KA
174
.P87
R42
v.31

UNITED STATES OF AMERICA

U.S.

Federal Power Commission Reports

Opinions, Decisions, and Orders

Volume 31

JANUARY 1, 1964–JUNE 30, 1964

Reported by the Commission

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1967

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
Price $5.75

FEDERAL POWER COMMISSION

COMMISSIONERS*

Lee C. White, *Chairman*

John A. Carver, Jr., *Vice Chairman*

Lawrence J. O'Connor, Jr.

Charles R. Ross

Carl E. Bagge

Gordon M. Grant, *Secretary*

---

*The Commissioners in this period of 1964 were Joseph C. Swidler, Lawrence J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CONTENTS

Page

Members of the Commission II

Table of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders IV

Table of Cases Reported V

Table of Cases Cited XXIII

Table of Statutes Cited XXVIII

Table of Rules of Commission Cited XXXVII

Table of Miscellaneous Citations XLI

Foreword XLV

Opinions, Decisions, and Orders 1

List of Producer Orders 1631

Index-Digest 1679

Subject-Index 1717

This volume should be cited "31 FPC ——".

COMMISSION OPINIONS

Opinion No. Page
401-A United Gas Pipe Line Co., docket No. CP62-161 1152
412-A Hassie Hunt Trust, Operator, et al., docket No. G-19115, et al 181
414 Union Producing Co., docket No. G-13811, et al 41
414-A Union Producing Co., docket No. G-13811, et al 503
415 Power Authority of the State of New York, project No. 2000 98
416 Kentucky West Virginia Gas Co., docket No. RP63-12 141
417 Alabama-Tennessee Natural Gas Co., docket No. G-5471, et al 208
417-A Alabama-Tennessee Natural Gas Co., docket No. G-5471, et al 928
418 Pacific Northwest Power Co., et al., project No. 2243, et al 247
418-A Pacific Northwest Power Co., et al., project No. 2243, et al 1051
419 United Gas Pipe Line Co. v. Coastal States Producing Co., et al., docket No. CP64-75, et al 406
420 Turlock Irrigation District, et al., project No. 2299 510
421 Northwest Paper Co., The, docket No. E-7092 593
422 Amerada Petroleum Corp., et al., docket No. CI62-1544, et al 623
422-A Amerada Petroleum Corp., et al., docket No. CI62-1544, et al 1315
423 Carolina Pipeline Co. v. Southern Natural Gas Co., docket No. RP63-4 705
424 Southern Natural Gas Co., et al., docket No. CP63-26, et al 789
424-A Southern Natural Gas Co., et al., docket No. CP63-26, et al 1387
425 Southeastern Public Service Co., docket No. RI63-361 973
~~426 Continental Oil Co., docket No. CI63-979~~ 1079
427 St. Michaels Utilities Commission, et al. v. Eastern Shore Public ~~Service Co. of Maryland, docket No. E-7114~~ 1161
428 United Gas Pipe Line Co., docket No. RP63-1 1180
429 Western Transmission Corp., et al., docket No. CP63-329, et al 1295
430 United Fuel Gas Co., et al., docket No. G-20270, et al 1342
431 Florida Gas Transmission Co., et al., docket No. RP61-3, et al 1402
432 Wisconsin Michigan Power Co., docket No. E-7026 1445
433 Black Hills Power and Light Co., docket No. E-7046 1605

INITIAL DECISION WHICH HAS BECOME FINAL

E. E. Fogelson, et al., docket No. G-19013, et al 476

GENERAL RULE MAKING

Order No.
272-A Docket No. R-228, Memorandum Opinion 1555
276-A Docket No. R-226 411
277 Docket No. R-258 599
278 Docket No. R-241, et al 601
279 Docket No. R-239 750
280 Docket No. R-240 754
281 Docket No. R-259 971
282 Docket No. R-260 972
283 Docket No. R-261 1026

TABLE OF CASES REPORTED

Page

Acco Oil & Gas Co. (Operator), et al., docket No. G–17270 163
Alabama Power Co., project No. 2146 31
*Alabama–Tennessee Natural Gas Co., docket No. G–5471, et al 208, 768, 928
Alabama–Tennessee Natural Gas Co., docket No. CP64–93 420
Algonquin Gas Transmission Co., docket No. RP64–21 702
All Area Questionnaires 34, 944, 1541
Amerada Petroleum Corp., docket No. G–18346 1018
*Amerada Petroleum Corp., et al., docket No. CI62–1544, et al 623, 1041, 1315
Amerada Petroleum Corp., et al., docket No. CI63–1042, et al 730
American Louisiana Pipe Line Co., et al., docket No. G–18419, et al 1579
American Louisiana Pipe Line Co., et al., docket No. CP64–154, et al 1333
American Louisiana Pipe Line Co., docket No. CP64–180 1076
*American Petrofina Co. of Texas, et al., docket No. CI61–1418, et al 623
*Anchor Oil Co., et al., docket No. CI61–292, et al 476, 1025
Anchorage, Alaska, City of, project No. 2405 1143
*Archer, Carl M., et al., docket No. CI61–1782, et al 476, 1025
*Archer, Dan E., et al., docket No. CI61–1783, et al 476, 1025
Area Rate Proceeding, et al., docket No. AR61–2, et al 400, 705, 887
Area Rate Proceeding, et al. (Hugoton-Anadarko Area), docket No. AR64–1, et al 197, 888, 1573, 1595
Area Rate Proceeding, et al. (Texas Gulf Coast Area), docket No. AR64–2, et al 197, 887, 922, 1383, 1573
Arizona Public Service Co., docket No. IT–5029 1398
Arizona Public Service Co., docket No. IT–5331 1400
Arkansas Louisiana Gas Co., et al., docket No. G–14853, et al 397
Arkansas Louisiana Gas Co., docket No. G–15187 444
Arkansas Louisiana Gas Co., et al., docket No. CP61–163, et al 1332
Arkansas Louisiana Gas Co., docket No. CP64–65 398
Arkansas Louisiana Gas Co., docket No. CP64–79 238

---

*Designates case as an opinion or decision.

Page
Arkansas Louisiana Gas Co., docket No. CP64–151 769
Arkansas Power & Light Co., docket No. E–7090 1592
Arkansas Power & Light Co., docket No. E–7143 202
*Armour Properties, et al., docket No. CI61–102, et al 476, 1025
Ashland Oil & Refining Co. (successor to United Carbon Co. and United Producing Co., Inc.), et al., docket No. CI60–493, et al 1532
Ashland Oil & Refining Co., et al., docket No. CI64–159, et al 730
Atlantic Refining Co., The, et al., docket No. G–11904, et al 234
Atlantic Refining Co., The, et al., docket No. G–17741, et al 402
Atlantic Refining Co., The, et al., docket No. CI61–752, et al 730
Atlantic Refining Co., The, et al., docket No. CI64–781, et al 1333
*Atlantic Seaboard Corp., et al., docket No. G–20272, et al 1342
Atlantic Seaboard Corp., docket No. CP64–117, et al 1581
Austral Oil Co., Inc., et al., docket No. G–17797, et al 402
Austral Oil Co., Inc., docket No. G–19831, et al 453
Aztec Oil & Gas Co. (successor to Hassie Hunt Trust and Herman Brown), docket No. CI64–367 604
Bass, Perry R. (Operator), et al., docket No. CI61–406, et al 23
Batex, Inc., et al., docket No. G–19656, et al 770
*Black Hills Power and Light Co., docket No. E–7046 1605
Blue Ridge Gas Co., docket No. G–14422 391
British-American Oil Producing Co., The, et al., docket No. RI64–123, et al 176
Brookhaven Oil Co., docket No. RI64–358 246
Brookover, Earl C., docket No. RI62–338 1145
Brown Co., project No. 2300 422
Brown, George R. (Operator), et al., docket No. CI63–523, et al 1074
Burrell, Jack L. (Operator), et al., docket No. RI64–82, et al 176
*Busmore Oil & Gas Co., Operator, et al., docket No. CI61–1641, et al 623
Carey, Matt, et al., project No. 961 395
Carnegie Natural Gas Co., docket No. CP64–157 914
*Carolina Pipeline Co., et al., docket No. RP63–4 705, 771, 1279, 1554
Carolina Power & Light Co., docket No. E–7078 1146
Central Louisiana Electric Co., Inc., et al., docket No. E–7162 1521
Central Maine Power Co., project No. 2283, et al 472
Central Maine Power Co., project No. 2322 486
Central Vermont Public Service Corp., et al., project No. 2205, et al 887

Page

*Champlin Oil & Refining Co., et al., docket No. CI61-888, et al. ---- 476, 1025

*Cherosage Enterprises Inc., et al., docket No. CI62-1459, et al. ---- 623

Chester, Illinois, City of, docket No. G-16398 ---- 1

Cheyenne Light, Fuel and Power Co., et al., docket No. CP64-51, et al. ---- 580

Chicago District Pipeline Co., docket No. RP64-5 ---- 2, 1043

Chicago Mill and Lumber Co., et al., docket No. G-19192, et al. ---- 748

Chippewa and Flambeau Improvement Co., issued April 6, 1964 ---- 779

Cimarron Transmission Co., docket No. CP64-264 ---- 1604

Cities Service Gas Co., docket No. G-2214 ---- 433

Cities Service Gas Co., docket No. CP64-81 ---- 915

Cities Service Gas Co., docket No. CP64-82 ---- 489

Cities Service Gas Co., et al., docket No. CP64-89, et al. ---- 3

Cities Service Gas Co., docket No. CP64-108 ---- 194-A, 1263

Cities Service Gas Co., docket No. RP64-9 ---- 1538

Cities Service Oil Co., et al., docket No. CI63-647, et al. ---- 730

*Clark Fuel Producing Co. (Operator), et al., docket No. CI61-1279, et al. ---- 623

Cleary Petroleum, Inc. (Operator), et al., docket No. CI63-1461, et al. ---- 730

Coastal States Gas Producing Co., docket No. CI64-237, et al. ---- 1027

*Coastal States Gas Producing Co., et al., docket No. CP64-75, et al. ---- 406

*Coastal Transmission Corp., et al., docket No. RP61-4, et al. ---- 1402

*Coates, George H., et al., docket No. CI62-355, et al. ---- 623

Colorado Interstate Gas Co., et al., docket No. G-10029, et al. ---- 87

Colorado Interstate Gas Co., docket No. G-18340 ---- 694

Colorado Interstate Gas Co., et al., docket No. CP61-143, et al. ---- 1332

Colorado Interstate Gas Co., et al., docket No. CP64-45, et al. ---- 580

Colorado Interstate Gas Co., docket No. CP64-88 ---- 1561

Colorado Interstate Gas Co., docket No. CP64-138 ---- 490

Colorado Interstate Gas Co., et al., docket No. CP64-160, et al. ---- 1121

Colorado Interstate Gas Co., docket No. CP64-182 ---- 1339

Colorado Interstate Gas Co., docket No. CP64-197 ---- 1077

Colorado Interstate Gas Co., docket No. CP64-204 ---- 1341

Page
Colorado Interstate Gas Co., docket No. RP64-1 434
Colorado-Wyoming Gas Co., et al., docket No. RP64-2, et al. 580
Columbia Gulf Transmission Co., docket No. CP64-111 33
Columbia Gulf Transmission Co., et al., docket No. CP64-141 462
Columbia River Basin, Headwater Benefit Investigation, docket No. E-6384 1044
Columbus and Southern Ohio Electric Co., project No. 2393 1147
*Commissioners of St. Michaels, Maryland, et al., docket No. E-7114 1161
Commissioners of St. Michaels, Maryland, et al., docket No. E-7114, et al. 395
Continental Oil Co., et al., docket No. G-13680, et al. 411
Continental Oil Co., et al., docket No. G-16840, et al. 235
Continental Oil Co., et al., docket No. G-17936, et al. 402
Continental Oil Co., docket No. G-18755 18
*Continental Oil Co., et al., docket No. CI61-375, et al. 476, 1025
Continental Oil Co. (Operator), et al., docket No. CI61-586, et al. 886
Continental Oil Co., et al., docket No. CI62-1100, et al. 730
*Continental Oil Co., docket No. CI63-979 1079, 1132
Continental Oil Co., et al., docket No. RI64-79, et al. 176
*Cox, Edwin L., et al., docket No. CI62-621, et al. 623
*Cree Drilling Co., Inc., et al., docket No. CI61-193, et al. 476, 1025
Creek Oil Co., Inc., et al., docket No. CI64-457, et al. 763, 1329
*Cricket Oil Co., et al., docket No. CI61-650, et al. 476, 1025
Crow, David, Agent, et al., docket No. G-20189, et al. 1132
Crow, David, Trustee, et al., docket No. G-20083, et al. 402
Crow, David, Trustee, et al., docket No. G-20188, et al. 1132
Crow Drilling Co., Inc., et al., docket No. G-6622, et al. 1132
Crown Central Petroleum Corp., docket No. RI64-208, et al. 179
Cumberland and Allegheny Gas Co., docket No. CP64-145 1071
Cumberland Natural Gas Co., Inc., et al., docket No. G-18740, et al. 763, 1329
Delaney Oil Co. (Operator), et al., docket No. G-20556, et al. 454
Delaware Power & Light Co., et al., docket No. E-7137, et al. 395
Delhi-Taylor Oil Corp., et al., docket No. G-20429, et al. 892
Department of Water Resources of the State of California, project No. 2100 165
Detroit Edison Co., The, docket No. E-6515 781
Dillard & Waltermire Drilling Co., docket No. G-19455 1048
Dorn & Miller Co., issued March 10, 1964 509
Drake, Truman, et al., docket No. G-18744, et al. 1329
Duke Power Co., project No. 2232 124, 204
Duke Power Co., et al., project No. 2232 1267

Page
Duke Power Co., a New Jersey Corp., docket No. E-7156 . 1264
Duke Power Co. of North Carolina, et al., project No. 2232 . . 1267
East Tennessee Natural Gas Co., docket No. CP64-135 456
Eastern Shore Natural Gas Co., docket No. CP64-172 1032
*Eastern Shore Public Service Co. of Maryland, The, et al., docket No. E-7114 1161
Eastern Shore Public Service Co. of Maryland, The, et al., docket No. E-7114, et al 395
Eastern Shore Public Service Co. of Virginia, The, et al., docket No. E-7137, et al 395
El Paso Electric Co., docket No. E-6886, et al 1584
El Paso Natural Gas Co., et al., docket No. G-10088, et al . . 87
El Paso Natural Gas Co., et al., docket No. G-13019, et al . . 1525
El Paso Natural Gas Co., docket No. G-13202 126
El Paso Natural Gas Co., docket No. CP62-265 1034
El Paso Natural Gas Co., docket No. CP63-63 1543
El Paso Natural Gas Co., docket No. CP63-205 917
El Paso Natural Gas Co., docket No. CP64-9 607
El Paso Natural Gas Co., docket No. CP64-99 422
El Paso Natural Gas Co., et al., docket No. CP64-116, et al . . 1280
El Paso Natural Gas Co., docket No. CP64-134 . . . . 425, 1577
El Paso Natural Gas Co., et al., docket No. CP64-139, et al . . 784
El Paso Natural Gas Co., docket No. CP64-156 608
El Paso Natural Gas Co., docket No. CP64-175 1389
El Paso Natural Gas Co., docket No. CP64-184 959
El Paso Natural Gas Co., docket No. CP64-209 1599
El Paso Natural Gas Co., docket No. CP64-219 1566
El Paso Natural Gas Co., docket No. CP64-239 1535
Equitable Gas Co., docket No. CP62-186 1589
Falcon Seaboard Drilling Co. (Operator), et al., docket No. G-17229, et al 9
Falcon Seaboard Drilling Co., et al, docket No. G-19253, et al 9
Featherstone, Olen F., issued April 8, 1964 893
*Feldman, D. D., et al., docket No. CI61-1452, et al 476, 1025
Florida Gas Transmission Co., docket No. CP63-346 1396
Florida Gas Transmission Co., docket No. CP64-235 1600
*Florida Gas Transmission Co., et al., docket No. RP61-3, et al 1402
*Fogelson, E. E., et al., docket No. G-19013, et al 476, 1025
Fohs, F. Julius (Operator), et al., docket No. G-17123 1049
Fohs, F. Julius, et al., docket No. RI61-411 1323
*Foree Drilling Co., Operator, et al., docket No. CI61-1726, et al 476, 1025

Page

Forest Oil Corp., issued January 16, 1964 140

Foster Petroleum Corp., docket No. RI64-17, et al. 894

*Fox, Hewitt B. & W. Rhinehart Miller, d/b/a Miller & Fox (Operator), et al., docket No. CI62-624, et al. 623

Gas Service Co., The, docket No. CP64-52 5

Genecov, A. S., Trustee, et al., docket No. G-19862 1029

General Crude Oil Co. (Operator), et al., docket No. CI61-1280, et al. 178, 603

*George W. Graham, Inc., Operator, et al., docket No. G-19123, et al. 181, 447, 946

Georgia Power Co., project No. 2177 128

Georgia Power Co., project No. 2354 1134

Georgia-Tennessee Gas Corp., et al., docket No. CP64-272, et al. 1391

Gilcrease Oil Co., docket No. G-16862 783

Goodrich, Hugh, et al., docket No. CI62-1410, et al. 28

Grand River Dam Authority, project No. 2183 204

Greensboro, Georgia, City of, et al., docket No. CP64-126, et al. 772

Grigsby, Jack W., et al., docket No. G-16665, et al. 614

*Gulf Oil Corp., et al., docket No. CI62-607, et al. 623

*Gulf Oil Corp., et al., docket No. CI63-123, et al. 789, 1387

Gulf Oil Corp., et al., docket No. CI63-459, et al. 730

Gulf Oil Corp., et al., docket No. RI64-176, et al. 176

Gulf States Utilities Co., et al., docket No. E-7047 195

Gulf States Utilities Co., et al., docket No. E-7162 1521

Hamill, Claud B., docket No. G-16860, et al. 199

*Hamilton Brothers, Ltd., et al., docket No. CI61-849, et al. 476, 1025

*Hamon, Jake L. (Operator), et al., docket No. CI61-922, et al. 623

*Hamon, Jake L., et al., docket No. CI61-1745, et al. 623

Harvey, W. W., et al., docket No. CI62-1470 880

Hawkins, H. L. & H. L. Hawkins, Jr., Operator, et al., docket No. G-18077, et al. 725

Hidalgo Gas Production Corp., et al., docket No. G-16674, et al. 197

Hill, A. G., et al., docket No. CI61-497, et al. 1025

Hill, A. G., et al., docket No. RI64-225, et al. 197

Hollandsworth and Travis (Operator), et al., docket No. RI61-493, et al. 895

Holyoke Water Power Co., project No. 2004 409

Hope Natural Gas Co., et al., docket No. CP64-119, et al. 757

*Hudson, W. H. (Operator), et al., docket No. CI62-1074, et al. 623

Page
Humble Gas Transmission Co., et al., docket No. G–15208, et al. 397
Humble Gas Transmission Co., docket No. CP64–163. 935
Humble Oil & Refining Co., et al., docket No. G–13732, et al. 187
Humble Oil & Refining Co. (Operator), et al., docket No. G–14927, et al. 187
Humble Oil & Refining Co. (Operator), et al., docket No. G–19191, et al. 748
*Humble Oil & Refining Co., et al., docket No. CI62–704, et al. 623
*Humble Oil & Refining Co., et al., docket No. CI63–129, et al. 789, 1387
Humble Oil & Refining Co., et al., docket No. CI63–575, et al. 730
Humble Oil & Refining Co., docket No. RI64–72. 22
*Hunt, Caroline, Trust Estate, et al., docket No. CI61–1344, et al. 181, 725
Hunt, Caroline, Trust Estate, et al., docket No. RI61–37, et al. 197
*Hunt, H. L., Operator, et al., docket No. G–19116, et al. 181, 447, 946
Hunt, H. L., Operator, et al., docket No. CI61–1221, et al. 725
*Hunt, H. L., et al., docket No. CI61–1282, et al. 181, 725
Hunt, H. L., et al., docket No. RI62–512, et al. 197
*Hunt, Hassie, Trust, Operator, et al., docket No. G–19115, et al. 181, 447, 946
Hunt, Hassie, Trust, Operator, et al., docket No. CI61–1283, et al. 725
Hunt, Hassie, Trust, et al., docket No. RI64–53, et al. 197
Hunt, Hassie, Trust Estate, et al., docket No. RI64–296, et al. 400
*Hunt, Lamar, Trust Estate, et al., docket No. G–19119, et al. 181, 447, 946
*Hunt, Lamar, et al., docket No. CI61–730, et al. 623
Hunt, Lamar, Trust Estate, et al., docket No. CI61–1345, et al. 725
*Hunt, Lamar, et al., docket No. CI61–1736, et al. 181
Hunt, Lamar, Trust Estate, issued May 6, 1964. 1123
Hunt, N. B., et al., docket No. G–10564, et al. 197
*Hunt, Nelson Bunker, et al., docket No. CI61–1346, et al. 181, 725
Hunt Oil Co., docket No. G–14082. 88
*Hunt Oil Co., et al., docket No. G–19117, et al. 181, 447, 946
Hunt Oil Co., et al., docket No. RI61–551, et al. 197
Hunt Oil Co., issued May 6, 1964. 1124

Page

*Hunt, William Herbert, Trust Estate, Operator, et al., docket No. G-19118, et al. 181, 447, 946
Hunt, William Herbert, Trust Estate, docket No. RI64-54, et al. 197
Hunt, William Herbert, Trust Estate, et al., docket No. RI64-297, et al. 400
Hunt, William Herbert, Trust Estate, issued May 6, 1964 1123
Idaho Power Co., docket No. E-7144 450
Idaho Power Co., project No. 1971 394, 1094
Illinois Power Co., docket No. CP64-181 1259
Indiana & Michigan Electric Co., docket No. E-7089 410
Interstate Power Co., docket No. E-7159 1034
Investment Tax Credit—Interim Order, docket No. R-232 175
Iowa-Illinois Gas & Electric Co., docket No. CP64-123 917
Iowa Power and Light Co., docket No. E-7149 676
Iowa Power and Light Co., docket No. E-7150 590, 690
*Irvin Producing Co., et al., docket No. CI61-579, et al. 476, 1025
J. C. Miller Oil Co., Incorporated, et al., docket No. G-18743, et al. 1329
J. C. Trahan, Drilling Contractor, Inc. (Operator), et al., docket No. G-18287, et al. 160
J. R. Butler & Co. (Operator), et al. (successor to Butler-Johnson Service Corp., et al.), docket No. G-7247, et al. 1397
*James G. Brown & Associates, Operator, et al., docket No. CI60-750, et al. 476, 1025
Jefferson Lake Sulphur Co. (Operator), et al., docket No. G-17997, et al. 402
Johnson, J. Wes, d/b/a Tower Oil & Gas Co. of Texas, et al., docket No. G-18852, et al. 1527
Johnson, J. Wes, d/b/a Tower Oil & Gas Co. of Texas, Jeanne Kerbs, and W. A. Morel (Operator), et al., docket No. RI60-276, et al. 1527
Johnson Rancho County Water District, et al., project No. 2240, et al. 1124
K-B Compression Co., Inc. (Operator), docket No. RI60-247 1395
Kansas-Colorado Utilities, Inc., et al., docket No. CP64-137, et al. 1121
Kentucky Gas Transmission Corp., et al., docket No. CP64-16, et al. 157
Kentucky Gas Transmission Corp., docket No. CP64-171 1338
Kentucky West Virginia Gas Co., docket No. CP64-105 156
*Kentucky West Virginia Gas Co., docket No. RP63-12 141
Knight, Julian A., et al., project No. 961 395
Kodiak Electric Association, Inc., project No. 2434 1571

Page
Lakeland Petroleum Corp. (Operator), et al., docket No. RI64-363 1097
LeFlore Gas Co., docket No. CP64-192 1099
Liberty, Texas, City of, et al., docket No. E-7047 195
License, Terms and Conditions of, Form L-2 (Revised February 1, 1964) 528
License, Terms and Conditions of, Form L-6 (Revised November 1, 1963) 284
Long Island Lighting Co., docket No. E-7158 1516
Lone Star Gas Co., et al., docket No. G-8763, et al. 3
Lone Star Gas Co., docket No. CP64-10 427
Lone Star Gas Co., docket No. CP64-178 961
Lone Star Gas Co., docket No. CP64-208 1282
Louisiana Nevada Transit Co., docket No. CP64-202 1539
Lynchburg Gas Co., et al., docket No. G-12862 392
Madole, James D., et al., docket No. G-20196, et al. 1132
Mallard Petroleum, Inc. (Operator), et al., docket No. RI64-101, et al. 176
Manufacturers Light & Heat Co., The, et al., docket No. CP64-15, et al. 157
Manufacturers Light & Heat Co., The, et al., docket No. CP64-59 429
Manufacturers Light & Heat Co., The, et al., docket No. CP64-67, et al. 699
Manufacturers Light & Heat Co., The, docket No. CP64-168 919
Maracaibo Oil Exploration Corp. (Operator), et al., docket No. RI60-138, et al. 402
*Marathon Oil Co. (Plymouth), et al., docket No. CI61-169, et al. 476, 1025
Marathon Oil Co., et al., docket No. CI63-356, et al. 730
Maury City, Tennessee, Town of, docket No. CP63-321 393
Mayfair Minerals, Inc., et al., docket No. G-20430, et al. 892
McAlester Fuel Co., docket No. RI62-300 89
*McWood Corp., et al., docket No. CI61-839, et al. 623
Merced Irrigation District, project No. 2179 897, 1394
Michigan Gas Storage Co., docket No. CP64-128 1072
Michigan Gas Storage Co., docket No. CP64-217 1564
Michigan Wisconsin Pipe Line Co., docket No. CP63-230 505
Michigan Wisconsin Pipe Line Co., docket No. CP64-109 149, 232
Michigan Wisconsin Pipe Line Co., docket No. CP64-124 184
Michigan Wisconsin Pipe Line Co., et al., docket No. CP64-155, et al. 1333
Michigan Wisconsin Pipe Line Co., docket No. CP64-242 1602

Page

Michigan Wisconsin Pipe Line Co., et al., docket No. RP64-38, et al. 1579

Midhurst Oil Corp. (Operator), et al., docket No. RI60-468 1019

Midwest Oil Corp. (Operator), et al., docket No. CI61-621, et al. 23

Midwestern Gas Transmission Co., docket No. RP64-8 413

Midwestern Gas Transmission Co., docket No. RP64-39 1585

*Miller, W. Rhinehart & Hewitt B. Fox, d/b/a Miller & Fox (Operator), et al., docket No. CI62-624, et al 623

Minnesota Power & Light Co., docket No. E-7095 476, 592

Mississippi Gas Corp., et al., docket No. CP64-87, et al 691

Mississippi River Fuel Corp., et al., docket No. CP64-133, et al 757

Mississippi River Fuel Corp., et al., docket No. RP61-21, et al 1512

Mississippi River Transmission Corp., docket No. CP61-274 937

Mississippi River Transmission Corp., et al., docket No. CP63-12, et al 1512

*Modesto Irrigation District, et al., project No. 2299 510, 1128

*Monsanto Chemical Co., et al., docket No. CI61-94, et al 476, 1025

*Monsanto Chemical Co., et al., docket No. CI61-876, et al 623

Monsanto Chemical Co., et al., docket No. RI64-16, et al 176

Montana-Dakota Utilities Co., docket No. CP64-189 1260

Montana-Dakota Utilities Co., docket No. CP64-247 1547

Montana-Dakota Utilities Co., docket No. IT-5460 903

Montana-Dakota Utilities Co., docket No. E-7155 760

Montana-Dakota Utilities Co., docket No. E-7164 1596

Morel, W. A. (Operator), et al. (successor to J. Wes Johnson, d/b/a Tower Oil & Gas Co. of Texas), docket No. CI64-867, et al 1527

Morgan Minerals Corp. (Operator), et al., issued June 26, 1964 1588

*MPS Production Co. (Operator), et al., docket No. CI62-726, et al 623

Murchison Bros. & Denius, docket No. G-17355 882

NAFCO Oil and Gas Inc., docket No. G-17282 190

Narragansett Electric Co., The, et al., docket No. E-7153 483

Natural Gas Pipeline Co. of America, et al., docket No. CP61-149, et al 1332

Natural Gas Pipeline Co. of America, docket No. CP62-144, et al 7

Natural Gas Pipeline Co. of America, docket No. CP64-71 (Phase II) 1031

Natural Gas Pipeline Co. of America, et al., docket No. CP64-89, et al 3

Page
Natural Gas Pipeline Co. of America, docket No. CP64–113 1288
Natural Gas Pipeline Co. of America, docket No. CP64–136 492
Natural Gas Pipeline Co. of America, docket No. CP64–173 938
Nekoosa-Edwards Paper Co., project No. 2255 948
Nevada Power Co., project No. 2321 435
New England Power Co., et al., docket No. E–7153 483
New London Gas Co., docket No. CP63–20 730
New York State Natural Gas Corp., et al., docket No. CP64–59 429
Newmont Oil Co., et al., docket No. G–13948, et al 411
Niagara Mohawk Power Corp., project No. 2320 1549
North Central Oil Corp. (Operator), et al., docket No. CI61–1570, et al 152
North Penn Gas Co., et al., docket No. CP64–103 242
Northern Natural Gas Co., docket No. CP62–178 920
Northern Natural Gas Co., docket No. CP62–307 939
Northern Natural Gas Co., docket No. CP63–219 461
Northern Natural Gas Co., et al., docket No. CP64–101, et al 784
Northern Natural Gas Co., docket No. CP64–112 399
Northern Natural Gas Co., et al., docket No. CP64–122, et al 1280
Northern Natural Gas Co., docket No. CP64–153 1037
Northern Natural Gas Co., docket No. CP64–188 1100
Northern Natural Gas Co., docket No. RP64–15 7
Northern States Power Co., docket No. E–7145 464
*Northwest Paper Co., The, docket No. E–7092 593
Northwestern Public Service Co., docket No. E–7148 761
Ocean Drilling & Exploration Co. (Operator), et al., docket No. CI60–743, et al 940
Ohio Fuel Gas Co., The, et al., docket No. CP64–14, et al 157
Olivet, Kansas, City of, docket No. CP64–100 240
Orange and Rockland Utilities, Inc., docket No. E–7157 969
*Order No. 272–A, docket No. R–228 1555
Order No. 276–A, docket No. R–226 411
Order No. 277, docket No. R–258 599
Order No. 278, docket No. R–241, et al 601
Order No. 279, docket No. R–239 750
Order No. 280, docket No. R–240 754
Order No. 281, docket No. R–259 971
Order No. 282, docket No. R–260 972
Order No. 283, docket No. R–261 1026
Otter Tail Power Co., docket No. E–7151 678
Owen, J. P. (Operator), et al., docket No. G–20555, et al 402
Pacific Gas & Electric Co., project No. 1962 905
Pacific Gas & Electric Co., project No. 2105 910

Page
Pacific Gas & Electric Co., project No. 2106 — 206
Pacific Gas & Electric Co., et al., issued March 17, 1964 — 597
Pacific Northwest Pipeline Corp., et al., docket No. G-10038, et al — 87
Pacific Northwest Pipeline Corp., et al., docket No. G-13018, et al — 1525
*Pacific Northwest Power Co., et al., project No. 2243, et al — 247, 773, 1051
Pacific Power & Light Co., docket No. E-7129 — 414
Pacific Power & Light Co., project No. 2082 — 680
Pan American Petroleum Corp., et al., docket No. G-15438, et al — 616
Pan American Petroleum Corp., et al., docket No. G-16946, et al — 236
Pan American Petroleum Corp., et al., docket No. G-19417, et al — 730
*Pan American Petroleum Corp., et al., docket No. CI61-438, et al — 476, 1025
Pan American Petroleum Corp., et al., docket No. CI62-1034, et al — 241
Pan American Petroleum Corp., et al., docket No. RI64-80, et al — 176
Panhandle Eastern Pipe Line Co., docket No. CP61-257 — 11
Panhandle Eastern Pipe Line Co., docket No. CP61-257 (Phase II) — 1576
Panhandle Eastern Pipe Line Co., docket No. CP64-149 — 609
Panhandle Eastern Pipe Line Co., docket No. RP64-18 — 736
Pendleton County Water District, docket No. CP64-23 — 1514
Pennsylvania Gas Co., docket No. CP64-199 — 1284
Penton, D. N. and Ruth I., d/b/a Penton and Penton, et al., docket No. G-19006, et al — 445
Penton, D. N. and Ruth I., d/b/a Penton and Penton (successor to Union Oil Co. of California), et al., docket No. CI64-476, et al — 445
Petersburg, Alaska, City of, project No. 2432 — 1569
*Petro-Associates, Inc. (Operator), et al., docket No. CI61-936, et al — 476, 1025
*Phillips, H. H., Jr., et al., docket No. CI62-954, et al — 623
Phillips, Leonard W., et al., docket No. G-4220, et al — 1397
Phillips Petroleum Co., docket No. G-11217, et al — 774, 1524
Phillips Petroleum Co., et al., docket No. G-17740, et al — 402
Phillips Petroleum Co., et al., docket No. G-18201, et al — 1025
Phillips Petroleum Co., docket No. G-18375 — 1021

Page
Phillips Petroleum Co. (Operator), et al., docket No. CI63-462, et al. 730
Placer County Water Agency, project No. 2079 92, 948
*Placid Oil Co., Operator, et al., docket No. G-19124, et al. 181, 447, 946
Placid Oil Co., Operator, et al., docket No. CI61-1682, et al. 725
Placid Oil Co., issued May 6, 1964 1124
*Power Authority of the State of New York, project No. 2000 93, 467, 962
Preston Oil Co., The, issued January 16, 1964 147
Producer Questionnaires, Orders, re 34, 944, 1541
Public Service Co. of Colorado, project No. 2351 684
Public Service Co. of Indiana, Inc., docket No. E-7163 1064
Public Service Co. of Indiana, Inc., project No. 2359 786
Public Service Co. of New Hampshire, project No. 1893, et al. 949
Public Service Co. of New Hampshire, project No. 2287, et al. 417
Public Utility District No. 1 of Chelan County, Washington, et al., project No. 943, et al. 1392
Public Utility District No. 1 of Douglas County, Washington, project No. 2149 954
Public Utility District No. 2 of Grant County, Washington, project No. 2114 133
Public Utility District No. 2 of Grant County, Washington, et al., project No. 2114, et al. 1392
Puget Sound Power & Light Co., et al., project No. 943, et al. 1392
Pure Oil Co., The, et al., docket No. CI63-148, et al. 730
Pure Oil Co., The, et al., docket No. RI64-193, et al. 176
Ravencliffs Development Co., docket No. G-17312, et al. 457
Realitos Oil Co., docket No. G-19884, et al. 13
Reserve Oil and Gas Co., et al., docket No. G-4720, et al. 763
Rio Bravo Oil Co., docket No. G-20060, et al. 883
Roxie, Mississippi, Town of, docket No. G-20260 1024
Rutherford, P. R., et al., docket No. G-17928, et al 402
Sabine Pipe Line Co., docket No. CP64-97 696
Sabine River Authority, State of Louisiana, et al., project No. 2305 885, 1141
Sabine River Authority of Texas, et al., project No. 2305 885, 1141
Sacramento Municipal Utility District, project No. 2101 473, 688
Sacramento Municipal Utility District, et al., issued March 17, 1964 597
*St. Michaels Utilities Commission, et al., docket No. E-7114 1161
St. Michaels Utilities Commission, et al., docket No. E-7114, et al. 395
Sam Houston Public Utility District, docket No. CP62-182 1149

Page

*Sands, Caroline Hunt, et al., docket No. CI61-643, et al. 476, 1025

*Sands, Caroline Hunt, et al., docket No. CI61-1343, et al. 181, 725

Sands, Caroline Hunt, et al., docket No. RI64-356 173

Sands, Loyd B., et al., docket No. CI61-643, et al. 476, 1025

Sands, Loyd B., et al., docket No. RI64-356 173

*Schafer Oil Corp., et al., docket No. CI61-1774, et al. 476, 1025

Sears, H. F., docket No. G-10494, et al. 585

Seattle, Washington, City of, project No. 553 1268

Seattle, Washington, City of, project No. 2144 509

Shell Oil Co. (Operator), et al., docket No. CI61-524, et al. 730

Shell Oil Co., et al., docket No. RI64-100, et al. 176

Shoreline Exploration, Inc., et al., docket No. CI60-356, et al. 160

Sierra Pacific Power Co., docket No. E-7161 1519, 1587

Sinclair Oil & Gas Co., et al., docket No. G-16760, et al. 1324

Sinclair Oil & Gas Co. (formerly Western Natural Gas Co.), docket No. G-19828, et al. 588

Sinclair Oil & Gas Co., et al., docket No. CI63-1025, et al. 731

*Skelly Oil Co., et al., docket No. CI63-73, et al. 623

Skelly Oil Co. (Operator), et al., docket No. RI64-531 587

Smith, H. R. (Operator), et al., docket No. RI61-29 458

Socony Mobil Oil Co., Inc., docket No. G-12193, et al. 1101, 1325, 1593

Socony Mobil Oil Co., Inc., et al., docket No. G-13827, et al. 411

Socony Mobil Oil Co., Inc., et al., docket No. G-17526, et al. 15, 402

*Sohio Petroleum Co. (Operator), et al. (formerly Katz Oil Co. (Operator), et al.), docket No. CI61-627, et al. 623

Sojourner, W. C., et al., docket No. CI62-1470 880

South Georgia Natural Gas Co., docket No. CP64-110 148

South Georgia Natural Gas Co., docket No. RP64-34 1273

South Texas Natural Gas Gathering Co., docket No. CP63-286, et al. 583

South Texas Natural Gas Gathering Co., docket No. CP64-203 1562

*Southeastern Public Service Co., docket No. RI63-361 973, 1553

Southern California Edison Co., project No. 522 1530

Southern California Edison Co., project No. 991 1393

Southern California Edison Co., project No. 2175 1010

*Southern Natural Gas Co., et al., docket No. CP63-26, et al. 789, 1387

Southern Natural Gas Co., docket No. CP64-144 452

Southern Natural Gas Co., docket No. CP64-169 1261

Southern Natural Gas Co., docket No. CP64-227 1567

*Southern Natural Gas Co., et al., docket No. RP63-4 705, 771, 1279, 1554

Southern Natural Gas Co., et al., docket No. RP63-7 468

Southern Natural Gas Co., docket No. RP64-31 1173

Page

Southwest Gas Producing Co., Inc. (Operator), et al., docket No. G-16714, et al. 192

Southwest Gas Producing Co., Inc., et al., docket No. G-18100, et al. 402

*Spencer, Emory M. (Operator), et al., docket No. CI61-1451, et al. 623

*Standard Oil Co. of Texas (Division of California Oil Co.), et al., docket No. CI61-1377, et al. 623

Standard Oil Co. of Texas, et al., docket No. RI64-158, et al. 176

Starks Utilities, Inc., et al., docket No. CP64-11, et al. 691

Stockton Light and Power Co. (of Maryland), et al., docket No. E-7117, et al. 395

Stockton Light and Power Co. (of Virginia), et al., docket No. E-7117, et al. 395

*Stubblefield Brothers, et al., docket No. CI61-605, et al. 476, 1025

Sun Oil Co. (Operator), et al., docket No. G-17923, et al. 15, 402

*Sun Oil Co., et al., docket No. CI61-657, et al. 623

Sun Oil Co., et al., docket No. CI63-1427, et al. 730

Sun Oil Co., et al., docket No. RI64-81, et al. 176

Sunray DX Oil Co., et al., docket No. G-4281, et al. 90

Sunray DX Oil Co., docket No. G-13422, et al. 1277

Sunray DX Oil Co., et al., docket No. G-17726, et al. 402

Sunray DX Oil Co., et al., docket No. CI60-85, et al. 748

*Sunray DX Oil Co. (formerly Sunray Mid-Continent Oil Co.), et al., docket No. CI61-1103, et al. 623

Superior Oil Co., The (Operator), et al., docket No. G-17989, et al. 402

Superior Oil Co., The (Operator), et al., docket No. G-18168, et al. 506

Superior Oil Co., The, et al., docket No. RI64-273, et al. 506, 934, 1511

Sylvania Corp., The, et al., docket No. CP64-69, et al. 699

Tenneco Corp., docket No. RI64-250 923

Tenneco Oil Co. (Operator), et al., docket No. G-13582 909

Tenneco Oil Co. (successor to Tenneco Corp.), docket No. RI63-433 1531

Tennessee Gas Transmission Co., et al., docket No. G-14562, et al. 411

Tennessee Gas Transmission Co., docket No. G-16842, et al. 502

Tennessee Gas Transmission Co., et al., docket No. CP61-106, et al. 241

Tennessee Gas Transmission Co., docket No. CP64-130 611

Tennessee Gas Transmission Co., et al., docket No. CP64-141 462

Tennessee Gas Transmission Co., docket No. CP64-165 1290

Page

Tennessee Gas Transmission Co., docket No. CP64–218 (Phase I) 1590
Texaco Inc., docket No. G–8969, et al. 1140
Texaco Inc., et al., docket No. G–15546, et al. 438, 924
Texaco Inc., et al., docket No. G–17613, et al. 400, 402
*Texaco Inc., et al., docket No. CI61–961, et al. 623
Texaco Inc., et al., docket No. CI64–475, et al. 1125
Texaco Inc., docket No. CI64–502 177
Texaco Inc., et al., docket No. RI64–98, et al. 176
Texas Eastern Transmission Corp., docket No. G–1964 1505
Texas Eastern Transmission Corp., et al., docket No. CP64–59 429
Texas Eastern Transmission Corp., docket No. RP64–36 1321
Texas Gas Exploration Corp., docket No. CI60–76 403
Texas Gas Transmission Corp., et al., docket No. CP64–94, et al 1125
Texas Gas Transmission Corp., docket No. CP64–107 1292
Texas Gas Transmission Corp., docket No. CP64–158 765
Texas Gulf Producing Co., et al., docket No. G–17925, et al. 402
*Tex-Star Oil & Gas Corp. (Operator), et al., docket No. CI62–729, et al 623
Tidewater Oil Co., et al., docket No. CI63–1009, et al 730
Tillamook People's Utility District, project No. 2274 406
Town Gas Co. of Illinois, docket No. CP64–3 697
Transcontinental Gas Pipe Line Corp., docket No. CP61–328 1262
Transcontinental Gas Pipe Line Corp., docket No. CP64–49 15
Transcontinental Gas Pipe Line Corp., docket No. CP64–96 957
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–103 242
Transcontinental Gas Pipe Line Corp., docket No. CP64–205 1285
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–270, et al 1391
Transcontinental Gas Pipe Line Corp., et al., docket No. RP63–3, et al 236
Transcontinental Gas Pipe Line Corp., docket No. RP64–28 1150
*Transwestern Pipeline Co., et al., docket No. G–20464, et al. 476, 1025
Transwestern Pipeline Co., et al., docket No. CP63–204, et al. 1328
Transwestern Pipeline Co., docket No. CP64–36 17
Transwestern Pipeline Co., docket No. CP64–90 431
Transwestern Pipeline Co., docket No. CP64–106 243
Transwestern Pipeline Co., docket No. CP64–148 878
Trice Production Co., et al., docket No. G–18516, et al. 402

Page
Trunkline Gas Co., docket No. CP64-114 613, 621, 1118
Trunkline Gas Co., docket No. CP64-120 186
Trunkline Gas Co., et al., docket No. RI64-273, et al. 506, 934, 1511
Trunkline Gas Co., docket No. RP64-19 743
*Turlock Irrigation District, et al., project No. 2299 510, 1128
*U.S. Natural Gas Corp., et al., docket No. CI63-1460, et al. 1295
Union Oil Co. of California, et al., docket No. G-18389, et al. 1324
Union Oil Co. of California, et al., docket No. G-19006, et al. 445
*Union Oil Co. of California, et al., docket No. CI61-715, et al. 476, 1025
Union Oil Co. of California (Operator), et al., docket No. CI63-1241, et al. 730
Union Oil Co. of California, et al., docket No. CI64-668, et al. 616
Union Point, Georgia, City of, et al., docket No. CP64-127, et al 772
*Union Producing Co., docket No. G-13811, et al 503
*Union Producing Co., et al., docket No. G-13811, et al. 41
Union Producing Co., et al., docket No. G-18354 778
*Union Producing Co. (Operator), et al., docket No. G-18354, et al 41, 887
*Union Producing Co., et al., docket No. CI62-639, et al. 623
Union Texas Petroleum, et al., docket No. G-13221, et al. 23, 28, 152, 160, 178, 234, 235, 236, 603, 756, 886, 925, 940, 1074, 1322
Union Texas Petroleum, a Division of Allied Chemical Corp., et al., docket No. CI61-1275, et al 730
United Fuel Gas Co., docket No. G-2451, et al 879
United Fuel Gas Co., et al., docket No. G-12862 392
*United Fuel Gas Co., et al., docket No. G-20270, et al 1342
United Fuel Gas Co. (successor to Amere Gas Utilities Co. and Atlantic Seaboard Corp.), et al., docket No. CP60-123, et al. 1532
United Fuel Gas Co., et al., docket No. CP64-16, et al 157
United Fuel Gas Co., docket No. CP64-73 1559
United Fuel Gas Co., et al., docket No. CP64-141 462
United Gas Pipe Line Co., docket No. G-12321 943
United Gas Pipe Line Co., docket No. CP60-14 1586
*United Gas Pipe Line Co., docket No. CP62-161 1152
*United Gas Pipe Line Co., et al., docket No. CP64-75, et al. 406
United Gas Pipe Line Co., docket No. CP64-118 86
United Gas Pipe Line Co., docket No. CP64-132 460
United Gas Pipe Line Co., docket No. CP64-142 432
United Gas Pipe Line Co., docket No. CP64-170 921
United Gas Pipe Line Co., docket No. CP64-185 1038
United Gas Pipe Line Co., docket No. CP64-186 1040
United Gas Pipe Line Co., docket No. CP64-215 1287
United Gas Pipe Line Co., docket No. CP64-216 1546

Page

*United Gas Pipe Line Co., docket No. RP63–1 1180, 1629
United Gas Pipe Line Co., et al., docket No. RP63–7 468
United Natural Gas Co., et al., docket No. CP64–67, et al. 699
United Natural Gas Co., et al., docket No. CP64–103 242
United Natural Gas Co., docket No. CP64–223 1578
United Natural Gas Co., docket No. RP64–33 1159
Utah Power & Light Co., docket No. E–7130 958, 1537
Utah Power & Light Co., project No. 765 20
Utica, Mississippi, Town of, docket No. CP64–146 1544
Valley Gas Transmission, Inc., docket No. CP64–102 245
Vaughn, G. H., et al., docket No. G–19894, et al. 200
Vaughn, Jack C. (Operator), et al., docket No. G–19894, et al. 200
Vermont Electric Cooperative, Inc., et al., project No. 2152, et al. 887
Virginia Electric & Power Co., project No. 2009 1141
Walker, Willard E., et al., docket No. G–18099, et al. 402
*Warrior River Natural Gas District, et al., docket No. CP63–70, et al. 789, 1387
*Washington Public Power Supply System, et al., project No. 2273, et al. 247, 773, 1051
Washington Water Power Co., The, project No. 621 133
Washington Water Power Co., The, project No. 2058 138
Washington Water Power Co., The, project No. 2075 1507, 1511
Weiner, Ted (Operator), et al., docket No. G–17993, et al. 402
*Western Oil Fields, Inc., Operator, et al., docket No. CI61–273, et al. 476, 1025
*Western Transmission Corp., et al., docket No. CP63–329, et al. 1295
Wheless Drilling Co. (Operator), et al., docket No. CI61–587, et al. 748
*Wisconsin Michigan Power Co., docket No. E–7026 1445
Wisconsin Michigan Power Co., et al., docket No. E–7142 171
Wisconsin Michigan Power Co., issued January 10, 1964 91
Wisconsin Power & Light Co., docket No. CP64–161 767
Wisconsin Power & Light Co., project No. 710 443
Wisconsin Power & Light Co., project No. 2344, et al. 471
Wisconsin Public Service Corp., et al., docket No. E–7142 171
Wisconsin Public Service Corp., project No. 1940, et al. 964
Wisconsin Valley Improvement Co., project No. 2113 417
Woodfin, Gene M., Trustee for the Jean Curry Glassell Trust, et al., docket No. CI63–885, et al. 925
Yadkin, Inc., project No. 2197 493
Yuba County Water Agency, et al., project No. 2246, et al. 1124
*Yucca Petroleum Corp., et al., docket No. CI60–768, et al. 476, 1025

TABLE OF CASES CITED

Page

Accardi *v.* Shaughnessy, 347 U.S. 260 (1954) 1220
Alabama Power Co. (project No. 82), 1 FPC 25, affirmed Alabama Power Co. *v.* McNinch, 94 F. 2d 601 (1937), cert. denied, 317 U.S. 652 (1943) 1407
Alabama Power Co. (project No. 2146), 13 FPC 1235 265,361
Alabama Power Co. (project No. 2146), 18 FPC 265 265,361
Alabama-Tennessee Natural Gas Co. (G-585), 11 FPC 75 1371
Alabama-Tennessee Natural Gas Co. (G-5471), 27 FPC 1063 209
Alabama-Tennessee Natural Gas Co. (G-5471), 27 FPC 1180 209
Alabama-Tennessee Natural Gas Co. (G-5471), 31 FPC 208 703, 736,744,1457,1580
Alston Coal Co. *v.* F.P.C., 137 F. 2d 740 (1943) 1357
Alton, City of *v.* Illinois Commerce Commission, 19 Ill. 2d 76, 165 N.E. 2d 513 (1960) 219
Amerada Petroleum Corp. (G-9385), 29 FPC 204 67
Amerada Petroleum Corp. (CI62-1544), 29 FPC 171 652
Amere Gas Utilities Co. (G-6358), 15 FPC 781 211
American Louisiana Pipe Line Co. (G-2306), 16 FPC 897 819
American Louisiana Pipe Line Co. (G-2306), 20 FPC 575 809
American Louisiana Pipe Line Co. (G-10396), 17 FPC 22 881
American Louisiana Pipe Line Co. (G-18419), 29 FPC 932 1200
American Telephone & Telegraph Co. *v.* U.S., 299 U.S. 232 (1936) 37
Appalachian Electric Power Co. (project No. 2210), 19 FPC 169 268
Appalachian Power Co. (E-6900), 28 FPC 1199 1499
Area Rate Proceeding (AR61-1), 26 FPC 193 1386
Area Rate Proceeding (Permian Basin) (AR61-1), 29 FPC 737 1574
Area Rate Proceeding (AR61-2), 30 FPC 1350 38
Area Rate Proceeding (Hugoton-Anadarko Area) (AR64-1), 30 FPC 1354 35
Area Rate Proceeding (AR64-1), 31 FPC 888 1386
Arizona Grocery Co. *v.* Atchison, Topeka and Santa Fe Ry. Co., 284 U.S. 370 (1932) 1439
Arkansas Motor Coaches *v.* Commissioner of Internal Revenue, 198 F. 2d 189 (1952) 963,1555
Arkansas Power & Light Co. (IT-5829), 8 FPC 106, affirmed Arkansas Power & Light Co. *v.* F.P.C., 185 F. 2d 751 (1950), cert. denied, 341 U.S. 909 (1951) 1439
Ashbacker Radio Corp. *v.* F.C.C., 326 U.S. 327 (1945) 350
Associated Industries *v.* Ickes, 134 F. 2d 694 (1943) 1356
Associated Press *v.* U.S., 326 U.S. 1 (1945) 350
Atlantic Gulf Gas Co. (G-887), 10 FPC 79 825
Atlantic Refining Co. *v.* F.P.C., 316 F. 2d 677 (1963) 630,756,855
Atlantic Refining Co. *v.* Public Service Commission of New York (CATCO), 360 U.S. 378 (1959) 214,629,806,946,1089,1300,1306
Atlantic Seaboard Corp. (G-1384), 11 FPC 43 1249,1351,1453
Atlantic Seaboard Corp. (G-16401), 28 FPC 860 722,1363
Atlantic Seaboard Corp. (G-17774), 28 FPC 1145 1378
Atlantic Seaboard Corp. (CP62-43), 27 FPC 370 174
Ayshire Corp. *v.* U.S., 335 U.S. 573 (1949) 722,1002,1490
Bel Oil Corp. *v.* Rufus W. Fontenot, 238 La. 1002, 117 So. 2d 571 (1960) 60
Black Hills Power and Light Co. (E-7064), 28 FPC 1121 1615
Blair *v.* City of Chicago, 201 U.S. 400 (1906) 596
Bluefield Water Works and Improvement Co. *v.* Public Service Commission of West Virginia, 262 U.S. 679 (1923) 74,1456
Board of Public Utility Commission *v.* New York Telephone Co., 271 U.S. 23 (1926) 230,931
Boonville, Wyoming, Village of *v.* Maltbie, 272 N.Y. 40, 4 N.E. 2d 209 (1936) 115
Bridge Co. *v.* U.S., 105 U.S. 470 (1881) 595

Page

California, People of the State of *v.* F.P.C., 369 U.S. 482 (1962) 274,1525
California Co., The (G–16680), 22 FPC 211 481
California Oil Co., Western Division *v.* F.P.C., 315 F. 2d 652 (1963) 632,756
California Oregon Power Co. (IT–5714), 3 FPC 368 1439
California Oregon Power Co. (E–6390), 13 FPC 1 567
California Oregon Power Co. *v.* F.P.C., 150 F. 2d 25 (1945), cert. denied, 326 U.S. 781 (1946) 1417
Callery Properties, Inc. *v.* F.P.C., 335 F. 2d 1004 (1964) 448,1318
Camfield *v.* U.S., 167 U.S. 518 (1897) 554
Carolina Pipeline Co. *v.* Southern Natural Gas Co. (RP63–4), 29 FPC 149 1169
Carolina Pipeline Co. *v.* Southern Natural Gas Co. (RP63–4), 31 FPC 705 1490
Carpenter *v.* Public Utility Commission of Pennsylvania, 15 A. 2d 473 (1940) 1490
Carta *v.* City of Norwalk, 108 Conn. 697, 145 A. 158 (1929) 115
Central Hudson Gas & Electric Corp. (G–2331), 14 FPC 544 1376
Central Nebraska Public Power and Irrigation District (project No. 1417), 5 FPC 165, affirmed Central Nebraska Public Power and Irrigation District *v.* F.P.C., 160 F. 2d 782 (1947) 96
Central New York Power Corp. (DI–179), 8 FPC 390 1549
Central Paper Co. *v.* Commissioner of Internal Revenue, 199 F. 2d 902 (1952) 963,1555
Chapman *v.* F.P.C., 345 U.S. 153 (1953) 357
Charles River Bridge *v.* Warren Bridge, 36 U.S. (11 Pet.) 420 (1837) 595
Chatanika Power Co., Inc. (project No. 2294), 26 FPC 751 297
Chelan Electric Co. (EP–621), 1 FPC 102 1413
Cherney Corp. *v.* S.E.C., 341 U.S. 953 (1951) 1439
Chesapeake & Ohio Ry. Co. *v.* Kelly, 241 U.S. 485 (1916) 861
Chicago & Northwestern Ry. Co., 295 ICC 277 1614
Churchill Tabernacle *v.* F.C.C., 160 F. 2d 244 (1947) 1438
Cia Mexicana de Gas S.A. *v.* F.P.C., 167 F. 2d 804 (1948) 307
Cities Service Gas Co (G–885), 6 FPC 747 1082
Cities Service Gas Co. (G–18799), 30 FPC 158 1221, 1410
Cities Service Gas Co. *v.* F.P.C., 255 F. 2d 860 (1958), 358 U.S. 837 (1959) 1475
Cities Service Gas Producing Co. *v.* F.P.C., 233 F. 2d 726 (1956), cert. denied, 352 U.S. 911 (1957) 1170
Cities Service Production Co. (G–9510), 28 FPC 1114 67, 234, 1103
Clarion River Power Co. (project No. 309), 1 FPC 269 1413
Clarion River Power Co. *v.* George Otis Smith, 59 F. 2d 861 (1932), cert. denied, 287 U.S. 639 (1933) 535
Cleveland, City of *v.* Hope Natural Gas Co. (G–100), 3 FPC 150 990
Coastal Transmission Corp. (G–18338), 26 FPC 318 720
Coastal Transmission Corp. (G–18338), 26 FPC 677 664
Colorado Interstate Gas Co. (G–1115), 11 FPC 324 73, 1371
Colorado Interstate Gas Co. *v.* F.P.C., 324 U.S. 581 (1945) 1199, 1417
Colton, City of *v.* Southern California Edison Co. (E–6821), 26 FPC 223 1172
Colyer *v.* Skeffington, 265 Fed. 17 (1920), reversed on other grounds, 277 Fed. 129 (1922) 1220
Commonwealth Natural Gas Corp. (G–963), 9 FPC 70 1300
Continental Oil Co. (G–11024), 27 FPC 96 630, 1004
Dayton Power & Light Co. *v.* F.P.C., 251 F. 2d 875 (1957) 963
Delhi-Taylor Oil Corp. (G–6504), 18 FPC 704 1002
Detroit, City of *v.* F.P.C., 230 F. 2d 810 (1956), cert. denied, 352 U.S. 829 (1956) 38, 71, 213, 1595
Detroit Edison Co. *v.* S.E.C., 119 F. 2d 730 (1941), cert. denied, 314 U.S. 618 (1941) 1414
East Bay Municipal Utility District (project No. 1134), 1 FPC 12 567
East Ohio Gas Co. (G–115), 6 FPC 176 37
El Paso Natural Gas Co. (G–2018), 13 FPC 421 70
El Paso Natural Gas Co. (G–4769), 22 FPC 260 49, 210, 1186, 1371
El Paso Natural Gas Co. (G–4769), 22 FPC 659 1371
El Paso Natural Gas Co. (G–4769), 28 FPC 688 48
El Paso Natural Gas Co. (G–12580), 22 FPC 900 719
El Paso Natural Gas Co. (G–16235), 27 FPC 321 151
El Paso Natural Gas Co. (G–17849), 29 FPC 1175 246, 1098
El Paso Natural Gas Co. (G–17849), 30 FPC 479 246, 1098

Page
El Paso Natural Gas Co. (CP60-72), 27 FPC 1134 627
El Paso Natural Gas Co. (CP62-97), 27 FPC 30 1082
El Paso Natural Gas Co. *v.* F.P.C., 281 F. 2d 567 (1960), cert. denied, 366 U.S. 912 52, 212, 931, 995, 1236
Erie Railroad Co. *v.* City of Patterson, 76 A. 1065 (1910) 1220
F.C.C. *v.* Pottsville Broadcasting Co., 309 U.S. 134 (1939) 587, 1439
F.C.C. *v.* RCA Communications, Inc., 346 U.S. 86 (1952) 274
F.C.C. *v.* Sanders Brothers Radio Station, 309 U.S. 470 (1940) 1356
F.P.C. *v.* Colorado Interstate Gas Co., 348 U.S. 492 (1954) 440
F.P.C. *v.* East Ohio Gas Co., 338 U.S. 464 (1949) 37
F.P.C. *v.* H. L. Hunt, 376 U.S. 515 (1964) 947, 1318, 1423
F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 (1943) 53, 214, 992, 1456
F.P.C. *v.* Idaho Power Co., 344 U.S. 17 (1952) 554
F.P.C. *v.* Natural Gas Pipeline Co., 315 U.S. 575 (1942) 991, 1375
F.P.C. *v.* Niagara Power Corp., 347 U.S. 239 (1954) 358
F.P.C. *v.* Panhandle Eastern Pipe Line Co., 337 U.S. 502 (1949) 1159
F.P.C. *v.* Sierra Pacific Power Co., 350 U.S. 348 (1956) 1164, 1449
F.P.C. *v.* Southern California Edison Co., 376 U.S. 205 (1964) 972, 1153, 1158
F.P.C. *v.* Tennessee Gas Transmission Co., 371 U.S. 145 (1962) 504, 932, 1288, 1318
F.P.C. *v.* Texaco Inc., 377 U.S. 33 (1964) 1423, 1530
F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961) 838, 930, 1156
F.T.C. *v.* Raladam Co., 316 U.S. 149 (1942) 307
Federal Water & Gas Corp., 188 F. 2d 100 (1950), cert. denied, *sub nom.* Cherney Corp. *v.* S.E.C., 341 U.S. 953 (1951) 1439
First Iowa Hydro-Electric Coop. (project No. 1853), 6 FPC 227 334
First Iowa Hydro-Electric Coop. *v.* F.P.C., 328 U.S. 152 (1946), rehearing denied, 328 U.S. 879 (1946) 271, 558, 596
Florida Power Corp. (project No. 682), 1 FPC 390 1408
Fly *v.* Heitmeyer, 309 U.S. 146 (1939) 587
Foster Petroleum Corp. (RI64-17), 30 FPC 672 586
Fresno Irrigation District (project No. 1925), 8 FPC 348 361
Galveston Electric Co. *v.* Galveston, 258 U.S. 388 (1922) 214, 1375, 1500
General Gas Pipe Line Corp. (G-123), 2 FPC 705 825
Glassell, Alfred C. (G-9278), 25 FPC 1071 67
Grand River Dam Authority (project No. 2183), 25 FPC 646 344
Granik *v.* F.C.C., 234 F. 2d 682 (1956) 881
Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 (1963) 813
Graridge Corp. (Operator) (G-19246), 30 FPC 1156 160, 179, 234, 603, 1527
Great Western Ry. Co. *v.* Sutton, L. R., 4 H.L. 226, per Blackburn, J. (1869) 1490
Green Mountain Power Corp. (project No. 2090), 13 FPC 1211 959
Gruber *v.* Chesapeake & Ohio Ry. Co., 158 F. Supp. 593 (1958) 1621
Gulf Oil Corp. (G-9520), 29 FPC 837 862, 1103, 1326
Gulf States Utilities Co. (IT-5509), 1 FPC 522 1450
Helman *v.* Fruit Growers Express Co., 200 F. Supp. 234 (1961) 963, 1555
Helvering *v.* R. J. Reynolds Tobacco Co., 306 U.S. 110 (1939) 226
Home Gas Co. (G-1966), 13 FPC 241 1371
Hope Natural Gas Co. (G-12571), 19 FPC 405 1312
Hope Natural Gas Co. *v.* F.P.C., 134 F. 2d 287 (1943), reversed 320 U.S. 591 (1943) 508
Hope Natural Gas Co. *v.* F.P.C., 196 F. 2d 803 (1952) 1001, 1496
Hope Natural Gas Co. *v.* F.P.C., 320 U.S. 591 (1943) 1093
Houghton *v.* Payne, 194 U.S. 88 (1904) 1439
Houston Texas Gas & Oil Corp. (G-9262), 16 FPC 118, affirmed, *sub nom.* Florida Economic Advisory Council *v.* F.P.C., 251 F. 2d 643 (1957), cert. denied, 356 U.S. 959 (1958) 1403
Humble Oil & Refining Co. (G-13566), 19 FPC 89 855
Humble Oil & Refining Co. (G-17144), 25 FPC 1173 1002
Hunt, H. L. (RI62-467), 28 FPC 897 504, 991
Hunt, H. L. *v.* F.P.C., 306 F. 2d 334 (1962), reviewed 376 U.S. 515 (1964) 141, 147, 509
Hunt, Hassie Trust (Operator) (G-19115), 30 FPC 1438 631
Hunt, Hassie Trust (Operator) (G-19115), 31 FPC 181 1320
Hunt, Hassie Trust (Operator) (G-19115), 31 FPC 447 638

Page

Hunt Oil Co. (G–9065), 28 FPC 623 ... 49,990
Hunt Oil Co. (G–9065), 30 FPC 220 ... 439,1594
I.C.C. *v.* B. & O. R.R. Co., 145 U.S. 276 (1892) ... 723,1490
I.C.C. *v.* Louisville and N.R. Co., 227 U.S. 88 (1913) ... 1253
Idaho Power Co. (E–6781), 18 FPC 603 ... 451
Idaho Power Co. (project No. 1971), 14 FPC 55 ... 278
Illinois Natural Gas Co. *v.* Central Ill. P.S.C., 314 U.S. 498 (1942) ... 1156
Independent Natural Gas Co. (G–178), 2 FPC 910 ... 1420
Indiana & Michigan Electric Co. (E–6270), 9 FPC 617 ... 1064
Indiana & Michigan Electric Co. (E–6372), 10 FPC 1315 ... 1064
Indiana & Michigan Electric Co. (E–7089), 30 FPC 967 ... 151
Interstate Power Co. *v.* F.P.C., 236 F. 2d 372 (1956), cert. denied, 352 U.S. 967 (1957) ... 930,1201
J. M. Huber Corp. *v.* F.P.C., 236 F. 2d 550 (1956), cert. denied, 352 U.S. 971 (1957) ... 1081
J. M. Huber Corp. *v.* F.P.C., 294 F. 2d 568 (1961) ... 735
Joerger *v.* Pacific Gas & Electric Co., 276 P. 1017 (1929) ... 554
Kanawha Valley Power Co. (project No. 1175), 2 FPC 11 ... 118
Kansas-Nebraska Natural Gas Co., Inc. (CP62–215), 29 FPC 1058 ... 841
Kansas-Nebraska Natural Gas Co., Inc. *v.* Pan American Petroleum Corp., 297 F. 2d 561 (1962), cert. denied, 370 U.S. 937 (1962) ... 401
Kansas Pipe Line & Gas Co. (G–106), 2 FPC 29 ... 842
Lake Ontario Land Development & Beach Protective Ass'n. *v.* F.P.C., 212 F. 2d 227 (1954) ... 95
Lexington, Cities of *v.* F.P.C., 295 F. 2d 109 (1961) ... 73,212,930,1236,1355,1499
Lignite Coal from North Dakota, 126 ICC 243 ... 1001
Linoma Power Co. (project No. 2002), 8 FPC 999 ... 267
Lockport, City of (EP–1217), 1 FPC 7 ... 358
Lone Star Gas Co. (CP61–61), 24 FPC 1088 ... 1082
Louisville Bridge Co. *v.* U.S., 242 U.S. 409 (1917) ... 297, 595
Louisville Gas & Electric Co. *v.* F.P.C., 129 F. 2d 126 (1942), cert. denied, 318 U.S. 761 (1942) ... 1417
Louisville Hydro-Electric Co., 1 FPC 130, affirmed Louisville Gas & Electric Co. *v.* F.P.C., 129 F. 2d 126 (1942), cert. denied, 318 U.S. 761 (1943) ... 1407
Lo-Vaca Gathering Co. *v.* F.P.C., 323 F. 2d 190 (1963) ... 409
Lynchburg Gas Co. (G–18322), 24 FPC 955 ... 1376
Lynchburg Gas Co. (RP63–5), 30 FPC 934 ... 709
Lynchburg Gas Co. *v.* F.P.C., 275 F. 2d 847 (1960) ... 825
Manufacturers Light & Heat Co., The (G–15080), 20 FPC 120 ... 1082
Manufacturers Light & Heat Co., The (G–18536), 22 FPC 482 ... 1082
Manufacturers Light & Heat Co., The (CP60–93), 25 FPC 755 ... 1082
Market Street, R.R. Corp. *v.* Railroad Commission of California, 324 U.S. 548 (1945) ... 930
Marshall *v.* Wilson, 154 P. 2d 547 (1945) ... 1424
Medina Gathering Corp. (CP62–194), 30 FPC 227 ... 481, 854, 1301, 1318
Meridian Ltd. *v.* San Francisco, 90 P. 2d 537 (1939) ... 555
Meridian Ltd. *v.* San Francisco, 91 P. 2d 105 (1939) ... 555
Merritt-Chapman & Scott Corp. *v.* Public Utility Dist. No. 2 of Grant County, Washington, 319 F. 2d 94 (1963) ... 97
Michigan Consolidated Gas Co. *v.* F.P.C., 203 F. 2d 895 (1953) ... 707
Michigan Wisconsin Pipe Line Co. (G–20569), 24 FPC 177 ... 809
Middle States Petroleum Corp. (G–14836), 21 FPC 493 ... 1306
Midwestern Gas Transmission Co. (G–16841), 21 FPC 653 ... 841, 1200
Midwestern Gas Transmission Co. (G–18313), 22 FPC 775 ... 847
Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870 (1960), cert. denied, 364 U.S. 891 (1961) ... 796
Minnesota Power & Light Co. (IT–5769), 3 FPC 388 ... 1417
Mississippi Power & Light Co. *v.* Memphis Natural Gas Co., 162 F. 2d 388 (1947), cert. denied, 332 U.S. 770 (1948) ... 401
Mississippi River Fuel Corp. (G–462), 4 FPC 340 ... 73
Mississippi River Fuel Corp. *v.* F.P.C., 252 F. 2d 619 (1957), cert. denied, 355 U.S. 904 (1958) ... 44, 1187, 1493, 1595
Mississippi River Fuel Corp. *v.* F.P.C., 281 F. 2d 919 (1960), cert. denied, 365 U.S. 827 (1961) ... 930, 935, 1170

Page

Montana Power Co., The (IT-5825), 4 FPC 213 1439
Montana Power Co., The (E-6696), 16 FPC 863 1613
Montana Power Co., The (project No. 2223), 17 FPC 834 267
Monticello, Georgia, City of (CP63-156), 29 FPC 912 803
N.L.R.B. *v.* Baltimore T. Co., 140 F. 2d 51 (1944), cert. denied, 321 U.S. 795 (1944) 1439
N.L.R.B. *v.* Fairchild Engine & Airplane Co., 145 F. 2d 214 (1944) 1253
National Coal Association *v.* F.P.C., 191 F. 2d 462 (1951) 150, 838, 1356
National Hells Canyon Association *v.* F.P.C., 237 F. 2d 277 (1956), cert. denied, 353 U.S. 924 (1957) 311
Natural Gas Pipeline Co. of America (G-2302), 14 FPC 212 1456
Natural Gas Pipeline Co. of America (G-12399), 24 FPC 222 855
Natural Gas Pipeline Co. of America (RP61-8), 28 FPC 731 1200
Newark, New Jersey, City of *v.* Central R.R. Co. of N. J., 267 U.S. 377 (1925) 596
Newport News, Virginia, City of *v.* Warwick, 166 S.E. 570 (1932) 115
Niagara Falls Power Co. *v.* F.P.C., 137 F. 2d 787 (1943), cert. denied, 320 U.S. 792 (1944) 594, 1440
Niagara Mohawk Power Corp. *v.* F.P.C., 202 F. 2d 190 (1952), affirmed 347 U.S. 239 (1954) 1438
North Carolina, State of *v.* Municipal Corporations, 90 S.E. 2d 519 (1955) 1490
Northern Natural Gas Co. (G-1382), 11 FPC 123 1367, 1369
Northern Natural Gas Co. (G-10200), 17 FPC 479 1082
Northern Natural Gas Co. (G-12153), 28 FPC 4 43
Northern Natural Gas Co. (G-12153), 29 FPC 689 1229, 1493
Northern Natural Gas Co. (G-12331), 17 FPC 906 1082
Northern Natural Gas Co. (G-17485), 22 FPC 164, affirmed *sub nom.* Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870 (1960), cert. denied, 364 U.S. 891 (1961) 797
Northern Natural Gas Co. (G-19040), 25 FPC 431 210, 931
Northern Natural Gas Co. (G-20570), 25 FPC 1234 806, 1310
Northern Natural Gas Co. (CP61-1), 25 FPC 540 844
Northern Natural Gas Co. (CP62-85), 30 FPC 859 796
Northern Natural Gas Co. (RP60-13), 26 FPC 841 1410
Northwestern Electric Co. (IT-5642), 2 FPC 327 1417
Northwestern Electric Co. (IT-5642), 3 FPC 83 1442
Northwestern Electric Co. *v.* F.P.C., 125 F. 2d 882 (1942) 1442
Oakdale Irrigation District (project No. 2005), 10 FPC 810 567
Ohio Fuel Gas Co., The (G-1786), 13 FPC 281 1370
Ohio Fuel Gas Co., The (G-10874), 16 FPC 1233 1082
Ohio Fuel Gas Co., The (G-18867), 22 FPC 643 1082
Ohio Fuel Gas Co., The (CP60-20), 23 FPC 693 1082
Ohio Valley Electric Corp., 36 SEC 304 274
Oil Incorporated (Operator) (CI60-170), 25 FPC 1178 1312
Otter Tail Power Co. (IT-5544), 2 FPC 134 1450
Pacific Gas & Electric Co. (E-6482), 13 FPC 200 1479
Pacific Northwest Power Co. (project No. 2173), 19 FPC 127 311
Pacific Power & Light Co. (E-7024), 27 FPC 623 335, 1613
Pacific Power & Light Co. *v.* F.P.C., 134 F. 2d 602 (1943) 1417
Pan American Petroleum Corp. *v.* F.P.C., 322 F. 2d 999 (1963) 438, 930
Pan American Petroleum Corp. *v.* Kansas-Nebraska Natural Gas Co., Inc., 297 F. 2d 561 (1962) 1475
Panhandle Eastern Pipe Line Co. (G-1116), 10 FPC 328 721, 1490
Panhandle Eastern Pipe Line Co. (G-1240), 9 FPC 443 719
Panhandle Eastern Pipe Line Co. (G-1705), 15 FPC 1421 816
Panhandle Eastern Pipe Line Co. (G-2035), 13 FPC 301, affirmed 232 F. 2d 467 (1956), cert. denied, 352 U.S. 891 (1957) 722
Panhandle Eastern Pipe Line Co. (G-2506), 25 FPC 787, remanded on other grounds, 305 F. 2d 763 (1962), cert. denied, 372 U.S. 916 (1963) 43, 1186
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 169 F. 2d 881 (1948) 540
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 204 F. 2d 675 (1953) 1087
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 232 F. 2d 467 (1956) 226
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 236 F. 2d 289 (1956) 307, 587, 771, 1438
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 236 F. 2d 606 (1956) 49, 69, 1280

Page

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 305 F. 2d 763 (1962), cert. denied, 372 U.S. 916 (1963) 38

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 316 F. 2d 659 (1962), cert. denied, 375 U.S. 881 (1964) 213, 931, 1235, 1499

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 352 U.S. 891 (1957) 53

Panhandle Eastern Pipe Line Co. *v.* Public Service Commission of Indiana, 332 U.S. 507 (1947) 659

Pearson *v.* Williams, 202 U.S. 281 (1906) 1439

Pennsylvania Power & Light Co. *v.* F.P.C., 139 F. 2d 445 (1943), cert. denied, 321 U.S. 789 (1944) 1417

Pennsylvania Water & Power Co. (IT-5915), 8 FPC 1, affirmed 193 F. 2d 230 (1951), 343 U.S. 414 (1952) 275, 991, 1441, 1496

Phillips Petroleum Co. (G-1148), 24 FPC 537, affirmed *sub nom.* Wisconsin, State of *v.* F.P.C., 373 U.S. 294 (1963) 38, 43, 177, 198, 657, 862, 869, 990

Pittsburgh, Pennsylvania, City of *v.* F.P.C., 237 F. 2d 741 (1956) 150, 1356

Pittsburgh, Pennsylvania, City of *v.* Pennsylvania Public Utilities Commission, 182 Pa. Sup. 551, 128 A. 2d 372 (1957) 219

Pittsburgh, Pennsylvania, City of *v.* Pennsylvania Public Utilities Commission, 187 Pa. Sup. 341, 144 A. 2d 648 (1958) 231

Placid Oil Co. (G-13183), 30 FPC 283 448, 630, 645, 756, 853, 1318

Portland General Electric Co. *v.* F.P.C., 328 F. 2d 165 (1964) 520

Power Authority of the State of New York (project No. 2000), 9 FPC 301 361

Power Authority of the State of New York (project No. 2000), 12 FPC 172 334

Power Authority of the State of New York (project No. 2216), 19 FPC 186 567

Public Service Commission of New York *v.* F.P.C., 287 F. 2d 146 (1961), cert. denied, 365 U.S. 880 (1961) 632, 856

Public Service Commission of New York *v.* F.P.C., 295 F. 2d 140 (1961), cert. denied, 368 U.S. 948 (1962) 175

Public Service Commission of New York *v.* F.P.C., 327 F. 2d 893 (1964) 178

Public Service Commission of New York *v.* F.P.C., 329 F. 2d 242 (1964) 403, 629, 1317

Public Service Commission of New York *v.* F.P.C., 361 U.S. 195 (1959) 235

Public Service Co. of Indiana, Inc. (E-6354), 10 FPC 1096 1064

Public Service Co. of Indiana, Inc. (E-6365), 10 FPC 1206 1064

Public Service Co. of Oklahoma (E-6816), 25 FPC 656 1169

Public Service Electric & Gas Co. (IT-5866), 4 FPC 400 1440

Public Utility Commission of Ohio *v.* United Fuel Gas Co., 317 U.S. 456 (1943) 557

Public Utility District No. 1 of Douglas County, Washington (project No. 2149), 28 FPC 128 277, 1054

Public Utility District No. 1 of Pend Oreille County, Washington *v.* F.P.C., 308 F. 2d 318 (1962), cert. denied, 372 U.S. 908 (1963) 303

Public Utility District No. 2 of Grant County, Washington (project No. 2114), 13 FPC 1462 265

Public Utility District No. 2 of Grant County, Washington (project No. 2114), 14 FPC 1067 265

Puget Sound Power & Light Co. (EP-943), 3 FPC 231 119, 1417

Pure Oil Co., The (G-17930), 25 FPC 383, affirmed 299 F. 2d 370 (1962) 507, 1476

Pure Oil Co., The *v.* F.P.C., 292 F. 2d 350 (1961) 735

Reichelderfer *v.* Quinn, 287 U.S. 315 (1932) 596

Rochester Tel. Corp. *v.* U.S., 307 U.S. 125 (1939) 1429

Rogers Sand Co. *v.* Pittsburgh, 139 Fed. 7 (1905) 596

Rubber Co. *v.* Goodyear, 76 U.S. 788 (1869) 115

Rutherford, P. R. (G-10922), 23 FPC 357 1094

Safe Harbor Water Power Corp. (EP-1025), 1 FPC 230 1413

Safe Harbor Water Power Corp. (IT-5494), 2 FPC 182 1501

Safe Harbor Water Power Corp. *v.* F.P.C., 179 F. 2d 179 (1949), cert. denied, 339 U.S. 957 275

St. Croix Falls Minnesota Improvement Co. (IT-5669), 3 FPC 13 1407

St. Joseph Stock Yards Co. *v.* U.S., 298 U.S. 38 (1936) 1439

San Diego Land & Town Co. *v.* Jasper, 189 U.S. 439 (1903) 1375

Page

Scripps Howard Radio *v.* F.C.C., 316 U.S. 4 (1942) 1062

Seattle, Washington, City of (project No. 2144), 26 FPC 54, affirmed *sub nom.* Public Utility District No. 1 of Pend Oreille County, Washington *v.* F.P.C., 308 F. 2d 318 (1962), cert. denied, 372 U.S. 908 (1963) 334

Service *v.* Dulles, 354 U.S. 363 (1957) 1220

Shell Oil Co. (G–5029), 25 FPC 1316 1082

Shell Oil Co. (G–9446), 28 FPC 257 67, 1026, 1103

Shell Oil Co. (RI61–515), 29 FPC 498, affirmed Shell Oil Co. *v.* F.P.C., 334 F. 2d 1002 (1964) 507

Shultz *v.* U.S., 132 F. Supp. 953 (1955) 963, 1555

Signal Oil & Gas Co. *v.* F.P.C., 238 F. 2d 771 (1956), cert. denied, 353 U.S. 923 (1957) 226

Sinclair Oil & Gas Co. (G–9291), 30 FPC 5 1103, 1326

Sinclair Oil & Gas Co. (successor in interest to Southern Production Co., Inc.) (G–9447), 22 FPC 53 992

Skelly Oil Co. (G–18638), 28 FPC 401, modified on rehearing, 28 FPC 1065 237, 642, 756, 853, 1311, 1317

Slade, Inc. (Operator) (G–19986), 29 FPC 11 67, 975

Smith *v.* Illinois Bell Telephone Co., 282 U.S. 133 (1930) 1415

Socony Mobil Oil Co., Inc. (G–13780), 27 FPC 347 923

Socony Mobil Oil Co., Inc. (G–17625), 30 FPC 452 412

Sohio Petroleum Co. *v.* F.P.C., 298 F. 2d 465 (1961) 735

South Carolina Electric & Gas Co. (project No. 2315), 30 FPC 1338 597

South Carolina Generating Co. (E–6585), 16 FPC 52 274, 1457

South Carolina Public Service Authority *v.* F.P.C., 200 F. 2d 78 (1952) 112

South Georgia Natural Gas Co. (G–9892), 22 FPC 211 793

Southern California Edison Co. (project No. 1930), 8 FPC 364 558

Southern Natural Gas Co. (G–296), 3 FPC 822 870

Southern Natural Gas Co. (G–1308), 9 FPC 756 714

Southern Natural Gas Co. (G–1907), 12 FPC 516 803

Southern Natural Gas Co. (G–19632), 25 FPC 518 711

Southern Natural Gas Co. (G–20509), 29 FPC 323 48, 805, 990, 1174, 1177, 1229, 1377

Southern Natural Gas Co. (G–20509), 29 FPC 779 794

Southern Natural Gas Co. (CP61–187), 25 FPC 727 825

Southern Steamship Co. *v.* N.L.R.B., 316 U.S. 31 (1942) 225

Stacey Manufacturing Co. *v.* Commissioner of Internal Revenue, 237 F. 2d 605 (1956) 227

Standard Oil Co. of California (CI60–338), 27 FPC 1153, affirmed *sub nom.* California Oil Co., Western Division *v.* F.P.C., 315 F. 2d 652 (1962) 868

State Corporation Commission of Kansas *v.* F.P.C., 206 F. 2d 690 (1953), cert. denied, 346 U.S. 992 (1954) 1496

State Corporation Commission of Kansas *v.* Wichita Gas Co., 290 U.S. 561 (1934) 1439

Sun Oil Co. *v.* F.P.C., 297 F. 2d 77 (1962) 36

Sun Oil Co. *v.* F.P.C., 364 U.S. 170 (1960) 1093

Sunray DX Oil Co. (RI63–60), 30 FPC 1418 894

Sunray Mid-Continent Oil Co. (RI62–196), 27 FPC 94 90

Sunray Mid-Continent Oil Co. *v.* F.P.C., 239 F. 2d 97 (1956), reversed on other grounds, 353 U.S. 944 (1957) 854

Sunray Mid-Continent Oil Co. *v.* F.P.C., 364 U.S. 137 (1960) 855, 1083

Swayne and Hoyt *v.* U.S., 300 U.S. 297 (1937) 719

Tacoma, Washington, City of (project No. 2016), 10 FPC 424 263, 357

Tacoma, Washington, City of *v.* Taxpayers of Tacoma, 357 U.S. 320 (1958) 303

Tagg Bros. & Moorehead *v.* U.S., 280 U.S. 420 (1930) 1003, 1439

Tennessee Gas Transmission Co. (G–5259), 18 FPC 428 1225, 1231

Tennessee Gas Transmission Co. (G–9331), 17 FPC 406 989

Tennessee Gas Transmission Co. (CP63–247), 29 FPC 1000 1292

Tennessee Gas Transmission Co. *v.* F.P.C., 322 F. 2d 1006 (1963) 438

Texaco Inc. (G–13169), 28 FPC 247 192, 235

Texaco Inc. (G–17613), 30 FPC 1316 507

Texaco Inc. *v.* F.P.C., 290 F. 2d 149 (1961) 440, 935

Texaco Seaboard, Inc. (CI61–118), 29 FPC 593 630, 756

Texaco Seaboard, Inc. (CI61–118), 30 FPC 613 853, 1317

Texas Eastern Transmission Corp. (CP60–122), 28 FPC 1035 720

Page

Texas Eastern Transmission Corp. *v.* F.P.C., 306 F. 2d 345 (1962) 1481
Texas Gas Transmission Corp. (CP63-214), 29 FPC 1084 1292
Texas Gas Transmission Corp. *v.* Shell Oil Co., 363 U.S. 263 (1960) 1171
Tidewater Oil Co. (G-13310), 27 FPC 1267 67
Transcontinental Gas Pipe Line Corp. (G-1842), 11 FPC 94 73, 980, 1371
Transcontinental Gas Pipe Line Corp. (G-10000), 17 FPC 360 825
Transcontinental Gas Pipe Line Corp. (G-10000), 28 FPC 979 1300, 1451
Transcontinental Gas Pipe Line Corp. (G-13143), 20 FPC 264 825
Transcontinental Gas Pipe Line Corp. (G-13143), 21 FPC 138, affirmed *sub nom.* Lynchburg Gas Co. *v.* F.P.C., 275 F. 2d 847 (1960) 825
Transcontinental Gas Pipe Line Corp. (CP61-194), 27 FPC 859 825
Transcontinental Gas Pipe Line Corp. (RP61-13), 27 FPC 187 941
Transwestern Pipeline Co. (G-14871), 22 FPC 391 477
Transwestern Pipeline Co. (G-14871), 28 FPC 109 477
Trunkline Gas Co. (G-15394), 21 FPC 704, affirmed *sub nom.* Battle Creek Gas Co. *v.* F.P.C., 281 F. 2d 42 (1960) 806
Trunkline Gas Co. (CP60-22), 24 FPC 1020 857
Trunkline Gas Co. *v.* The Superior Oil Co. (RI64-273), 31 FPC 506 613
Trunkline Gas Co. *v.* The Superior Oil Co. (RI64-273), 31 FPC 1511 1525
Trunkline Gas Co. (RP64-19), 31 FPC 743 1120
Trunkline Gas Co. *v.* F.P.C., 247 F. 2d 159 (1959) 49
Union Producing Co. (G-10060), 18 FPC 387 60
Union Producing Co. (G-13811), 31 FPC 503 1574
Union Texas Petroleum (G-13221), 29 FPC 273 697, 853, 1312
Union Texas Petroleum (G-13221), 29 FPC 1283 616, 642, 926, 1018, 1021, 1150
United Fuel Gas Co. (G-1781), 12 FPC 251 73, 1369
United Fuel Gas Co. (G-2451), 23 FPC 127 227
United Fuel Gas Co. (G-20270), 27 FPC 538 1352
United Fuel Gas Co. (CP61-107), 29 FPC 90 1378
United Fuel Gas Co. *v.* Public Service Commission of West Virginia, 376 U.S. 784 (1964) 1465
United Gas Improvement Co. *v.* F.P.C., 283 F. 2d 817 (1960), cert. denied, 365 U.S. 881 (1961) 632, 806
United Gas Improvement Co. *v.* F.P.C., 287 F. 2d 159 (1961) 152, 632, 645, 856
United Gas Improvement Co. *v.* F.P.C., 290 F. 2d 133 (1961) 632, 860
United Gas Improvement Co. *v.* F.P.C., 290 F. 2d 147 (1961) 632, 856
United Gas Pipe Line Co. (G-133), 3 FPC 402 1196
United Gas Pipe Line Co. (G-1142), 14 FPC 353, affirmed in part Mississippi River Fuel Corp. *v.* F.P.C., 252 F. 2d 619 (1957), cert. denied, 355 U.S. 904 (1958) 1196
United Gas Pipe Line Co. (G-9547), 25 FPC 26 68, 1001, 1196
United Gas Pipe Line Co. (CP60-36), 30 FPC 329 630, 645, 756, 853
United Gas Pipe Line Co. (CP60-36), 30 FPC 1209 448
United Gas Pipe Line Co. (CP62-161), 30 FPC 560 408
United Gas Pipe Line Co. *v.* F.P.C., 181 F. 2d 796 (1950), cert. denied, 340 U.S. 827 (1951) 657
United Gas Pipe Line Co. *v.* Louisiana Public Service Commission, 130 So. 2d 652 (1961) 1222
United Gas Pipe Line Co. *v.* Memphis Light, Gas and Water Division, 358 U.S. 103 (1958) 401, 508, 1471
United Gas Pipe Line Co. *v.* Mobile Gas Service Corp., 350 U.S. 332 (1956) 401, 469, 1002, 1172, 1311, 1449
United Railways & Electric Co. *v.* West, 280 U.S. 234 (1930) 223
United States *v.* American Trucking Association, 310 U.S. 534 (1940) 226
United States *v.* Appalachian Power Co., 311 U.S. 377 (1940), rehearing denied, 312 U.S. 712 (1941) 311, 377, 597
United States *v.* Chicago Heights Trucking Co., 310 U.S. 344 (1940) 723
United States *v.* Columbia Steel Co., 334 U.S. 495 (1948) 275
United States *v.* Dakota Montana Oil Co., 288 U.S. 459 (1933) 226
United States *v.* El Paso Natural Gas Co., 376 U.S. 651 (1964) 1328
United States *v.* Gerlach Live Stock Co., 339 U.S. 725 (1950) 554
United States *v.* Grand River Dam Authority, 363 U.S. 299 (1960), rehearing denied, 364 U.S. 855 (1961) 595
United States *v.* City of Greenville, 118 F. 2d 963 (1941) 1439

Page

United States *v.* Kansas Gas and Electric Co., 215 F. Supp. 532 (1963) 1168
United States *v.* Oregon Railroad & Navigation Co., 159 Fed. 975 (1908) 722
United States *v.* Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1899) 554
United States *v.* City and County of San Francisco, 310 U.S. 16 (1940) 543, 1439
United States *v.* Wabash Railroad Co., 321 U.S. 403 (1944) 723
United States *v.* Willow River Co., 324 U.S. 499 (1945) 562
United States Feldspar Corp. *v.* U.S., 38 F. 2d 91 (1930) 1438
Utah Power & Light Co. *v.* U.S., 243 U.S. 389 (1917) 1439
Virginia Electric Power Co. (project No. 2009), 10 FPC 1 343
Virginia Petroleum Jobbers Ass'n. *v.* F.P.C., 259 F. 2d 921 (1958) 150, 1059, 1356
Virginia Petroleum Jobbers Ass'n. *v.* F.P.C., 265 F. 2d 364 (1959) 1356
Vitarelli *v.* Seaton, 359 U.S. 535 (1959) 1220
Warrior River Electric Coop. Association (project No. 2102), 11 FPC 693 351
Washington, State of, Department of Game *v.* F.P.C., 207 F. 2d 391 (1953), cert. denied, 347 U.S. 946 (1954) 303
Washington, State of, *ex rel* Public Utility District No. 1 of Skagit County *v.* Wylie, 28 Wash. 2d 113, 182 P. 2d 706 (1947) 356
Washington Public Power Supply System (project No. 2244), 24 FPC 21 356
Washington Public Power Supply System (project No. 2257), 23 FPC 109 356
Washington Public Power Supply System *v.* Pacific Northwest Power Co., 217 F. Supp. 481 (1963) 271
Western Distribution Co. *v.* Public Service Commission of Kansas, 285 U.S. 119 (1932) 1415
Western Natural Gas Co. (G-168), 2 FPC 910 1420
Western Trunk Line, Trans-Missouri, and Illinois Freight Committee Territories, Investigations of Advances in Rates by Carriers in, 20 ICC 307 980
Willmut Gas & Oil Co. *v.* United Gas Pipe Line Co. (G-1158), 12 FPC 132 1083
Wilson, Robert P. (project No. 2276), 28 FPC 571 301
Wisconsin, State of *v.* F.P.C., 292 F. 2d 753 (1961) 655
Wisconsin, State of *v.* F.P.C., 303 F. 2d 380 (1961), affirmed, 373 U.S. 294 (1963) 43
Wisconsin, State of *v.* F.P.C., 373 U.S. 294 (1963) 39, 507, 1476
Wisconsin Michigan Power Co. (E-6268), 9 FPC 457 1489
Wisconsin Michigan Power Co. (E-6268), 10 FPC 170 1489
Wisconsin Michigan Power Co. *v.* F.P.C., 197 F. 2d 472 (1952), cert. denied, 345 U.S. 935 (1953) 1448
Wisconsin Public Service Corp. *v.* F.P.C., 147 F. 2d 743 (1945), cert. denied, 325 U.S. 880 (1945) 594
Zangerle *v.* City of Cleveland, 145 Ohio St. 347 (1945) 115

TABLE OF STATUTES CITED

United States: Page
- Act of July 3, 1886, 24 Stat. 123 476, 592
- Administrative Procedure Act of 1946, 60 Stat. 237:
  - Sec. 3 1026
  - Sec. 4 658, 1026
  - Sec. 4(a) 971
  - Sec. 7(c) 1203
  - Sec. 11 1575
- Bonneville Act, The, 50 Stat. 731 (1937), 16 U.S.C. 407 (1958):
  - Sec. 4(a) 272
  - Sec. 5(a) 273
- Boundary Waters Treaty of 1909, 36 Stat. 2448 (1910) 107
- Clayton Act, 38 Stat. 731 (1914), 15 U.S.C. 14 (1958):
  - Sec. 10 1408
- Communications Act of 1934, 47 U.S.C.A. 212 (1958):
  - Sec. 2(b) 1429
- Federal Power Act, 49 Stat. 838 (1935):
  - Sec. 3(6) 96
  - Sec. 3(7) 94, 352, 522
  - Sec. 3(10) 959
  - Sec. 3(11) 95, 205, 487, 685, 899, 1136, 1531, 1550
  - Sec. 3(13) 1616
  - Sec. 4(b) 436, 965
  - Sec. 4(e) 125, 279, 435, 487, 510, 524, 574, 596, 684, 897, 905, 950, 955, 964, 1135, 1507, 1549
  - Sec. 4(f) 264, 786, 1143, 1147, 1569, 1571
  - Sec. 5 264, 1056
  - Sec. 6 165, 1556
  - Sec. 7 293, 1056
  - Sec. 7(a) 264, 1057
  - Sec. 7(b) 101, 275, 1052
  - Sec. 8 1267
  - Sec. 9 300, 1143
  - Sec. 9(a) 356
  - Sec. 9(b) 271, 553, 1569, 1572
  - Sec. 10(a) 250, 436, 513, 1059
  - Sec. 10(c) 436
  - Sec. 10(d) 436, 552
  - Sec. 10(e) 94, 468, 963, 1556
  - Sec. 10(f) 91, 436, 597, 779, 1044, 1054
  - Sec. 10(h) 274
  - Sec. 10(i) 437, 1558
  - Sec. 11 436, 520
  - Sec. 12 436
  - Sec. 14 436, 533, 885
  - Sec. 15 436, 533
  - Sec. 18 436, 535
  - Sec. 19 436
  - Sec. 20 436
  - Sec. 22 436, 885
  - Sec. 23 594
  - Sec. 23(a) 436, 476, 592, 594
  - Sec. 23(b) 476, 522, 593, 594, 959
  - Sec. 24 301, 1059
  - Sec. 27 512
  - Sec. 29 511
  - Sec. 201 1069, 1503
  - Sec. 201(b) 1153

- United States—Continued
  - Federal Power Act—Continued — Page
    - Sec. 201(e) 1064
    - Sec. 202 196
    - Sec. 202(b) 195
    - Sec. 202(e) 781, 903, 1398, 1400
    - Sec. 203 171, 202, 464, 1264, 1518, 1523
    - Sec. 204 414, 450, 464, 590, 676, 678, 760, 761, 969, 1035, 1519, 1584, 1596, 1607
    - Sec. 204(a) 416, 451, 970, 1036, 1608
    - Sec. 204(e) 416, 451, 970, 1036
    - Sec. 204(f) 416, 451, 591, 679, 760, 970, 1036, 1520, 1598, 1614
    - Sec. 205 196, 396, 483, 973, 1069, 1161, 1448
    - Sec. 205(a) 1462, 1615
    - Sec. 205(b) 1450
    - Sec. 205(c) 1064, 1146, 1162, 1463
    - Sec. 205(d) 196, 1162, 1464
    - Sec. 205(e) 1162, 1448
    - Sec. 206 196, 396, 973, 1069, 1165, 1496
    - Sec. 206(a) 1452
    - Sec. 301 1069
    - Sec. 301(b) 1069
    - Sec. 305(a) 1415, 1611
    - Sec. 307 1069
    - Sec. 308 599, 1069
    - Sec. 309 599, 973, 1027, 1069, 1558
    - Sec. 313 593, 597
    - Sec. 313(a) 22, 32, 171, 205, 207, 284, 410, 420, 437, 444, 468, 472, 475, 488, 528, 578, 593, 688, 690, 788, 902, 956, 962, 1059, 1097, 1139, 1142, 1145, 1148, 1273, 1511, 1533, 1573.
  - Federal Reports Act, 56 Stat. 1078, 5 U.S.C. 139(d) (1958) 36
  - Federal Water Power Act of 1920, 41 Stat. 1063 (1920), 16 U.S.C. 791 (1958) 292, 535, 553, 780
  - Flood Control Act of 1944, 58 Stat. 593 (1944) 524
  - Flood Control Act of 1958, 72 Stat. 305 (1958):
    - Sec. 204 166
  - Internal Revenue Act of 1954, 68A Stat. 3, 26 U.S.C. 1 221
  - Internal Revenue Act of 1962, 76 Stat. 960, 26 U.S.C. 1 175, 1193, 1232, 1500
  - Internal Revenue Act of 1964, 78 Stat. 19, 26 U.S.C. 1 1190
    - Sec. 203(e) 1193
  - Internal Revenue Code, 26 U.S.C. (1958):
    - Sec. 167 210, 929, 1191, 1355, 1465
    - Sec. 167(b) 1238
    - Sec. 168 210
    - Sec. 170(c) 1189
    - Sec. 263(c) 49
    - Sec. 421 (1954) 1607
    - Sec. 421 (1964) 1620
    - Sec. 613 49
  - Interstate Commerce Act, 41 Stat. 494, 49 U.S.C.:
    - Sec. 15(7) 1002
  - Mann-Elkins Act of 1910, 36 Stat. 539, 49 U.S.C. 1:
    - Sec. 12 1001
  - Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. 717 (1958):
    - Sec. 1(a) 719
    - Sec. 1(b) 1080, 1153
    - Sec. 1(c) 408, 582, 716
    - Sec. 2 240, 802
    - Sec. 2(7) 1158
    - Sec. 4 8, 27, 30, 42, 126, 155, 163, 197, 405, 446, 458, 479, 603, 606, 620, 642, 702, 733, 750, 765, 873, 927, 943, 946, 971, 1043, 1075, 1128, 1303, 1318, 1338, 1345, 1402, 1496, 1529, 1595.
    - Sec. 4(a) 974
    - Sec. 4(b) 706, 1412

United States—Continued
  Natural Gas Act—Continued   Page
    Sec. 4(c) 710
    Sec. 4(d) 507, 978, 1123, 1124, 1125, 1476
    Sec. 4(e) 23, 43, 90, 141, 401, 405, 504, 603, 665, 701, 771, 775, 797, 887, 978, 1081, 1102, 1106, 1140, 1183, 1326, 1363, 1514, 1525.
    Sec. 5 27, 31, 59, 155, 163, 197, 620, 765, 943, 1357, 1496, 1595
    Sec. 5(a) 42, 212, 405, 413, 665, 701, 887, 1105, 1201, 1326, 1357
    Sec. 6(a) 1413
    Sec. 6(b) 1418
    Sec. 7 19, 91, 408, 427, 603, 617, 625, 726, 752, 755, 790, 881, 946, 971, 1037, 1087, 1104, 1125, 1154, 1292, 1296, 1317, 1357, 1420, 1513, 1530, 1532, 1581, 1590.
    Sec. 7(a) 1, 5, 240, 391, 393, 691, 698, 754, 767, 772, 790, 1156, 1259, 1514, 1544
    Sec. 7(b) 11, 148, 156, 398, 405, 425, 429, 432, 447, 452, 479, 580, 606, 608, 618, 702, 734, 750, 754, 769, 854, 914, 1027, 1038, 1075, 1080, 1099, 1100, 1121, 1132, 1261, 1294, 1330, 1338, 1529, 1535, 1546, 1547, 1576, 1583, 1592.
    Sec. 7(c) 3, 11, 15, 17, 26, 29, 33, 86, 154, 157, 162, 178, 184, 214, 238, 242, 243, 245, 399, 403, 408, 420, 422, 425, 428, 429, 431, 445, 456, 460, 462, 477, 489, 490, 492, 580, 583, 604, 607, 609, 611, 618, 621, 640, 694, 696, 699, 733, 749, 754, 757, 763, 765, 784, 798, 893, 915, 917, 921, 926, 935, 938, 942, 957, 959, 961, 1031, 1032, 1037, 1038, 1040, 1071, 1072, 1075, 1076, 1077, 1082, 1100, 1121, 1127, 1154, 1156, 1260, 1280, 1282, 1284, 1285, 1287, 1288, 1294, 1296, 1327, 1329, 1333, 1339, 1341, 1389, 1391, 1420, 1526, 1527, 1533, 1535, 1539, 1543, 1547, 1559, 1561, 1562, 1564, 1566, 1567, 1578, 1583, 1591, 1599, 1600, 1602, 1604.
    Sec. 7(e) 4, 12, 16, 18, 26, 29, 33, 86, 154, 159, 162, 185, 186, 239, 243, 244, 245, 400, 404, 421, 424, 426, 428, 430, 432, 446, 456, 461, 463, 478, 489, 491, 492, 584, 605, 608, 610, 612, 619, 622, 640, 695, 697, 700, 733, 749, 758, 764, 766, 785, 798, 879, 916, 918, 919, 922, 926, 936, 938, 942, 958, 960, 962, 1032, 1033, 1037, 1039, 1040, 1071, 1073, 1075, 1076, 1078, 1083, 1127, 1261, 1282, 1283, 1284, 1286, 1287, 1289, 1294, 1296, 1336, 1340, 1342, 1390, 1420, 1528, 1534, 1536, 1540, 1544, 1548, 1560, 1562, 1563, 1565, 1566, 1568, 1578, 1583, 1591, 1600, 1601, 1603, 1604.
    Sec. 8 1438
    Sec. 8(a) 1425
    Sec. 9(a) 1352
    Sec. 10 197, 1438
    Sec. 10(a) 34, 752
    Sec. 12 1415, 1619
    Sec. 14 59, 91, 197, 1538
    Sec. 14(b) 752
    Sec. 15 59, 197, 600, 726, 755
    Sec. 15(a) 891, 1356, 1386
    Sec. 16 59, 197, 600, 603, 752, 755, 971, 1438
    Sec. 19 439, 1292
    Sec. 19(a) 35, 181, 197, 658, 768, 929, 1041, 1279, 1554, 1630
    Sec. 19(b) 241, 658
  Public Utility Holding Company Act of 1935, 49 Stat. 803:
    Sec. 2(a)(11) 1415
  Raker Act, 38 Stat. 241 (1913) 511
  Sherman Act, 26 Stat. 209 (1890), 15 U.S.C. 1:
    Sec. 1 274
    Sec. 2 274
States:
  Alabama Code, Tit. 37, Section 255(a) (Cum. supp. 1961) 817
  California Water Code, Div. 2, pt. 2, 1200–1677 (1961) 556
  California Water Code, Section 1254 (1961) 554

States—Continued Page
Idaho Code, Section 61-327 271
Kentucky Revised Statutes, Section 353.720 764
Louisiana Revised Statutes, Tit. 30, Subsections 41-46 1083
Oklahoma Statutes Ann., Tit. 52, Section 240 1083
Texas Civil Statutes, Tit. 102, Art. 6008, p. 8 (Dec. 23) 48
Texas Oil & Gas Conservation Laws, 102 Revised, Civil Statutes of Texas Railroad Commission (1957) 72
Texas Statutes Ann., Tit. 102, Art. 6049(a) 1083

TABLE OF RULES OF COMMISSION CITED *

Page

Sec. 1.7 971, 1554

Sec. 1.7(b) 1391

Sec. 1.7(c) 506, 958, 1018, 1537

Sec. 1.8 485, 1383, 1398, 1400

Sec. 1.8(a)(1) 309

Sec. 1.8(d) 152, 233

Sec. 1.8(e) 1019, 1323

Sec. 1.9 1018

Sec. 1.9(a) 791

Sec. 1.10 1398, 1400

Sec. 1.11(a) 313

Sec. 1.11(d) 881

Sec. 1.12 400

Sec. 1.12(e) 628

Sec. 1.14(a) 267

Sec. 1.15 600

Sec. 1.16 600

Sec. 1.17 600

Sec. 1.18 163, 310, 457, 471, 726, 778, 1003, 1395, 1468, 1574

Sec. 1.18(d) 778

Sec. 1.18(e) 9, 13, 18, 187, 190, 192, 199, 200, 453, 454, 457, 458, 587, 589, 614, 783, 882, 883, 892, 895, 909, 923, 1019, 1029, 1048, 1049, 1277, 1323, 1531, 1588.

Sec. 1.19 971

Sec. 1.20(j) 779

Sec. 1.23 1538

Sec. 1.26(d) 210

Sec. 1.28(a) 627

Sec. 1.30 471

Sec. 1.30(c) 581, 601

Sec. 1.30(c)(1) 16, 582, 693

Sec. 1.30(c)(3) 1304

Sec. 1.30(e) 197, 400

Sec. 1.31 599

Sec. 1.32 735, 1028

Sec. 1.33(a) 791

Sec. 1.33(a)(2) 791

Sec. 1.33(c) 795

Sec. 1.34 35, 181, 197, 1322

Sec. 1.34(a) 468, 1060, 1322

Sec. 1.34(d) 1630

Sec. 1.37(f) 471, 485

Sec. 2.53(c) 766

Sec. 2.55(b) 1082

Sec. 2.55(d) 1285

Sec. 2.58 971, 1540, 1605

Sec. 2.58(c) 33, 187, 239, 245, 585, 610, 612, 1076, 1286, 1540, 1563, 1568, 1601, 1603, 1605

Sec. 3.5(9) 1060

Sec. 4.1 128, 133, 138, 680, 905, 949, 1507

Sec. 4.4 129, 135, 139, 495, 683, 907, 951, 967, 1508

Sec. 4.5 129, 135, 139, 495, 683, 907, 951, 967, 1508

Sec. 4.20 128, 493, 964, 1010

---

* The Commission's Rules and Regulations are contained in Title 18, Chapter I, of the Code of Federal Regulations.

	Page
Sec. 4.22	129, 495, 683, 967, 1011
Sec. 4.23	129, 495, 683, 967, 1011
Sec. 4.30	1055
Sec. 4.41	1145, 1571, 1573
Sec. 4.81	267
Sec. 4.82	267
Sec. 4.84	298
Sec. 9.3	1267
Sec. 11	902
Sec. 11.20	1558
Sec. 11.20(c)	1559
Sec. 11.24	115
Sec. 11.24(a)	112
Sec. 11.24(a)(2)	97
Sec. 11.24(d)	119
Sec. 11.24(d)(1)	113
Sec. 11.24(d)(2)	96
Sec. 11.24(e)	97
Sec. 11.24(g)	118
Sec. 13.1	91, 598, 779
Sec. 14	1556
Sec. 34.1a	416, 677, 761, 762, 970, 1036
Sec. 34.1a(a)	761
Sec. 34.1a(a)(1)	677, 761, 762
Sec. 34.1a(a)(2)	416, 451, 970, 1036
Sec. 34.1a(a)(4)	679
Sec. 34.1a(b)	678, 679, 761, 763
Sec. 34.1a(c)	678, 679, 761, 763
Sec. 34.2(f)(2)(ii)	678
Sec. 34.2(g)	592, 690, 1521, 1587, 1598
Sec. 34.2(h)	592, 690, 1521, 1587, 1598
Sec. 34.9	592, 690, 1521, 1587, 1598
Sec. 35	196, 1068, 1165
Sec. 35.1(b)	973
Sec. 35.3	396, 1146
Sec. 35.11	973
Sec. 154	14, 27, 30, 155, 163, 180, 191, 193, 201, 405, 446, 455, 459, 479, 588, 590, 606, 615, 620, 642, 702, 703, 704, 733, 737, 746, 750, 784, 799, 883, 884, 893, 896, 910, 927, 943, 1030, 1050, 1075, 1128, 1160, 1175, 1275, 1303, 1321, 1324, 1338, 1529, 1532.
Sec. 154.21	9, 1169
Sec. 154.22	1169
Sec. 154.23	1169
Sec. 154.24	1169
Sec. 154.25	1169
Sec. 154.26	1169
Sec. 154.27	1169
Sec. 154.28	1169
Sec. 154.29	1169
Sec. 154.30	1169
Sec. 154.31	1169, 1303
Sec. 154.32	1169, 1303
Sec. 154.33	1169, 1303
Sec. 154.34	1169, 1303
Sec. 154.35	1169, 1303
Sec. 154.36	1169, 1303
Sec. 154.37	1169, 1303
Sec. 154.38	1169, 1303
Sec. 154.39	1169, 1303
Sec. 154.40	1169, 1303
Sec. 154.41	1169, 1303
Sec. 154.63	176, 413, 1217
Sec. 154.63(b)(4)	1176
Sec. 154.63(e)(2)(i)	1185
Sec. 154.63(f)	435
Sec. 154.85	470

Page
Sec. 154.91(a) 753
Sec. 154.92(b) 620
Sec. 154.93 1476
Sec. 154.94(b) 27, 30, 155, 163, 606, 620, 641, 927, 943
Sec. 154.94(c) 765
Sec. 154.94(f) 27, 30, 155, 163, 606, 620, 641, 927, 943
Sec. 154.100 1123, 1124, 1125
Sec. 154.101 618, 765
Sec. 154.102 447, 1099, 1529
Sec. 157 405, 446, 479, 606, 702, 733, 750, 1075, 1338, 1391, 1421, 1422, 1529
Sec. 157.5(b) 1421
Sec. 157.5(c) 1421
Sec. 157.7 971
Sec. 157.11(b) 893
Sec. 157.14(a) 1422
Sec. 157.14(a)(4) 1422
Sec. 157.14(a)(10) 1391
Sec. 157.14(a)(11)(v) 809
Sec. 157.14(a)(15) 1422
Sec. 157.20 4, 12, 17, 18, 34, 87, 159, 185, 187, 239, 243, 244, 246, 400, 421, 425, 427, 429, 431, 432, 457, 461, 463, 490, 491, 493, 583, 585, 608, 610, 612, 622, 695, 697, 701, 758, 766, 786, 800, 879, 916, 918, 920, 922, 936, 939, 958, 960, 962, 1032, 1033, 1038, 1039, 1041, 1071, 1073, 1077, 1078, 1100, 1122, 1128, 1261, 1282, 1283, 1284, 1286, 1288, 1289, 1294, 1302, 1336, 1340, 1342, 1390, 1421, 1534, 1536, 1540, 1544, 1548, 1560, 1562, 1563, 1565, 1567, 1568, 1578, 1583, 1591, 1600, 1601, 1603, 1605.
Sec. 157.24(a) 602
Sec. 157.28 178, 651, 764
Sec. 250.5 602

TABLE OF MISCELLANEOUS CITATIONS

Page

12 Am. Jur. Contracts, § 250 — 1479
30 Am. Jur. Irrigation, § 930 — 1439
Barron's National Business and Financial Weekly, p. 5 (December 9, 1963) — 231
Bonbright, Principles of Public Utility Regulation, pp. 311, 347–9 — 1362
Bonbright, Public Utilities Fortnightly, Vol. 69, No. 10, pp. 657–8 — 228
Bonneville Power Administration, Annual Report (1960), p. 16 — 333
Clader, "The Accounting Emphasis in Public Utility Control", Public Utilities Fortnightly (October 26, 1944) — 1439
Congressional Record, p. 8741 (July 11, 1947) — 1155
Congressional Record, p. 8748 (July 11, 1947) — 1155
Congressional Record:
  Vol. 17, p. 16682, 87th Cong., 2d Sess. (1962) — 1235
  Vol. 17, p. 16795, 87th Cong., 2d Sess. (1962) — 1235
  Vol. 18, p. 17397, 87th Cong., 2d Sess. (1962) — 1235
  Vol. 51, p. 12759, 63d Cong., 2d Sess. (1914) — 1557
  Vol. 51, p. 14062 (1914) — 267, 1058
  Vol. 53, p. 527 (1916) — 267
  Vol. 56, pp. 9775, 9804, 9805 (1918) — 293, 357
  Vol. 56, p. 10035 (1918) — 267, 1058
  Vol. 58, pp. 1933–4, 1937–8, 2131–3 (1919) — 95
  Vol. 58, pp. 2037–38, 2039–40 (1919) — 293, 294
  Vol. 58, pp. 2134–5 (1919) — 557
  Vol. 58, pp. 2221, 2223 (1919) — 1557
  Vol. 58, p. 2243 (1919) — 267
  Vol. 59, p. 246 (1919) — 358
  Vol. 59, p. 1173 (1919) — 295
  Vol. 100, p. 9477, 83d Cong., 2d Sess. (1954) — 225
  Vol. 108, p. 16682 (1962) — 1234
  Vol. 108, p. 16795 (1962) — 1234
  Vol. 108, p. 17387 (1962) — 1234
  Vol. 108, p. 17632 (1962) — 1234
Constitution of the United States, Article III, Section 1 — 554
Davidson, Accelerated Depreciation and the Allocation of Income Taxes, 33 Accounting Rev. 173 — 216
Davidson, Price Discrimination in Selling Gas and Electricity, pp. 62, 64, 181–2 — 1362
Davis, Administrative Law, Vol. 2, § 17.03 — 1424
Eisenhower, Address to Congress, Congressional Record, Vol. 100, p. 571 — 224
Eismer, Depreciation Under the New Tax Law, 33 Harv. Bus. Rev. 1, pp. 66–74 — 216
Executive Compensation: Taxation of Stock Options, 13 Vand. L. Rev. 475 (1960) — 1611
Federal Power Commission 3rd Annual Report (1923) — 299
Federal Power Commission, Bureau of Rates and Gas Certificates, "The Rate Base: Its Determination and Relation to Cost of Service", Course in Ratemaking, 1958–59, Lecture 7, p. 5 [On file in FPC Library] — 995
Federal Trade Commission, Report on S. Doc. 92, 70th Cong., 1st Sess., Part 72–A, pp. 96–512, Part 84–A, pp. 354–55 (1935) — 228
Gellhorn and Byse, Administrative Law, Cases and Comments, 4th Ed., (1960) — 1221
Gould, "Directors Responsibility, Two Schools of Thought on One Board", New York Journal American (April 6, 1960) — 1611
Griswold, Erwin N., "Are Stock Options Getting Out of Hand?", 38 Harv. Bus. Rev. No. 6, pp. 49–55 (Nov.–Dec. 1960) — 1611
Griswold, Erwin N., "The Mysterious Stock Option", Tax Revision Compendium, Vol. 2, pp. 1327–35, (November 16, 1959) — 1611

Page

Internal Revenue Service, Publication No. 456, § 167 IRC, Depreciation Guidelines and Rules 1191, 1238
Internal Revenue Service, Publication No. 457, Tables for Applying Revenue Procedure 62–21 1191, 1238
Livingston, The American Stockholder (J. P. Lippincott Co., 1958) 1611
Moonitz, Income Taxes in Financial Statements, 32 Accounting Rev. 181 (1957) 229
N.A.R.U.C., Reports of Commission on Depreciation 17 228
N.A.R.U.C., Report of Special Committee on Depreciation (Nov. 15–19, 1938) 228
Natural Gas Investigation, docket No. G–580, Commissioners Olds and Draper, p. 129 (1948) 991
Netboy, Salmon of the Pacific Northwest, pp. 111, 112 (1958) 336
Olds, Chairman, Federal Power Commission, Letter to Rep. Clarence F. Lea on H.R. 4819 (June, 1941) 1420
Opinions Attorney General, Vol. 32, pp. 525, 528 (1921) 596
Page, Contracts, Vol. 1, §§ 87–89, 2d Ed. (1920) 1413
Paton, Transactions Between Affiliates, 20 Accounting Rev. 256 (1945) 1440
Proverbs 5:15 313
Restatement, Contracts 2d, § 236(a) 1481
Smith & Wimberly, Natural Gas Investigation, p. 215 (1948) 57
Statement of General Policy No. 61–1, 24 FPC 818 10, 14, 23, 35, 89, 180, 453, 459, 635, 770
Statement of General Policy No. 61–1, 2d Amendment, 24 FPC 1107 70, 74, 90, 164, 180, 188, 191, 199, 201, 455, 588, 589, 783, 882, 884, 892, 896, 909, 1020, 1029, 1050, 1277, 1589.
Statement of General Policy No. 61–1, as amended by Order No. 264, 29 FPC 589 10, 14, 453, 455, 459, 588, 589, 882, 884, 909, 1020, 1029, 1049, 1050, 1323
Statement of General Policy No. 61–1, Fourth Amendment, 25 FPC 661 852
Statement of General Policy No. 61–1, Fifth Amendment, 28 FPC 441 647
Statement of General Policy No. 61–1, Seventh Amendment, 30 FPC 1370 90, 188, 615, 923, 1325, 1395, 1531
Statement of General Policy, as amended 43, 51, 192, 852, 1277
Statistics of Electrical Utilities in the United States (1960) 217
Statistics of Electrical Utilities in the United States (1962) 209
Statistics of Natural Gas Companies (1960) 217
Statistics of Natural Gas Companies (1962) 209
Sutherland, Statutory Construction, § 6402, 3d Ed. (1943) 595
Swiren, Max, Accelerated Depreciation Tax Benefits in Utility Rate Making, 28 U. Chi. L. Rev. 637 228
Uniform System of Accounts, definition 5 1428
Uniform System of Accounts, § 5(b) 1414
United States House of Representatives:
  Hearings, Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., p. 390 (1936) 1557
  Hearings, Committee on Interstate and Foreign Commerce, 77th Cong., 1st Sess. (1941) 1421
  Hearings, Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 2d Sess., pp. 392, 2170 (1937) 1001
  Hearings, Committee on Interstate and Foreign Commerce on H.R. 11662, 74th Cong., 2d Sess., pp. 10, 46 (1937) 1001
  Hearings, Committee on Public Lands on H.R. 14893, 63d Cong., 2d Sess., pp. 195, 357–59 (1914) 267
  Hearings, Committee on Water Power, 65th Cong., 2d Sess., p. 55 (1918) 351
  Hearings, Committee on Water Power, 65th Cong., 2d Sess., pp. 623–24 (1918) 267
  Hearings, Committee on Water Power, on Water Power Act, Parts I–IV, 65th Cong., 2d Sess., p. 814 (1918) 293
  Hearings, Committee on Water Power, 65th Cong., 2d Sess., p. 816, fn. 4 (1918) 357
  Hearings, Committee on Ways and Means on H.R. 10650 (Revenue Act of 1962), 87th Cong., 2d Sess., part 1, p. 384 (1962) 216
  Hearings, Committee on Ways and Means, 87th Cong., 1st Sess., p. 1530 (1961) 1233

United States House of Representatives—Continued Page
- Hearings, Subcommittee of the Committee on Public Works Administration, 87th Cong., 2d Sess., Part III (BPA), p. 668 (1961) 362
- House Report No. 16, to accompany H.R. 208, Committee on Public Lands, 64th Cong., 1st Sess. (1916) 267
- House Report No. 41, to accompany H.R. 7207, 63d Cong., 1st Sess. 537, 564
- House Report No. 61, to accompany H.R. 3184, Committee on Water Power, 66th Cong., 1st Sess., p. 2, *et seq* 292
- House Report No. 709, 75th Cong., 1st Sess. (1938) 1002
- House Report No. 800, Committee on Interstate and Foreign Commerce, 80th Cong., 1st Sess., pp. 4–5 (1947) 1154, 1157
- House Report No. 1290, Committee on Interstate and Foreign Commerce, on Amendments to Sec. 7 of NGA, 77th Cong., 1st Sess. (1941) 1154, 1421, 1423
- House Report No. 1318, 74th Cong., 1st Sess., p. 24 (1936) 1557
- House Report No. 1337, to accompany H.R. 8300, Committee on Ways and Means 224, 225
- House Report No. 12680, 74th Cong., 2d Sess., p. 4 (1937) 1002
- House Report No. 16053, 63d Cong., 2d Sess. 1557

United States Senate:
- Hearings, Committee on Finance, on H.R. 8300, 83d Cong., 2d Sess., p. 95 224
- Hearings, Committee on Finance, on H.R. 10650, 87th Cong., 2d Sess. (Part I), p. 87 (1962) 1233, 1234
- Hearings, Committee on Finance, 87th Cong., 2d Sess., p. 990 1234
- Hearings, Committee on Interior and Insular Affairs, on S. 4 (Wilderness Bill), 88th Cong., 1st Sess., pp. 275–76 259
- Hearings, Committee on Interstate Commerce, 74th Cong., 1st Sess., p. 237 1557
- Hearings, Committee on Public Lands, on H.R. 16673, 63d Cong., 2d Sess., pp. 351–55 (1914) 267
- S. 180, 66th Cong., 1st Sess., p. 6 (1919) 535, 596, 1557
- S. 1419, 65th Cong., 2d Sess. 292
- Senate Report No. 621, 74th Cong., 1st Sess., p. 45 1557
- Senate Report No. 621, on § 204 of FPA, 74th Cong., 1st Sess., p. 28 1625
- Senate Report No. 1622, Committee on Finance, 83d Cong., p. 26 224

Wickson, Accountants' Handbook, 4th Ed., §§ 15.14, 17.52 44

Wigmore, Evidence, Vol. 6, § 1702, 3d Ed. 997

Williston, Contracts, Vol. 1, Making of Offers, §§ 41, 42, 3d Ed. (1957) 1413

FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By Title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947, 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-first of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, January 1, 1964 to June 30, 1964, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF CHESTER, ILLINOIS, DOCKET NO. G-16398

ORDER AMENDING ORDER ISSUED FEBRUARY 6, 1959

(Issued January 2, 1964)

On November 1, 1963, Mississippi River Fuel Corporation (Mississippi) filed an application to amend the Commission's order issued February 6, 1959, in Docket No. G-16398 (Docket No. G-14857, *et al.*) by deleting therefrom the maximum volume limitation of 1,518 Mcf at 14.73 psia on deliveries of natural gas to the City of Chester, Illinois, (Chester) all as more fully set forth in the application to amend.

The order of February 6, 1959, adopted the decision of the presiding examiner wherein Mississippi was directed, pursuant to Section 7(a) of the Natural Gas Act, to establish physical connection of its transportation facilities with the proposed facilities of Chester and to sell and deliver to Chester up to a maximum volume of 1,518 Mcf of natural gas per day at 14.73 psia (1,501 Mcf at 14.9 psia). Mississippi requests that this limitation on Chester's stated demand be deleted so that Chester will be on an equal basis with Mississippi's other resale customers in regard to stated demand increases. Mississippi's other resale customers can increase their stated demands pursuant to Section 11(b) of the General Terms and Conditions of Mississippi's applicable FPC Gas Tariff.

On October 2, 1963, Mississippi tendered for filing a service agreement, dated September 25, 1963, and its proposed Twentieth Revised Sheet No. 25 to its FPC Gas Tariff, Original Volume No. 1, providing, among other things, for an increase in the stated demand for Chester to 1,650 Mcf (at 14.9 psia).

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 3, 1963 (28 F.R. 12840). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 6, 1959, in Docket No. G-16398 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 6, 1959, in Docket No. G-16398 be and the same is hereby amended by deleting therefrom the maximum volume limitation imposed on deliveries of natural gas to the City of Chester, all as hereinbefore described and as set forth in the subject application to amend.

(B) Mississippi's proposed Twentieth Revised Sheet No. 25 to its FPC Gas Tariff, Original Volume No. 1 and the service agreement between Mississippi and Chester, dated September 25, 1963, are hereby accepted for filing to become effective on the date this order issues.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CHICAGO DISTRICT PIPELINE COMPANY, DOCKET NO. RP64-5

ORDER PERMITTING WITHDRAWAL OF JOINT PETITION TO INTERVENE AND MODIFYING ORDER

(Issued January 2, 1964)

By order issued December 16, 1963, the Commission ordered a preliminary hearing to be held on the issue of the Coal Interests'[1] standing to intervene in this proceeding, which issue was joined by documents filed with the Commission by the Coal Interests and Chicago District Pipeline Company (CDP).[2] In that order, the Commission established the procedure for the preliminary hearing and required the Coal Interests to file their direct testimony and exhibits in support of their joint petition to intervene on or before January 6, 1964. Additionally, the Commission ordered a prehearing conference to convene on this preliminary matter, on January 15, 1964, "for the purpose of establishing such procedures that will result in the most expeditious determination of this matter." The order also provided that the Presiding Examiner would issue his initial decision together with his proposed findings on the intervention issue directly upon completion of the record and the filing of briefs. The hearing on CDP's proposed rate form change—the subject of this proceeding—was deferred until after the Commission had issued its decision on this intervention issue.

On December 23, 1963, Coal Interests filed a notice of withdrawal of their joint petition to intervene in this proceeding. In the notice of withdrawal, Coal Interests state that they "do not believe that the facts and circumstances of this case are of sufficient importance to the coal industry to justify the considerable expenditures of finances and personnel time of Petitioners and the Commission which would be required for the hearings upon the proposed change in rate form and the preliminary hearing on intervention."

The Commission finds:

Good cause exists to permit Coal Interests to withdraw their joint petition to intervene and to modify our order of December 16, 1963; as hereinafter ordered.

The Commission orders:

(A) Coal Interests are hereby permitted to withdraw their joint petition to intervene filed herein on October 7, 1963.

(B) The order issued herein on December 16, 1963, is hereby modified in the following respects: The procedures prescribed by ordering paragraphs (A), (B), and (E) are hereby terminated. Ordering paragraph (C) is modified to provide that, at the prehearing conference to be held on January 15, 1964, the Presiding Examiner, in keeping with our expressed intent that the proceeding be expedited to the fullest extent possible, shall set dates for service of testimony and exhibits on cost allocation, rate form, rate design, and rebuttal evidence and for convening of hearing.

---

[1] Consisting of Fuels Research Council, Inc.; National Coal Association; United Mine Workers of America; and Mid-West Coal Producers Institute, Inc.

[2] Joint petition seeking leave to intervene filed by Coal Interests on October 7, 1963; answer, motion to strike, and applications for subpoenas filed by CDP on October 16, 1963; answer filed by Coal Interests on October 28, 1963; amended applications for subpoenas filed by CDP on November 8, 1963; and answer filed by Coal Interests on November 21, 1963.

(C) In all other respects, the order issued herein on December 16, 1963, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–89; LONE STAR GAS COMPANY, DOCKET NO. G–8763

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 2, 1964)

On October 9, 1963, Cities Service Gas Company (Cities) and Natural Gas Pipeline Company of America (Natural) filed in Docket No. CP64–89 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the exchange of up to 40,000 Mcf of natural gas per day for a period terminating May 1, 1964, all as more fully set forth in the joint application.

Cities proposes to deliver a total daily maximum of 40,000 Mcf of natural gas to Natural at two exchange points. A daily maximum of 10,000 Mcf will be delivered through an existing interconnection of the two systems in Carson County, Texas; the remaining volumes will be delivered by Cities through a herein proposed interconnection in Beaver County, Oklahoma.

Lone Star Gas Company (Lone Star) will deliver gas to Cities for the account of Natural at the Lindsay, Maysville and Antioch gasoline plants in Garvin County, Oklahoma. Such volumes will be deducted by Lone Star from the volumes it is obligated and has been authorized to deliver to Natural by the Commission's order issued December 4, 1956, as amended, in Docket No. G–8763, at a point in Stephens County, Oklahoma.*

Cities proposes to tap its 26-inch pipeline at the Beaver Exchange Point and construct and operate 50 feet of connecting 10-inch pipeline to Natural's 36-inch pipeline, as well as appurtenant meter and regulator equipment. Natural proposes to tap its 36-inch line at the Beaver Exchange Point.

The proposed exchange of natural gas will be made pursuant to an agreement among Cities, Lone Star and Natural, dated September 30, 1963.

The total cost of the proposed facilities is estimated to be $10,005 of which $7,405 is attributable to Cities and $2,600 is attributable to Natural. Cities and Natural will finance the cost out of treasury cash.

The joint application indicates that the purpose of the proposed exchange arrangement is to assure Cities' ability to meet the demands of its customers during the 1963–64 heating season.

Cities and Natural propose to retain the subject facilities as an emergency interconnection after the cessation of the exchange arrangements. They state that said facilities will add flexibility of operation and continuity of service in the event of an emergency on the system of either company.

---

*Cities now purchases gas at the above-mentioned plants but from parties other than Lone Star. No new facilities will be required to effectuate the proposed deliveries and receipts at said plants.

On November 6, 1963, Lone Star filed in Docket No. G–8763 an application to amend further the Commission's order issued December 4, 1956, as amended, in said docket, to authorize Lone Star to make the deliveries of natural gas to Cities for the account of Natural, as contemplated by the proposed exchange arrangement in Docket No. CP64–89, all as more fully set forth in the application to amend.

The order of December 4, 1956, as amended, authorized Lone Star to construct and operate certain facilities and to sell and deliver an average of 100,000 Mcf of natural gas per day and up to a maximum of 125,000 Mcf of natural gas per day to Natural at a point in Stephens County, Oklahoma. Lone Star will deduct from these authorized volumes in Docket No. G–8763 the volumes proposed to be delivered by it to Cities for the account of Natural at the plant sites in Garvin County, Oklahoma.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 31, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, Natural Gas Pipeline Company of America, a Delaware Corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(3) The facilities hereinbefore described, as more fully described in the joint application in Docket No. CP64–89 are to be used in the exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the exchange and delivery of natural gas by Cities and Natural are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Cities and Natural are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed exchange and delivery of natural gas by Cities and Natural are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Cities' and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 4, 1956, as amended, in Docket No. G-8763 be further amended as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Cities Service Gas Company and Natural Gas Pipeline Company of America, jointly, to construct and operate the proposed facilities and to exchange and deliver natural gas for a period terminating May 1, 1964, as hereinbefore described, all as more fully described in the joint application in Docket No. CP64-89, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Cities' and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation and the exchange and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 2 months from the date on which this order issues.

(D) The Commission's order issued December 4, 1956, as amended, in Docket No. G-8763 be and the same is hereby further amended to authorize Lone Star to deliver natural gas to Cities for the account of Natural for a period terminating May 1, 1964, all as hereinbefore described and as set forth in the subject application to amend.

(E) In all other respects said orders, as amended, shall remain in full force and effect.

(F) Cities, Natural and Lone Star shall tender for filing appropriate rate schedules covering the subject services pursuant to the applicable Commission Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE GAS SERVICE COMPANY, DOCKET NO. CP64-52

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 2, 1964)

On August 26, 1963, as supplemented on October 2 and October 31, 1963, The Gas Service Company (Applicant) filed in Docket No. CP64-52 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Drexel, Missouri, and environs, and to customers along the connecting pipeline which Applicant proposes to construct and operate, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately 10 miles of 4-inch lateral pipeline from the proposed point of delivery by Panhandle extending to Drexel, as well as a distribution system in Drexel. Applicant's estimated third year peak day and annual natural gas requirements are 525 Mcf and 52,500 Mcf, respectively.

The total estimated cost of transmission and distribution facilities for the proposed project is $206,798, which cost will be financed by treasury cash.

It appears that Applicant has received appropriate authorizations from Drexel and the Public Service Commission of Missouri.

On October 30, 1963, Panhandle filed an answer to the subject application stating that it had no objection to the issuance of an order directing the proposed sale and physical connection of facilities.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 12, 1963 (28 F.R. 12840). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, The Gas Service Company, is a corporation duly organized and existing under the laws of the State of Delaware and is authorized by the Public Service Commission of Missouri to engage in the business of distributing and selling natural gas within Drexel, and environs.

(3) It is necessary and desirable in the public interest that Panhandle Eastern Pipe Line Company be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 525 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Panhandle, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Panhandle in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 525 Mcf of natural gas per day to Applicant, as hereinbefore described and as set forth in the application, as supplemented.

(B) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Panhandle, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Panhandle in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. CP62-144 AND CP62-145

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 2, 1964)

On November 29, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket Nos. CP62-144 and CP62-145 an application to amend further the Commission's order issued June 8, 1962, as amended, to extend to December 31, 1964, the authorization to sell and deliver natural gas, all as more fully set forth in the application to amend on file with the Commission.

The order of June 8, 1962, as amended, authorized Applicant (formerly Natural Gas Storage Company of Illinois) in Docket No. CP62-144 to acquire certain underground storage rights and to construct and operate facilities for the evaluation of the characteristics and capabilities of an underground natural gas storage reservoir, described as the Cairo Storage Area, in Louisa County, Iowa. Said order limited the maximum inventory of gas stored in the Cairo Storage Area to 2,800,000 Mcf of 1,000 Btu gas at 14.65 psia. The same order also authorized Applicant in Docket No. CP62-145 to construct and operate certain facilities and to sell and deliver to Natural Gas Storage Company of Illinois (the then Applicant in Docket No. CP62-144) until December 31, 1963, a maximum volume of 2,800,000 Mcf of natural gas.

The application shows that as of October 31, 1963, only 580,000 Mcf of gas was injected into the proposed reservoir and, therefore, Applicant states that a proper evaluation cannot be made by December 31, 1963.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 8, 1962, as amended, in Docket Nos. CP62-144 and CP62-145 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued June 8, 1962, as amended, in Docket Nos. CP62-144 and CP62-145 be and the same is hereby further amended to extend to December 31, 1964, the time to sell and deliver the remaining volumes of the 2,800,000 Mcf maximum limitation not sold and delivered by December 31, 1963, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. RP64-15

ORDER ACCEPTING RATE REDUCTION FOR FILING, WAIVING STATUTORY NOTICE AND APPROVING STATEMENT OF INTENTION

(Issued January 2, 1964)

In a letter to Northern Natural Gas Company (Northern), from the Executive Director of the Commission, dated August 12, 1963, Northern was advised that a study of its 1962 earnings indicated an excessive rate of return on its jurisdictional business for that year. Discussions were held between Northern and representatives of the staff on September 3, September 17, October 25, December 19, December 20, December 27, and on December 30, 1963.

As a result of these conferences between representatives of Northern Natural Gas Company and the staff, Northern on December 30, 1963 filed with the Commission revised tariff sheets[1] which effect a reduction of its jurisdictional rates in the sum of approximately $1,505,000 annually to become effective as of December 27, 1963. The rates in the revised tariff sheets will reduce Northern's currently effective demand charge in each of Northern's firm rate schedules by 7.9¢ per Mcf.

There was included as a part of the filing a "Statement of Intention" (attached hereto as an exhibit)* which, briefly stated, contains the following provisions:

(1) The conditions in Section IV of the Statement of Proposed Settlement attached to the Northern rate settlement order in Docket No. G–19040 issued December 21, 1961, shall remain in full force and effect.

(2) If the Internal Revenue Code is amended to reduce the Federal corporate income tax rate to be effective during the year 1964, Northern will further reduce the demand component of its rates to reflect the annual reduction in Federal income taxes of such changes in the tax rate to the extent it is applicable to Northern's jurisdictional business. (If the corporate income tax rate is reduced from 52% to 50%, Northern will reduce the demand component of its rates equal to an annual reduction of $1,500,000 in jurisdictional revenue.)

(3) Northern will pass on to its jurisdictional customers that portion of any refunds and interest received from its natural gas suppliers as a result of producer rate increase filings subsequent to December 27, 1961 for gas purchased from such producers subsequent to January 1, 1964, until the date the "Statement of Intention" ceases to be effective.

(4) Northern will further reduce its jurisdictional rates to reflect reduced costs in purchased gas to the extent such reduced costs are not offset by increases in the cost of gas to Northern.

(5) Northern agrees, as long as the "Statement of Intention" remains in effect, not to effectuate any increases in its jurisdictional rates before June 27, 1965, provided, however, that if, as a result of a proceeding by the Commission resulting from a change in Commission policy applicable to other pipeline companies generally, Northern is required to reduce its rates, the moratorium provision shall be considered terminated.

The Statement further provides that it shall terminate on the date after June 27, 1965, upon which Northern makes increased rates effective under Section 4 of the Natural Gas Act or on the date the Commission institutes a rate proceeding against Northern or one of its subsidiaries other than one resulting from a change in Commission policy applicable as well to other pipeline companies generally.

The filing by Northern was subject to Commission acceptance of a request for waiver of the statutory 30-day notice period, and further, subject to the Commission's not imposing any condition on the acceptance for filing of such revised tariff sheets contrary to the "Statement of Intention".

---

[1] Sixth Revised Sheets Nos. 18h, 18i, 18j, 18–1.1, 18–1.2, 18p, and 18q. Superseding Fifth Revised Sheets Nos. 18h, 18i, 18j, 18–1.1, 18–1.2, 18p, and 18q.

Seventh Revised Sheets Nos. 18d and 18e. Superseding Sixth Revised Sheets Nos. 18d and 18e.

Eighth Revised Sheet No. 18c. Superseding Seventh Revised Sheet No. 18c.

Ninth Revised Sheets Nos. 18m and 18n. Superseding Eighth Revised Sheets Nos. 18m and 18n.

Eleventh Revised Sheets Nos. 4, 5, 6, 9, 10, 11, 14, 15, and 16. Superseding Tenth Revised Sheets Nos. 4, 5, 6, 9, 10, 11, 14, 15, and 16.

*Omitted in printing.

This order is not intended as a determination of disposition of refunds, if any, applicable to purchases of natural gas during the period from December 27, 1961, through December 31, 1963, resulting from supplier increases which Northern began paying after December 27, 1961, nor is this order intended to prejudice the position Northern or any proper party may assert respecting such refunds.

The Commission finds:

(1) The revised tariff sheets tendered for filing by Northern with the Commission on December 30, 1963, should be accepted for filing.

(2) Good cause exists for waiving the 30-day notice requirement of Section 154.22 of the Commission's Regulations under the Natural Gas Act in order that the tariff sheets filed by Northern on December 30, 1963, may become effective as of December 27, 1963, as hereinafter ordered.

(3) The conditions within the "Statement of Intention" filed by Northern on December 30, 1963, concurrently with its rate reduction filing, are reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved as hereinafter ordered.

The Commission orders:

(A) The revised tariff sheets filed with the Commission by Northern on December 30, 1963, are hereby accepted for filing.

(B) The 30-day notice provision of Section 154.22 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets accepted for filing in ordering paragraph (A) above are hereby permitted to become effective as of December 27, 1963, subject to the conditions of this order and the "Statement of Intention" filed by Northern with this Commission on December 30, 1963.

(C) The conditions within the "Statement of Intention" filed by Northern on December 30, 1963, concurrently with its rate reduction filing, are hereby approved and made effective as proposed therein.

(D) Northern shall comply with each of the provisions of the "Statement of Intention" relating to future rate reductions and refunds.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FALCON SEABOARD DRILLING COMPANY (OPERATOR), ET AL., DOCKET NO. G-17229; FALCON SEABOARD DRILLING COMPANY, ET AL., DOCKET NO. G-19253

ORDER ACCEPTING OFFERS OF SETTLEMENT REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACT AMENDMENTS, REQUIRING REFUNDS AND TERMINATING PROCEEDINGS

(Issued January 3, 1964)

On October 18 and 21, 1963, Falcon Seaboard Drilling Company (Operator), *et al.* (Falcon) submitted Offers of Settlement in the above-designated proceedings, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure covering jurisdictional sales of natural gas to Tennessee Gas Transmission Company (Tennessee) from Texas District Nos. 2 and 3 under its FPC

Gas Rate Schedule Nos. 1 and 6, respectively. The pertinent details are as follows:

Rate schedule No.	Supplement No.	Docket No.	Suspended rate cents per Mcf [1]	Effective date	Settlement rate (cents)
6	2	G–17229	[2] 15.95016	6/8/60	[2] 14.6
1	3	G–19253	15.33333	(3)	14.6

[1] At 14.65 p.s.i.a. pressure base.
[2] Subject to deduction of 0.21931 cents for dehydration by buyer as contractually provided.
[3] Proposed rate not placed in effect subject to refund.

Under the terms of the offers, Falcon proposes to delete the favored-nation and price redetermination provisions from the rate schedules involved, and to revise the periodic escalations in conformity with the provisions of the Second Amendment. Falcon proposes to establish settlement rates of 14.6¢ per Mcf,[1] inclusive of present tax reimbursement. Further, Falcon proposes to refund to Tennessee all monies collected in excess of 14.6¢ per Mcf in Docket No. G–17229. No refunds are involved in Docket No. G–19253 because the proposed rate was not placed in effect subject to refund. Refunds would be approximately $27,000, exclusive of interest, in Docket No. G–17229. No protests have been filed to the instant offers.

In support of its offers, Falcon cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contracts with Tennessee and states that such provisions were important elements of consideration required by Falcon under the contracts for the long-term commitment of its gas reserves to the performance of the contracts. Tennessee has concurred in the offers and has agreed to execute the contract amendments provided for therein.

Since the proposed settlement rates of 14.6¢ per Mcf at 14.65 psia are acceptable under the provisions of the Second Amendment[2] to the Commission's Statement of General Policy No. 61–1,[3] for jurisdictional sales of natural gas in Texas Railroad Commission District Nos. 2 and 3. It is believed that the public interest will best be served by accepting Falcon's proposed settlements as hereinafter set forth. The proposed settlement rates should be made effective as of the date of issuance of this order.

However, we desire to make it clear that acceptance of the Offers of Settlement shall not be construed as approval of any future increased rates proposed by Falcon.

The Commission finds:

The proposed settlements of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offers of Settlement filed by Falcon with the Commission on October 18 and 21, 1963, are in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offers of Settlement filed by Falcon with the Commission on October 18 and 21, 1963, are hereby approved in accordance with the provisions of this order.

---

[1] The settlement rate under Rate Schedule No. 6 is subject to the deduction for dehydration.

[2] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

(B) Falcon shall file, within 30 days from the date of issuance of this order notices of change providing for the 14.6¢ per Mcf settlement rates, inclusive of present tax reimbursement,[4] and contractual amendments to its FPC Gas Rate Schedule Nos. 1 and 6, respectively, which Falcon shall execute with Tennessee in conformity with Falcon's Offers of Settlement in all respects. Both the notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Falcon shall refund to Tennessee all amounts collected under its FPC Gas Rate Schedule No. 6, in Docket No. G-17229, in excess of the settlement rate of 14.6¢ per Mcf, inclusive of present tax reimbursement[4] together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Falcon to the date of refund. Falcon shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Falcon shall report to the Commission in writing and under oath, the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Tennessee with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Falcon has complied with the terms and conditions of this order, the rates and charges of 14.6¢ per Mcf, including present tax reimbursement,[4] specified in the Offers of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceedings shall be deemed terminated, and Falcon's refund obligations with respect to Docket No. G-17229 shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Falcon.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-257

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 3, 1964)

On March 30, 1961, as supplemented on May 19, 1961, October 30, 1961, and September 10, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP61-257 an application pursuant to Subsections (b) and (c) of Section 7 of the Natural Gas Act for:

(1) permission and approval to abandon certain lateral connections to its main pipeline (with meters and appurtenances) all in the State of Illinois, in accordance with a letter agreement dated August 4, 1960, providing for the sale of said facilities to Illinois Power Company (Illinois Power);

(2) a certificate of public convenience and necessity to construct and operate certain new measuring and regulating stations made necessary by the proposal in subparagraph (1) above;

as hereinafter described, and as more fully described in the application.

---

[4] The 14.6¢ rate under FPC Gas Rate Schedule No. 6 is subject to deduction of 0.29931¢ for dehydration by buyer as contractually provided.

The application includes the proposed abandonment and sale of the Galesburg lateral and appurtenances, which is contingent upon the final disposition of Docket No. CP60–60. Applicant has requested that the application be considered in two separate phases with Phase I (all proposals excepting Galesburg) to be considered at this time. The facilities which Applicant wishes to include in Phase I are:

(a) the 41,557 foot Abingdon lateral with standard appurtenances (including metering facilities),

(b) the 596-foot Knoxville lateral with standard appurtenances (including metering facilities),

(c) 33,791 feet of the Clinton lateral with standard appurtenances (including metering facilities),

(d) 1,362 feet of the Danville lateral with standard appurtenances, and

(e) 15,920 feet of the Champagne lateral with standard appurtenances (including metering facilities).

Illinois Power will pay Applicant the depreciated original cost of the facilities.

In lieu of the above-mentioned metering facilities to be abandoned, Applicant proposes to construct three new metering facilities at points of connection with the facilities to be acquired by Illinois Power.

Applicant estimates the cost of the three new metering stations at $104,600, which will be financed from current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 31, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities proposed to be constructed as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Appli-

cant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment of the aforementioned facilities is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company to construct and operate the facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Permission and approval be and the same are hereby granted to abandon the facilities as hereinbefore described, all as more fully described in the application in this proceeding.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be installed, and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within sixty days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

REALITOS OIL COMPANY, DOCKET NOS. G-19884 AND RI61-15

ORDER ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued January 3, 1964)

On September 25, 1963, Realitos Oil Company (Realitos) submitted an Offer of Settlement in the above-designated proceedings, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, covering the jurisdictional sale of natural gas to Tennessee Gas Transmission Company (Tennessee) from Texas District No. 4 under its FPC Gas Rate Schedule No. 1. The pertinent details are as follows:

Supplement No.	Docket No.	Suspended rate cents per Mcf	Effective date	Settlement rate (cents)
1	G-19884	15.0052	6/17/60	14.6
2	RI61-15	17.24347	9/19/61	14.6

Under the terms of the offer, Realitos proposes to delete the favored-nation and price redetermination provisions from the rate schedule involved, and to adjust its periodic escalations in conformity with the Second Amendment. Realitos proposes to establish a settlement rate of 14.6¢ per Mcf, inclusive of present tax reimbursement. Further, Realitos proposes to refund to Tennessee all monies collected in excess of 14.6¢ per Mcf in these proceedings. Realitos' annual revenues would be decreased about $925 from the currently effective rate. Refunds would be approximately $2,150, exclusive of interest. No protests have been filed to the instant offer.

Since the proposed settlement rate of 14.6¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[1] to the Commission's Statement of General Policy No. 61–1,[2] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 4, it is believed that the public interest will best be served by accepting Realitos' proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective as of the date of issuance of this order.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate proposed by Realitos.

The Commission finds:

The proposed settlement of the above-designated proceedings on the basis described herein, as more fully set forth in the Offer of Settlement filed by Realitos with the Commission on September 25, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Realitos with the Commission on September 25, 1963, is hereby approved in accordance with the provisions of this order.

(B) Realitos shall file, within 30 days from the date of issuance of this order a notice of change providing for the 14.6¢ per Mcf settlement rate, inclusive of present tax reimbursement, and a contractual amendment to its FPC Gas Rate Schedule No. 1, which Realitos shall execute with Tennessee in conformity with Realitos' Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Realitos shall refund to Tennessee all amounts collected under its FPC Gas Rate Schedule No. 1, in Docket Nos. G–19884 and RI61–15, in excess of the settlement rate of 14.6¢ per Mcf, inclusive of present tax reimbursement, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Realitos to the date of refund. Realitos shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Realitos shall report to the Commission in writing and under oath, the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Tennessee with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Realitos has complied with the terms and conditions of this order, the rate and charge of 14.6¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceedings shall be deemed terminated, and Realitos refund obligations with respect to the above-designated proceedings shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Realitos.

---

[1] Issued December 20, 1960, 24 FPC 1107, amended by Order No. 264, in Docket No. R–234, issued March 27, 1963, 29 FPC 589.

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17526; SUN OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–17923

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 3, 1964)

The United Gas Improvement Company (UGI) on December 4, 1963, filed an application for rehearing of the order issued November 19, 1963, under the lead docket of Texaco Inc., Docket No. G–17613 insofar as it relates to the above-entitled proceedings. In our order of November 19, we held, *inter alia*, that the producers in Docket Nos. G–17526 and G–17923 had the contractual right to file favored-nation increased rates of 23.55¢ at least during the period prior to April 1, 1963. Consequently, the motions filed by UGI to reject, cancel and dismiss the producers' rate filings in these proceedings were denied. The application for rehearing presents nothing which was not fully argued and carefully considered prior to the November 19 order, and we therefore adhere to our order for the reasons set forth therein.

The Commission finds:

No new facts or principles of law have been presented by UGI in its application for rehearing which either were not fully considered by the Commission prior to its order herein, or, having now been considered, warrant further hearing, modification, or revocation of said order.

The Commission orders:

The application for rehearing filed herein by UGI is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–49

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 3, 1964)

On August 26, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP64–49 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the rendition of service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully set forth in the application.

The application seeks authority to construct and operate a sales meter station and appurtenant equipment to be located in Pittsylvania County, Virginia, at milepost 1425.69 on Applicant's main 36-inch transmission line. The meter station will be utilized as an additional point of delivery for natural gas service to Lynchburg Gas Company (Lynchburg Gas), an existing customer, for resale.

Lynchburg Gas has requested the proposed new delivery point in order that natural gas service can be provided to the Virginia Towns of Altavista and Hurt, and to two industrial plants in the area, Burlington Industries at Altavista and Klopmen Mills, Inc., at Hurt. Firm service will be provided to the communities while interruptible service would go to the industries for use in a fabric direct-drying process. Physical deliveries of the volumes purchased by Lynchburg Gas at the proposed point of delivery will be made into the facilities of Lynchburg Pipe Line Company (Lynchburg Pipe), its wholly owned subsidiary. Lynchburg Pipe will then buy the gas and transport it to the Altavista and Hurt areas for resale to municipal distributors. The volumes of natural gas involved are estimated at a maximum daily requirement of 1,575 Mcf, of which 240 Mcf will be on a firm basis, all out of allocations previously authorized by the Commission. No steam generation in either of the industrial plants is contemplated.

Lynchburg Gas and Lynchburg Pipe, respectively, filed on December 6, 1963, certificates of the State Corporation Commission of Virginia indicating that it has regulatory jurisdiction over the rates and services of the two companies, and is exercising such jurisdiction.

Lynchburg Pipe itself or through its parent, Lynchburg Gas, will construct and operate all facilities between the proposed sales meter station and the Altavista-Hurt area consumers. Exhibit X-2 to the application indicates that the State Corporation Commission of Virginia has authorized the construction and operation of the proposed facilities to both the communities of Hurt and Altavista.

Applicant estimates that the proposed facilities will cost approximately $17,000 which will be initially financed from Applicant's general funds. Lynchburg Gas will reimburse Applicant in full for the cost of the proposed meter station.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 29, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within thirty days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-36

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 3, 1964)

On August 5, 1963, as supplemented on September 4 and 27, 1963, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64-36 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two line taps and two metering stations on Applicant's existing pipeline system and the sale of natural gas therefrom to Consolidated Utilities, Incorporated, (Consolidated) for resale for domestic and commercial use in the towns of Follett and Darrouzett, Lipscomb County, Texas.

The construction cost of the facilities above described is estimated to be $19,935.

The annual volumes of natural gas to be delivered by Applicant to Consolidated are estimated at 50,000 Mcf for each of the first three years and the service agreements provide for peak day deliveries of 3,000 Mcf to each of the two communities named.

A service agreement was executed with Consolidated on May 16, 1963, by Applicant providing for gas service under its presently effective F.P.C. Rate Schedule SG-1.

On November 14, 1963, a temporary authorization was granted to Applicant by the Commission.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 31, 1963 the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.*, (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CONTINENTAL OIL COMPANY, DOCKET NO. G–18755

ORDER GRANTING MOTION FOR TERMINATION IN ACCORDANCE WITH SETTLEMENT OFFER AND REQUIRING REFUNDS

(Issued January 6, 1964)

On June 9, 1959, Continental Oil Company (Continental) filed an application for a certificate of public convenience and necessity in Docket No. G–18755 seeking authorization pursuant to Section 7 of the Natural Gas Act to sell natural gas in interstate commerce on an interim basis to Southern Natural Gas Company (Southern) from acreage in the Bayou Pigeon Field, Iberia Parish, south Louisiana. Temporary authorization was issued to Continental on June 25, 1959, which provided that Continental was obligated to refund to Southern ". . . any amounts in excess of the amounts resulting from the rate finally determined to be proper in Docket No. G–18755."

The subject acreage was originally dedicated under a long term contract between Continental and Hope Natural Gas Company (Hope). Continental's application for a certificate to make the sale to Hope was granted on August 10, 1959, in Docket No. G–17554.[1] However, the leasing agreement provided for termination if production had not commenced prior to July 1, 1959. Since Hope could not take the subject gas at that time, the interim agreement was entered into with Southern. The sales under the interim agreement commenced on June 30, 1959, and terminated on December 15, 1959, at which time the sales to Hope commenced under the long term contract in Docket No. G–17554. The initial rate in the sales to both Southern and Hope was 23.67¢ per Mcf.[2]

On December 8, 1960, the order issuing the certificate to Continental in Docket No. G–17554 was judicially remanded (*Public Service Commission of New York v. F.P.C.*, 287 F. 2d 146 (CADC)); the matter was finally settled by Commission order on July 30, 1962 (*Texaco Inc.*, 28 FPC 247).

Continental, in its motion filed herein on August 26, 1963, proposes to settle the matter in Docket No. G–18755 on the same terms, insofar as they are applicable, as the settlement in Docket No. G–17554, *supra*.

Continental proposes to refund to Southern two-thirds of the difference between the amount collected from Southern for sales under Supplement No. 1 to Rate Schedule No. 166 and the amount that would have been collected at the rate of 20.625¢ per Mcf. Continental will pay interest on all amounts to be refunded at a rate of 6 percent per annum, such interest to accrue through August 31, 1963, the last day of the month in which the Continental motion was filed.

Continental proposes that upon payment of the refunds, the proceeding in Docket No. G–18755 be terminated, because under the circumstances, Continental no longer seeks a certificate to make a sale.

Notice of Continental's application, motion for termination and settlement proposal was issued on November 29, 1963 (28 F.R. 13325).

No protest, petitions to intervene, notices of intervention or requests for hearing have been received.

We are of the view that it is in the public interest to dispose of this long pending matter in which the dollar effect is *de minimis* on the terms proposed by Continental.

The Commission orders:

(A) Continental Oil Company, a natural-gas company within the meaning of the Natural Gas Act, shall refund to Southern Natural Gas Company, within 45 days from the date of issuance of this order, two-thirds of the difference between the dollar amounts actually collected under Supplement No. 1 to Rate Schedule No. 166 and the amount that would have been collected at a rate of 20.625¢ per Mcf, together with interest, as proposed.

(B) Within 30 days after making the refunds required by this order, Continental shall report to the Commission, in triplicate, the amount of the refund made to Southern, showing separately the amount of principal and interest so paid and the basis used for such determination, together with a release from Southern showing receipt of the refund in conformity with the terms of Continental's settlement offer and this order.

---

[1] *Texas Gas Transmission Corporation*, 22 FPC 378.

[2] All rates expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.

(C) Upon full compliance of Continental with all the terms of this order, Continental shall be relieved of any further refund obligations in this certificate proceeding and said proceeding shall terminate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UTAH POWER & LIGHT COMPANY, PROJECT NO. 765

ORDER AMENDING LICENSE (TRANSMISSION LINE) AND DISMISSING APPLICATION IN PART

(Issued January 6, 1964)

Utah Power & Light Company, licensee for transmission line Project No. 765, situated in Wasatch, Utah and Grand Counties, Utah, and affecting lands of the United States within the Uinta and Wasatch National Forests and other lands of the United States, filed the following applications for amendment of its license for the project:

(1) Application filed on May 8, 1961 seeks to exclude from the license the remaining portion of the Snake Creek-Mary Ellen Mine 11 KV line, extending from the licensee's Snake Creek Power Plant in Section 21, T. 3 S., R. 4 E., S.L.M., to the Live Yankee Tunnel in unsurveyed Section 20, T. 3 S., R. 3 E., S.L.M., and crossing lands of the United States for a distance of 3.906 miles with a 40-foot wide right-of-way within the Uinta (formerly Wasatch) National Forest.

(2) Application filed on October 12, 1961 seeks to exclude from the license a portion of the Columbia-Green River-Sego 44 KV three-phase transmission line in Grand County, Utah, extending from a point on the line in the NW¼NW¼ Sec. 21, T. 21 S., R. 20 E., S.L.M., near Thompson, Utah, to the Chesterfield Coal Company Substation near Sego, Utah, in the SW¼NW¼ Sec. 27, T. 20 S., R. 20 E., S.L.M., and crossing 0.673 mile of 100-foot wide right-of-way on lands of the United States; and

(3) Application filed on February 5, 1963 seeks to: (a) exclude from the license portions of the Big Cottonwood-Park City District System 12.5 KV line, extending from Station 88+81.9 in the NW¼NE¼ Sec. 21, T. 2 S., R. 2 E., S.L.M., to Station 259+62.8 in the SW¼NE¼ Sec. 13, T. 2 S., R. 2 E., S.L.M., totaling 3.24 miles in length, of which 2.66 miles are within the Wasatch National Forest; and (b) to include in the license a proposed relocated portion of the line which will cross 2.02 miles of lands of the United States within the Wasatch National Forest.

In support of the applications referred to in (1) and (2) above, the licensee advised that the lines therein described have been dismantled because mining operations served by the lines have been discontinued and there are no other customers served by the lines. In support of the application referred to in (3) (a) above, the licensee advises that the portion of the line therein described is being relocated because construction of a highway requires its removal and upon completion of construction of the highway, the portion of line must be rebuilt as recited in (3) (b) above.

With further reference to the line described in (1) above, the Department of the Interior raises no objection to excluding the portion of the line herein involved, and the U.S. Forest Service has reported that that section of line has been removed and the National Forest lands formerly occupied by the portion of line have been restored to a condition satisfactory to the Service.

With further reference to the line described in (2) above, the Department of the Interior advises that the lands of the United States formerly occupied by the line have been restored to a condition satisfactory to the Department.

With further reference to the line described in (3) above, the U.S. Forest Service has reported that the National Forest lands formerly occupied by the portion of line which was removed have been restored to a condition satisfactory to the Service.

The effect of the amendments will be a reduction of lands of the United States occupied by transmission line Project No. 765 as follows: 3.906 miles of National Forest lands of 40-foot wide right-of-way by removal of the Snake Creek-Mary Ellen Mine Line; 0.673 mile of 100-foot wide right-of-way of lands of the United States of removal of a portion of the Columbia-Green River-Sego 44 KV line; and 2.266 miles of 100-foot wide right-of-way by removal of a portion of the Big Cotton-Park City District System line 12.5 KV line within the Wasatch National Forest. The amount of annual charges presently specified in the license for Project No. 765 would correspondently be reduced by $36.20, from $784.99 to $748.79.

By letter dated January 4, 1944, the Commission advised the licensee that with the exceptions of the 44-KV and 11-KV circuits joining the Ashton, Idaho hydro plant with the interconnected system near the St. Anthony plant, the transmission lines included under the license for Project No. 765 are not primary lines and are not part of a "project" as defined in Section 3(11) of the Federal Power Act. The lines referred to in items 1, 2, and 3 above, are not part of a "project" as defined in Section 3(11) of the Act.

In the circumstances, the Commission has no objection to the issuance by the U.S. Forest Service of a Special Use Permit to Utah Power & Light Company for the proposed relocated portion of the Big Cottonwood-Park City District System line.

The Commission finds:

(1) The license for transmission line Project No. 765, further amended as hereinafter provided, is in the public interest.

(2) The following described exhibits, revised to the extent indicated, conform to the Commission's rules and regulations and should be reapproved as part of the license:

(a) Exhibit "K", sheet 3 of 5 (FPC No. 765-3), revised by the staff to reflect the exclusion from the license of the remaining portion of the Snake Creek-Mary Ellen Mine 11 KV line, and of a portion of the Big Cottonwood-Park City District System;

(b) Exhibit "K", sheet 2 of 5 (FPC No. 765-7), revised by the staff to reflect the exclusion from the license of a part of the Columbia Green River-Sego 44 KV line; and

(c) Exhibit M, revised by the staff to reflect the exclusion from the license of the remaining portion of the Snake Creek-Mary Ellen Mine 11 KV line, and of a portion of the Big Cottonwood-Park City District System and of the Columbia-Green River-Sego 44 KV line.

The Commission orders:

(A) The license for transmission line Project No. 765 is hereby further amended, effective as of September 1, 1963, as follows:

PARAGRAPH I. The paragraph commencing "Now, therefore . . ." on page 2 of the license as amended, listing the project works, is hereby further amended to exclude the following described portions of transmission lines:

"Columbia-Green River-Sego 44 KV Line" extending from a point on the above-mentioned transmission line in the NW¼NW¼, Sec. 21, T. 21 S., R. 20 E., S.L.M., near Thompson, Utah, to the Chesterfield Coal Company Substation near Sego, Utah, in the SW¼NW¼, Sec. 27, T. 20 S., R. 20 E., S.L.M. "Snake Creek-Mary Ellen Line 11 KV Line" extending from Snake Creek Power Plant in Sec. 21 T. 3 S., R. 4 E., S.L.M., to the Live Yankee Tunnel in Sec. 20, T. 3 S., R. 3 E., S.L.M.

"Big Cottonwood-Park City District System 12.5 KV Line" from Station 88+81.9 in the NW¼NE¼, Sec. 21, T. 2 S., R. 2 E., S.L.M. to Station 259+62.8 in SW¼NE¼, Sec. 13, T. 2 S., R. 2 E., S.L.M.

PARAGRAPH II. Article 12 as amended February 10, 1959 is hereby further amended by changing subparagraph (b) to read:

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its land, $748.79.

(B) The exhibits described in finding (2) above, revised in the manner therein indicated, are hereby reapproved as part of the license for Project No. 765.

(C) The aforementioned application filed on February 5, 1963 is hereby dismissed to the extent that it seeks to include in the license the portion of the Big Cottonwood-Park City District System line proposed to be relocated.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. RI64–72

ORDER DENYING MOTION

(Issued January 7, 1964)

On September 19, 1963, the County of Wayne, Michigan (County of Wayne) filed a petition requesting leave to intervene and a motion for a prompt hearing in the above-entitled proceeding,[1] which relates to a proposed increased rate of 22.25¢ per Mcf, including tax reimbursement, at 15.025 psia tendered by Humble Oil & Refining Company (Humble) on July 22, 1963, for sales of natural gas to American Louisiana Pipe Line Company from Cheniere Perdue Field, Cameron Parish, Louisiana. By the Commission's order issued August 2, 1963, in said docket, the proposed increased rate, designated as Supplement No. 3 to Humble's FPC Gas Rate Schedule No. 140, was suspended until February 1, 1964, and thereafter until such further time as it is made effective in accordance with the provisions of the Natural Gas Act.

---

[1] The petition to intervene filed by County of Wayne will be acted upon in a separate order.

In support of its motion, the County of Wayne states, among other things, that Humble's proposed increased rate exceeds by 6.75¢ per Mcf the applicable area price level for increased rates and, while not here involved, also exceeds the level for initial service rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended.[2] The County of Wayne also states that the refund provisions of Section 4(e) do not fully protect the ultimate consumer, and further, that under Section 4(e) of the Act the Commission is required to give to the hearing and decision of questions arising thereunder preference over other questions pending before it and decide the same as speedily as possible.

Humble's proposed rate will not have any triggering effect or price redetermination impact on other producer rates in the area. Nor will the proposed rate pierce the producer pricing plateau in the area. Further, the estimated annual increase in revenue to Humble, if the proposed rate is made effective subject to refund in accordance with Section 4(e) of the Act, is $7,516, which is a relatively small amount. Unlike the situation involved in those producer cases that we have set for individual hearing[3] subsequent to the *Phillips* decision,[4] there are no exceptional circumstances presented here which would warrant similar action in the instant case. We therefore conclude that determination of the just and reasonable rate for the sale by Humble involved here should be made in an area rate proceeding. In this connection we note that an area rate proceeding[5] has been initiated, and is well under way, for the area from which the subject sale is made.

The Commission finds:

For the reasons set forth above, the motion of the County of Wayne should be denied.

The Commission orders:

The motion filed by the County of Wayne for a prompt hearing in Docket No. RI64–72 is hereby denied.

---

[2] Issued September 28, 1960, 24 FPC 818, 18 CFR, Chapter I, Part 2, Section 2.56.

[3] See, for instance, *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, order issued June 14, 1962, and Opinion No. 369 issued therein on November 30, 1962, 28 FPC 897.

[4] Opinion No. 338, *Phillips Petroleum Company*, Docket No. G–1148, *et al.*, issued September 28, 1960, 24 FPC 537.

[5] Docket No. AR61–2, *et al.* issued May 10, 1961, 25 FPC 942.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; PERRY R. BASS, (OPERATOR), ET AL.,[1] DOCKET NOS. CI61–406, CI61–714, CI61–973, AND CI63–631; MIDWEST OIL CORPORATION (OPERATOR), ET AL.,[1] DOCKET NOS. CI61–621 AND CI62–1317

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 7, 1964)

On September 20, 1963, Perry R. Bass, (Operator), et al., (Bass) filed a motion for severance of the above-entitled Bass proceedings from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as Union Texas proceeding), for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity in accordance with the applications and the settlement proposal.

---

[1] The applications, related rate schedules and settlement proposals include the interests of the *"et al."* sellers listed in the applications.

The terms of the Bass proposal conform, generally, to the recent settlements in the Union Texas proceeding which have been approved by the Commission[2] and provide for maximum initial rates of 20.625¢ per Mcf[3] for sales from south Louisiana, effective April 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and extension of the take-or-pay make-up periods to four years in the rate schedules which provide for lesser make-up periods.[4]

No answers to Bass' motion and offer have been received.

On September 23, 1963, Midwest Oil Corporation (Operator), *et al.*, (Midwest) filed a similar motion and offer related to the Midwest dockets listed in the caption hereof.[5] Midwest's proposal differs from those proposals recently approved by the Commission in that the effective date of its rate reduction and commencement of moratorium period is October 1, 1963, rather than April 1, 1963. The Brooklyn Union Gas Company (Brooklyn Union), on October 7, 1963, and Public Service Electric and Gas Company on October 16, 1963, filed letters with the Secretary objecting to the October 1, 1963 effective date proposed in Midwest's offer. Both stated, however, that they would not object to an effective date of April 1, 1963. As we have stated in other settlement orders in this proceeding, it would be unfair to producers who settled earlier to allow such later effective date.[6] Accordingly, our approval of Midwest's proposal will be conditioned upon a change in the effective date of the rate reductions and commencement of the moratorium period to April 1, 1963.

With the exceptions discussed hereinafter, the rates during the moratorium period under the rate schedules related to the applications proposed to be settled by Bass and Midwest will be 20.625¢ per Mcf. The initial rate under Bass' Rate Schedule No. 11 (CI61–973), 19.5¢ per Mcf, will remain in effect during the moratorium period. The initial rate under Midwest's Rate Schedule No. 26 (CI62–1317) is 20.3¢ per Mcf. The presently effective rate, being collected subjected to refund in Docket No. RI63–116, under Midwest's Rate Schedule No. 26 is 20.7¢ per Mcf. Midwest proposes that such increased rate remain in effect during the moratorium period subject to further orders of the Commission in the rate proceeding in Docket No. RI63–116.

Except in Docket No. CI61–793, none of the temporary authorizations heretofore issued to Bass and Midwest in these dockets contain express refund conditions and neither applicant proposes to refund any amounts collected for deliveries made prior to the proposed effective dates of the rate reductions.[7]

---

[2] See orders issued August 7, 1963, 30 FPC 456 (Humble Oil & Refining Company) and October 9, 1963, 30 FPC 979 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[4] See appendix for further details.

[5] In addition to the Dockets listed in the caption to this order, Midwest's Docket No. CI60–745 is also consolidated with the Union Texas proceeding. However, Midwest has filed an amendment to its application in Docket No. CI60–745 seeking authorization to abandon the service proposed in that docket.

[6] See order issued October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 979.

[7] In Docket No. CI61–973 the settlement rate is the initial rate proposed, 19.5¢ per Mcf.

We find these proposals, generally, to be in the public interest and shall approve them subject to the following reservations and conditions.

Since deliveries have been made at rates higher than the settlement rates since April 1, 1963, we shall require that Bass and Midwest refund to the pipeline purchasers the dollar amounts of such excess with interest at 7 percent per annum, such interest to accrue through the last day of the month in which the settlements were filed, September 30, 1963.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the proposals to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretations. Thus, prepayments, if any, shall be made during the moratorium periods at rates no higher than the rates in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

Transcontinental Gas Pipe Line Corporation and Hope Natural Gas Company, the purchasers in Docket Nos. CI61–714 and CI61–621 respectively, will flow through the refunds received and reduce their rates in accordance with their latest rate settlements.

Southern Natural Gas Company (Southern), the purchaser in Docket Nos. CI61–406 and CI63–631, has filed reports of plans of disposition of refunds in connection with several of our orders conditionally approving settlement agreements arising out of the Union Texas Proceeding.[8] Southern contends in those reports that it should be permitted to retain refunds received from a producer in a situation similar to that here presented. In order to avoid a situation in which a pipeline obtains and fails to pass on to the ultimate consumers refunds and reduction in gas purchase costs, even though, in the absence of such refunds and rate reductions, it may be earning a reasonable return on invested capital, we shall require that Southern, within 30 days from the date of issuance of this order, report to the Commission its proposed disposition of the refunds which it would receive as a result of Bass' settlement, and its proposed rate adjustments to reflect the prospective reductions in purchased gas costs which result from Bass' settlement. In addition, and until further order of the Commission, we shall require that Bass hold the amounts proposed to be refunded to Southern attributable to payments for gas delivered between March 31, 1963, and the date upon which the rates are actually reduced, in a special account. Interest shall accrue only through September 30, 1963. No additional interest shall accrue as a result of this provision.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221,

---

[8] Order issued August 7, 1963, 30 FPC 448, *re The California Company, a Division of California Oil Company*, report filed December 2, 1963: Order issued October 9, 1963, 30 FPC 979, *re Socony Mobil Oil Company*, report filed December 20, 1963: Order issued October 28, 1963, 30 FPC 1096, *re Sinclair Oil & Gas Company*, report filed December 19, 1963.

et al., omit the intermediate decision in regard to these dockets,[9] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Southern be required to submit the reports as ordered below.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI61–406, CI61–714, CI61–973, CI63–631, CI61–621 and CI62–1317 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to the applicants in Docket Nos. CI61–406, CI61–714, CI61–973, CI63–631, CI61–621 and CI62–1317 upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates granted by paragraph (C) above, are granted upon the express condition that applicants comply fully with the terms of this order and the settlement proposals, as modified, which settlements are expressly approved under the conditions of this order.

(E) Within 90 days from the date of issuance of this order, applicants shall refund to the respective pipeline purchasers the difference between the amounts collected for gas delivered subsequent to March 31, 1963, and the amounts that would have been collected under the settlement rates for gas delivered since that time, except under Midwest's Rate Schedule No. 26 and Bass' Rate Schedule Nos. 9 and 13, together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposals were filed, September 30, 1963.

---

[9] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963.

(F) The certificates issued to Midwest by paragraph (C) above are granted upon the express condition that the effective date of the rate reduction be April 1, 1963, and that the moratorium period commence on April 1, 1963, and end on March 31, 1968.

(G) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, each applicant shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, and the amounts that would have been refunded but for Paragraph (M) hereof, showing separately the amount of principal and interest and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(H) Upon full compliance of applicants with all the terms of this order and of the settlement proposals, applicants shall be relieved of any further refund obligations in these certificate proceedings, except as might be required by further orders of the Commission provided for in Paragraph (M) hereof, and said proceedings shall terminate.

(I) The certificates herein issued are not transferable and shall be effective only so long as applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(K) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against applicants, particularly any proceeding under Section 4 or 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(L) Within 30 days from the date of issuance of this order, Southern shall submit to the Commission, a report, a copy of which shall be served upon each of its jurisdictional customers and the various state utility commissions of states wherein it does business, setting forth the proposed disposition of any refunds it might receive from Bass as a result of Bass' settlement and its proposed rate adjustments to reflect the reduction in purchased gas costs which result from Bass' settlement proposal insofar as it applies to Docket Nos. CI61-406 and CI63-631.

(M) Until further order of the Commission, Bass shall retain in a special account sums equal to the difference between the amount paid under Rate Schedules Nos. 9 and 13 for deliveries made between March 31, 1963 and the date upon which the rates are actually reduced and that which would have been paid at the proposed settlement rates. Interest on amounts in this special account shall accrue at a rate of 7 percent per annum through September 30, 1963.

APPENDIX

Producer	Rate schedule No.	Docket No.	Purchaser	Present rate [1] (cents per Mcf)	Settlement rate [1] (cents per Mcf)
Perry R. Bass (Operator), *et al.*	9	CI61-406	Southern Natural Gas Co.	23.675	20.625
Perry R. Bass (Operator), *et al.*	10	CI61-714	Transcontinental Gas Pipe Line Corp.	23.55	20.625
Perry R. Bass (Operator), *et al.*	11	CI61-973	United Fuel Gas Co.	19.5	19.5
Perry R. Bass (Operator), *et al.*	13	CI63-631	Southern Natural Gas Co.	21.25	20.625
Midwest Oil Corp. (Operator), *et al.*	23	CI61-621	Hope Natural Gas Co.	23.25	20.625
Midwest Oil Corp. (Operator), *et al.*	26	CI62-1317	United Fuel Gas Co.	[2] 20.7	20.3

[1] All rates at 15.025 p.s.i.a. pressure base 15.025 p.s.i.a.
[2] This rate is now in effect subject to refund in docket No. RI63-116, and according to Midwest's settlement proposal, this rate will continue in effect subject to refund.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; HUGH GOODRICH, DOCKET NO. CI62-1410

ORDER SEVERING PROCEEDING, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 7, 1964)

On December 2, 1963, Hugh Goodrich (Goodrich) filed a motion for severance of Docket No. CI62-1410 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* (hereinafter referred to as the Union Texas proceeding), for approval of the attached settlement proposal and for the issuance of a certificate of public convenience and necessity in accordance with the application and settlement proposal.

The terms of the Goodrich proposal conform, generally, to recent settlements in the Union Texas proceeding which have been approved by the Commission[1] and provide for the issuance of a certificate of public convenience and necessity at a rate of 20.625¢ per Mcf[2] for the sale of natural gas produced from the Kaplan and Casinade Fields, south Louisiana; a five-year moratorium on rate increase filings, effective April 1, 1963 (subject to the usual exceptions); refunds of all amounts above the settlement rate collected for deliveries made subsequent to March 31, 1963, with interest at a rate of 7 percent per annum to accrue through September 30, 1963.

The contract has a ten-year take-or-pay make-up period and provides for an initial price of 22.75¢ per Mcf. The temporary authorization heretofore issued to Goodrich provided for an initial price of 21.25¢ per Mcf.

No answers to Goodrich's motion have been received.

We find this proposal, generally, to be in the public interest and shall approve it subject to the following reservations and conditions.

---

[1] See orders issued August 7, 1963, 30 FPC 456 (Humble Oil & Refining Company) and October 9, 1963, 30 FPC 979 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the motion and offer were filed, December 31, 1963. This has been a requirement in all of our orders approving settlements arising out of the Union Texas proceeding.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the proposals to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium period at a rate no higher than the rate in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The pipeline purchaser in Docket No. CI61–1410 is Transcontinental Gas Pipe Line Corporation (Transco). In order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest which it receives as a result of Goodrich's settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever this individual docket from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket Nos. G–13221, *et al.*, omit the intermediate decision in regard to this docket[3] and issue a certificate of public convenience and necessity in accordance with the application, settlement proposal and conditions of this order.

The Commission finds:

(1) Hugh Goodrich is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Goodrich is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

---

[3] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, is required by the public convenience and necessity and is in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and accounts for the refunds, interest and purchased gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decision in this proceeding.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) The matters in Docket No. CI62-1410 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*

(C) A certificate of public convenience and necessity is hereby issued to Hugh Goodrich in Docket No. CI62-1410, upon the conditions set forth herein authorizing the sale of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application and settlement proposal herein.

(D) The certificate granted by paragraph (C) above, is granted upon the express condition that Goodrich comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(E) Within 90 days from the date of issuance of this order, Goodrich shall refund to the pipeline purchaser the difference between the amounts collected for gas delivered subsequent to March 31, 1963, and the amounts that would have been collected under the settlement rate for gas delivered since that time together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, December 31, 1963.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Goodrich shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of Goodrich with all the terms of this order and of the settlement proposal, Goodrich shall be relieved of any further refund obligations in this certificate proceeding and said proceeding shall terminate.

(H) The certificate herein issued is not transferrable and shall be effective only so long as Goodrich continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Goodrich, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Goodrich, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to Goodrich's rate reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account.

(L) Upon full compliance of Goodrich with all the terms of this order and the settlement proposal, Supplement No. 2 to Goodrich's Rate Schedule No. 1 shall be accepted for filing, effective as of the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued January 9, 1964)

Application was filed on March 7, 1963 by Alabama Power Company, licensee for major Project No. 2146, for further amendment of its license for the project situated on the Coosa River, navigable waters of the United States, and affecting lands of the United States.

The application requests authorization to install the third generating unit in the Lock 3 Development during initial construction. The licensee states that the proposed installation of the third generating unit will be economically feasible by 1966 and the installation should be commenced in 1964 and completed in 1966.

The license for the project describes the Lock 3 Development as consisting of an initial installation of two 33,500-horsepower turbines each connected to a 24,300-kilowatt generator with provision for an additional third unit of similar size. The proposed installation will consist of having one 33,500-horsepower turbine connected to one 24,300-kilowatt generator, together with associated facilities.

Recent load forecast and power supply studies, obtained by taking detail load forecasts for 1964, 1965 and 1966 from each of the four operating companies forming the Southern Company integrated system which includes the licensee, and developing therefrom a diversified system total, indicate that the power output from the Lock 3 development, constructed initially to its ultimate capacity of 72,900 kw (3 units of 24,300 kw each) will be required to meet the estimated

1966 system load, and its dependable capacity thereon is estimated at 63,200 kw, as compared with 46,800 kw for a 2-unit installation. The average annual energy to be obtained from the ultimate installation is estimated at 202.3 million kwh, as compared with 190.6 kwh for a two-unit installation. The incremental increase in capital cost for installing the third generating unit initially is estimated at $2,275,000, and the corresponding increase in annual cost is estimated at $294,700. The incremental increase in power output, derived from the third generating unit, is about 16,400 kw of dependable capacity, and about 11.7 million kwh of average annual energy. Based on power values of $27.53 per kw-yr for dependable capacity, and 2.5 mills per kwh for average annual energy, the estimated incremental annual value of the power output is about $480,900. The incremental annual net benefits ($480,900–$294,700) therefrom amount to about $186,200. Thus, construction should be completed by July 30, 1966, as contemplated in the construction schedule set forth in Article 33 of the license.

The granting of the application increasing the authorized installed horsepower capacity will increase the amount of administrative annual charges payable under the license.

The Chief of Engineers and the Secretary of the Army have reported that, based on the understanding that the existing license provisions in the interest of navigation and flood control will remain applicable, the proposal in the application for amendment of the license is satisfactory.

The Commission finds:

(1) The license, further amended as hereinafter provided, is in the public interest.

(2) Public notice of the application has been given. No protests have been received.

(3) The authorized installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 756,000 horsepower, and the increased annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

(4) Exhibit M (Revision No. 2), filed as part of the application, conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M, filed on January 19, 1962 now part of the license and which has been superseded, should be eliminated from the license.

The Commission orders:

(A) Exhibit M (Revision No. 2) mentioned in finding (4) above is hereby approved as part of the license for Project No. 2146, and Exhibit M mentioned in the same finding as being superseded is hereby eliminated from the license for the project.

(B) The license for Project No. 2146 is hereby further amended, effective as of December 1, 1963, as follows:

Article 28 of the license is further revised to show the authorized installed capacity as being increased to 756,000 horsepower.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP64–111

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 9, 1964)

On November 13, 1963, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP64–111 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct during the calendar year 1964, gas supply facilities necessary to take into its certificated main line system natural gas purchased by United Fuel Gas Company (United Fuel) from producers in the general area of Applicant's existing transmission system, at a total cost not to exceed $500,000, with no single project to exceed $125,000, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Fuel for transportation by Applicant, all as fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in making relatively minor alterations and additions to its existing gas supply facilities in order to attach and utilize additional supplies of natural gas from new or existing sources.

Applicant proposes to finance the cost of the subject facilities from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 31, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 5, 1958, in Docket No. G–15524, *et al.* (20 FPC 681).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Columbia Gulf Transmission Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the appplication in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Fuel Gas Company.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COMMISSION LETTER ORDER OF OCTOBER 30, 1963, DIRECTING RESPONSES TO TWO QUESTIONNAIRES:

(I) SUMMARY LISTS OF RESPONDENT'S (1) GAS AND OIL PRODUCTION AND (2) FIELD AND CYCLING PLANTS BY PRICING AREAS—YEAR 1962 AND

(II) COSTS AND STATISTICS PERTAINING TO OIL AND GAS PRODUCTION, EXPLORATION, GAS SYSTEMS, AND FIELD GASOLINE AND CYCLING PLANT OPERATIONS—YEAR 1962

ORDER MODIFYING LETTER ORDER REQUIRING FURNISHING OF DATA AND DENYING MOTIONS FOR RECONSIDERATION

(Issued January 9, 1964)

On October 30, 1963, 30 FPC 1155, the Commission issued a letter order pursuant to Section 10(a) of the Natural Gas Act directing 114 natural gas producers to complete and file the two questionnaires having the titles stated in the caption of this order. Recipients of the letter and the questionnaires were either producers making sales of more than 10,000,000 Mcf annually in interstate commerce or regulated natural gas pipeline companies with annual production of 10,000,000

Mcf and their oil and gas production affiliates. The letter order stated that the data being solicited was necessary "for programming additional area rate proceedings."[1]

The data collected will be made available for use by interested parties and the Commission staff in future area proceedings instituted as a part of our continuing efforts to establish just and reasonable prices for natural gas produced by independent producers, and by natural gas pipeline companies and their affiliated companies and sold in interstate commerce. On November 27, 1963, the Commission issued an order initiating two additional area rate proceedings in the Hugoton-Anadarko and the Texas Gulf Coast areas pursuant to Sections 4, 5, 10, 14, 15, and 16 of the Natural Gas Act. This order stated, with respect to the questionnaire, that:

As a next step in fixing just and reasonable area rates, we believe that additional area rate proceedings should now be instituted. To this end, we have promulgated a cost and operating data questionnaire to more than one-hundred principal natural gas producing companies making sales of natural gas for resale. Data received from the respondents to this questionnaire will be a prime source of information to be utilized by the parties to the proceedings including the Commission's staff. See *Area Rate Proceeding* (Hugoton-Anadarko Area), Docket No. AR64-1, *et al.*, 30 FPC 1354.

Between November 29, 1963 and December 31, 1963, motions for reconsideration of the letter order were filed by twenty-five of the respondents and by the Independent Petroleum Association of America (IPAA).[2] The motions, except those of Humble, British-American, Skelly, Shell, Forest, Superior and IPAA were designated as applications for rehearing under Section 19(a) of the Natural Gas Act and Section 1.34 of our Rules of Practice and Procedure. However, neither the Act nor our Rules provide for applications for rehearing of orders calling for the submission of information for use in Commission proceedings or investigations. Our letter order of October 30, 1963, is much like our order of August 2, 1961, prescribing the filing of data in Area Rate Proceeding (Permian Basin Area), Docket No. AR61-1, *et al.*, 26 FPC 247. An appeal taken from this order by the Sun Oil Company was dismissed upon the motion of the Commission on the ground that it was interlocutory and therefore review was not permissible. *Sun Oil Company* v. *Federal Power Commission*, 297 F. 2d 77. The applications for rehearing, therefore, will be treated as motions for reconsideration.

---

[1] See our Statement of General Policy No. 61-1, Federal Power Commission Rules of Practice and Procedure, Section 2.56, 18 C.F.R. 2.56.

[2] The respondents filing such motions were Texaco Inc.; Humble Oil & Refining Company; a joint motion by Austral Oil Company Incorporated, Perry R. Bass (Operator), *et al.,* and Belco Petroleum Corporation; a joint petition by Hunt Oil Company, Hassie Hunt Trust and Placid Oil Company; J. M. Huber Corporation, and Sun Oil Company. Amerada Petroleum Corporation filed a telegram joining Texaco's motion. If we were to follow Section 1.34 of our Rules, the following applications for rehearing would be regarded as untimely filed: the motion of Kerr-McGee filed on December 2, 1963; the telegram filed by American Petrofina Company of Texas adopting Hunt's motion on December 2, 1963; Cabot Corporation adopted Texaco's motion on December 3, 1963, by telegram, and The Pure Oil Corporation also adopted Texaco's motion on December 9, 1963, by telegram. On December 9, 1963, The Atlantic Refining Company adopted Humble's motion and The British-American Oil Producing Company filed a motion for reconsideration. Also, on December 9, 1963, Aztec Oil & Gas Company protested the applicability of the letter order to it since it sold less than 10,000,000 Mcf for resale in 1962, a claim which has been confirmed by a reexamination of Commission records. On December 12, 1963, Skelly Oil Company filed a "Petition for Order Assigning Docket Number, Setting Matter For Hearing And For Declaration Of Rights Of Petitioner." This petition will also be treated as a motion for reconsideration since it raises essentially the same points as the other movants. This statement is also applicable to "Protest" filed by Shamrock Oil and Gas Corporation and to Union Pacific Railroad Company's adoption of Humble's motion, both filed on December 16, 1963; to the application of Southwest Gas Producing Company, Inc. for rehearing and reconsideration filed on December 18, 1963; and to the motions for reconsideration filed by Shell Oil Company, Forest Oil Corporation and The Superior Oil Company on December 19, 24 and 26, 1963, respectively. On December 31, 1963, Pan American Petroleum Corporation advised us by telegram that it joined in Shell's motion. IPAA sent a lengthy letter to the Commission under date of December 17, 1963, raising essentially the same contentions as those of the movants. It will, therefore, be treated as another motion for reconsideration and answered herein.

The movants individually or collectively urge the Commission to rescind its October 30th letter order, or in the alternative, to revise the cost and operations questionnaire. No objections are raised to answering the summary questionnaire. The reasons advanced for rescission are multiple. It is contended that the questionnaire is not "necessary or appropriate to assist the Commission in the proper administration" of the Natural Gas Act because (1) the burden of completing the questionnaire outweighs the usefulness of the data to be filed; (2) data are solicited concerning extracted liquifiable hydrocarbons and not just natural gas; (3) the questionnaire covers all field gasoline cycling plants including those engaged solely in intrastate commerce; (4) the questionnaire is not representative because the Commission has not directed natural gas producers selling less than 10,000,000 Mcf in interstate commerce to file it; (5) the respondents are being required to submit certain data (unspecified) previously submitted in other Area Rate Proceedings and the questionnaire is incompletely drawn; (6) the questionnaire is prematurely issued because the area rate approach and the various allocation methods have not been finally sanctioned by the Courts; (7) the pricing area boundaries used by the Commission in fixing natural gas prices should be determined in the rulemaking proceedings in Docket No. R-218 before cost and operating data is requested for all production areas; (8) the Commission should require cost and operating data only with respect to those areas where area rate proceedings are to be initiated; and (9) more time will be needed for compliance with the questionnaire. Certain movants urge that Commission-Gas Industry conferences, or hearings, be scheduled to shorten, clarify, and revise the questionnaire so as to reduce the reporting burden.

The burden complained of by the movants relates to the estimated cost and the amount of time needed to complete the questionnaire. There are a variety of cost estimates: Texaco $250,000, Humble $100,000, Skelly $125,000, various companies $85,000, Perry R. Bass $50,000, Austral $40,000 (by Arthur Andersen & Co.) and Belco $20,000.[3] In the main, these cost estimates were brought to the attention of the Bureau of the Budget when it reviewed and approved the cost questionnaire pursuant to the Federal Reports Act of 1942, thereby independently determining that "the collection of * * * [the] information is necessary for the proper performance of the [Commission's] functions." *Federal Reports Act*, 5 U.S.C. Sec. 139(d). The questionnaire was approved for issuance only after several months of consultation between the Bureau, the Commission and the Committee on Petroleum and Natural Gas, a member committee of the Advisory Council on Federal Reports. The consulting membership of the Committee included executives from 14 individual oil and gas company-respondents, 3 industry trade associations and a leading accounting firm.

While we recognize that the task we have set for the respondents to our Order is undoubtably substantial, the cost of providing information necessary to assist the Commission in the proper administration of the Natural Gas Act, is not a sufficient reason for rescission of our Order. In the *East Ohio Gas Company* case, 6 FPC 176, a natural-gas company objected to complying with general accounting orders of the Commission prescribing a Uniform System of Accounts because of a claimed cost of $1,500,000. (6 FPC at 183.) The Commission's rejection of this contention received the approval of the Supreme Court. *Federal Power Commission* v. *East Ohio Gas Co.*, 338 U.S. 464, 475. The Commission's orders, the Court concluded, met the test prescribed in *American Telephone & Telegraph Co.* v. *U.S.*, 299 U.S. 232, 247, that, "The evidence does not show that the expense * * * will lay so heavy a burden upon the companies as to overpass the bounds of reason."

---

[3] In terms of interstate volumes sold by these companies in 1962, the alleged average cost of completing the questionnaire is approximately 0.065¢ per Mcf. (*Source:* The above cost estimates divided by the reported 1962 interstate sales by the companies named above.) This cost is to be contrasted to the average wellhead price received for natural gas in 1962—15.4¢ per Mcf. (U.S. Bureau of Mines).

Obviously, much of the cost incurred in answering the present questionnaire is attributable to the absence of any regulations requiring natural gas producers to maintain a Uniform System of Accounts or to file annual reports with respect to their regulated business. As a result, the responses to the questionnaire become the only source of information available to the Commission. These responses must be developed from the respondents' diverse accounting systems. However, when such costs are measured against the task at hand, that of obtaining general information to aid in the establishment of gas rates in all pricing areas, they do not appear to be disproportionate. The uses to be made of the data amply justify its collection. As mentioned above, two new area proceedings involving seven of the twenty-six pricing areas have been recently instituted.[4] Further, it is of the utmost importance to begin preparations now for the completion of the first round of fixing just and reasonable rates in all of the pricing areas as soon as possible. To achieve this, data must be readily available and composited at the earliest time to facilitate the commencement of hearings in other areas.

However, the costs to a particular company complying with the questionnaire are directly proportional to the number of pricing areas in which it has interstate gas sales. Costs for the larger companies, therefore, will be greater because they do business in most or all of the pricing areas. If a respondent has production in a single major pricing area, such as the Permian Basin or Southern Louisiana, its cost of completing the questionnaire should not be appreciably greater than it was in the first two area rate proceedings. However, a large part of the questionnaire requires the filing of production trend data for a seven-year period in all pricing areas. We think, in view of the comments in the motions concerning the burden of complying with the questionnaire, that the filing of all trend data for pricing areas other than the Permian Basin, Southern Louisiana, Hugoton-Anadarko, the Texas Gulf areas and the continental United States should be deferred at this time. This will give substantial relief to the respondents and should enable them to provide the Commission the remaining data needed for the review of information already lodged with the Commission and that necessary for the development of further area rate proceedings, the most immediate being the Hugoton-Anadarko and the Texas Gulf Coast areas. At such time as the Commission considers the initiation of more area proceedings, it will require submission of the deferred trend data.

The contention is made that the questionnaire improperly requires the filing of data concerning "liquifiable hydrocarbons and plants operated for the extraction thereof." Also, that data related to all "producer owned or operated field gasoline and cycling plants," is required irrespective of the intrastate character of some plants. These arguments not only miss the point but also

---

[4] While the November 27th order instituted two new proceedings affecting seven pricing areas, the Commission preserved to the parties an opportunity to seek an enlargement of the areas encompassed in these proceedings.

fail to particularize the liquids and plant data considered objectionable. Of course, in area rate proceedings, the Commissions' sole objective is to establish just and reasonable rates only for jurisdictional sales of natural gas. In so doing, the Commission is not precluded from considering appropriate evidence relating to intrastate or other non-jurisdictional matters affecting the rates of natural gas being transported or sold in interstate commerce for resale. On the contrary there are costs, revenues, and other considerations incident to extraction operations which though non-jurisdictional are related to interstate sales of natural gas, and therefore, must be taken into account in fixing rates for such sales. *Phillips Petroleum Company*, 24 FPC 537, 563, affirmed, *Wisconsin* v. *F.P.C.*, 373, U.S. 294; also see *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 305 F. 2d 763; *City of Detroit* v. *F.P.C.*, 230 F. 2d 810, certiorari denied, 352 U.S. 829. Likewise, the operations of the so-called intrastate gasoline plants are usually integrated with total company operations. They normally are one of many similar operations undertaken by an oil and gas producing company. An understanding of a company's integrated gasoline plant operation is therefore essential to determine what portion of the costs properly should be borne by the interstate segment. We note, moreover, that all respondents retain their right to object to the introduction in an area rate proceeding of any evidence extracted from the information supplied in response to these portions of the questionnaire should they at that time still believe it is unrelated to the problem at hand.

Many respondents assert that cost and operations data obtained only from the large producer respondents to the questionnaire will not be representative of natural gas producing experience in the various pricing areas. It is their position that producers with less than 10,000,000 Mcf annually should also be made respondents thereby adding to the information contained in the composites of the filed data for use in area proceedings. This, they say, will increase the representativeness of the composites.

When a similar question arose recently in connection with other area rate proceedings we determined that the issue of representativeness of the data contained in the basic data exhibits and the related studies based on them should properly be decided upon the close of the area proceedings by the presiding examiner and then by the Commission. See Area Rate Proceeding, *et al.*, Docket No. AR61–2, *et al.*, Order Denying Motion to Direct Certain Respondents to Submit and Staff to Compile Cost Data, issued November 22, 1963, 30 FPC 1350. At the present time, we have not promulgated but we do not foreclose the use of a questionnaire for smaller producers who are respondents to the new proceedings. They are, of course, free to submit the information required of the respondents should they choose to do so. In any event, however, it is clear that we will need the information in the questionnaire from the producer respondents to the present inquiry who alone make an estimated 77%[5] of the sales of natural gas subject to our jurisdiction.

Some of the movants point out that the questionnaire provides for the reporting of data already submitted by them in connection with previous area rate proceedings. The questionnaire, of course, had to be designed for all prospective respondents regardless of the possibility that certain of them might have previously answered some schedules in connection with earlier proceedings. Where data are requested which have been previously filed with the Commission by a given respondent, the respondent should either file duplicate data or meet with representatives of the Bureau of Natural Gas and establish a means of utilizing the relevant information of the earlier filing.

---

[5] On the basis of available information, seventy-four independent producer respondents sold 6,010,879,967 Mcf (Form 301) of the total 7,798,180,890 Mcf (Form 2) of natural gas purchased domestically by natural-gas company pipelines in the year 1962. In addition, the questionnaire will obtain data on almost 95% of the natural gas produced by natural-gas pipeline companies and their affiliates. (Form 2)

Also, some respondents claim that data, in addition to that presently required by the questionnaire, will doubtlessly be requested by various parties and that, therefore, the questionnaire is inadequate. It is quite possible that the questionnaire does not require the filing of all the data desired by all the parties to the various area proceedings and that they may seek to secure such additional information by informal or formal request. It does, however, include all the additional schedules requested by producer representatives during the Bureau of the Budget's recent review of the questionnaire pursuant to the Federal Reports Act of 1942. To defer the questionnaire until all interested parties could fully refine their needs for additional information would obviously be incompatible with our responsibilities under the Natural Gas Act.

We cannot accept the contentions by the movants that the collection of 1962 cost and operations data for all areas is premature. It is urged that further development of area rates should be discontinued until the method adopted by the Commission for fixing the area rates in the Permian Basin is judicially approved. Also, it is argued that all area boundaries should be fixed in Docket R-218 before collecting more data; and, in any event, the present collection of data should be limited to only those areas where new rate proceedings have been initiated.

In the order instituting two new proceedings in the Hugoton-Anadarko and Texas Gulf Coast areas we stated that our statutory responsibilities do not permit us to "await determination of one area proceeding before we initiate others * * *." There, our reference was to Commission determinations, but our statement is even more applicable to the long periods of time needed for Court review. A contrary view would involve a stretch-out in achieving fully effective producer regulation and result in a general breakdown of the Commission's program for fixing producers' rates by the area approach which received judicial encouragement at the highest level earlier last year in *Wisconsin* v. *F.P.C.*, 373 U.S. 294.

Our policy, therefore, is to initiate and complete as many area proceedings as expeditiously as our resources permit. For this reason, it is essential to begin the collection of data from all areas now, and to have it available for use as soon as future area proceedings can be scheduled.

None of the movants argue persuasively that area boundary proceedings in Docket R-218 should be concluded before collecting area data and instituting new proceedings. As pointed out in the Commission's recent order in that Docket,[6] the outcome of the rulemaking proceeding, involving relatively limited boundary changes, is largely dependent on the "production cost information" to be provided by responses to the questionnaire. We stated that the area boundary refinements contemplated in Docket R-218 could not be completed satisfactorily in the absence of this information. We expect, as stated in our deferral order, "that the additional area proceedings * * * will allow for consideration and disposition of area boundary issues arising within the pricing areas consolidated for hearing * * *."

Some movants request the Commission to grant extensions of time for the filing of their completed questionnaires. We do not believe that such requests should be entertained at this time, and they will be denied without prejudice.

---

[6] Order Deferring Further Consideration of Proposed Changes in Pricing Area Boundaries Fixed Under Statement of General Policy 61-1, Docket No. R-218, 30 FPC 1374, issued November 27, 1963.

We have no intention of permitting any substantial general delay in meeting the time schedule which was worked out with the Committee on Petroleum and Natural Gas in a manner calculated to gear the responses into our hearing schedule, while relieving producers of the obligation to perform all portions of the work at once. We recognize, however, that there may be some few special situations calling for accommodation. Such requests for more time should detail the efforts the petitioner has made to complete the questionnaire within the prescribed time, and be addressed separately to each of the four segments of data to be reported and the reporting dates set out therefor in the schedule accompanying the cost questionnaire.

We are unable to confirm Hassie Hunt Trust's statistically unsupported claim that it sold less than 10,000,000 Mcf of natural gas in interstate commerce during the year 1962. On the basis of gas sales information available from F.P.C. Forms 301-A and 301-B, filed by the Trust for the year 1962, it is evident that its sales exceeded 10,000,000 Mcf at both mixed pressure bases and at a pressure base of 14.65 psia which is the one prescribed for use in answering the questionnaire. See *Instructions and Explanatory Notes on Questionnaire*, page 6, first paragraph.[7]

The proposal contained in several motions for conferences looking toward simplifying and shortening the questionnaire, would normally be favorably received by us.[8] However, we believe that the respondents, either directly or indirectly, have been accorded ample opportunity during the extensive Bureau of the Budget review to present their views and, therefore, further general conferences on the basic content of the questionnaire at this time would only serve to delay forward progress in answering it, to the obvious detriment of our area rate program. Of course, to the extent clarifying instructions are required, the Commission's staff is always available to provide such assistance and guidance as needed.

The Commission orders:

(A) The motions for reconsideration filed by the movants listed on page 2, footnote 3, requesting the Commission to rescind its letter order of October 30, 1963, or in the alternative, to revise the questionnaire thereby promulgated, entitled "Costs and Statistics Pertaining to Oil and Gas Production, Exploration, Gas Systems, and Field Gasoline and Cycling Plant Operations—Year 1962," are denied.

(B) Requests for extensions of time within which to file responses to the questionnaire are denied without prejudice. Future requests should be in the form prescribed hereinabove.

(C) The request of Sun Oil Company for a stay of our letter order of October 30, 1963, is denied.

(D) The request of the Skelly Oil Company for an immediate hearing concerning the need and the form of the questionnaires is denied.

---

[7] According to our analysis of available Form 301 information, the Trust made the following total interstate sales in 1962:

	Mcf
Natural gas sales reported at a pressure base of 14.65	3, 950, 759
Natural gas sales reported at a pressure base of 15.025 psia converted to 14.65 psia (5,778,286 Mcf x 1.0256)	5, 926, 210
Natural gas sales reported under rate schedules filed by others (Form 301–A)	354, 097
	10, 231, 066

[8] We are not required, under Section 10(a) of the Natural Gas Act, to issue notice and hold hearings concerning the need or content of industry questionnaires. However, as noted above, gas producing industry views were received and considered.

(E) The Aztec Oil & Gas Company is relieved from complying with the letter order of October 30, 1963, and further, its name shall be removed from the list of respondents to the questionnaires.

(F) Trend data for the years 1955–1961 required by the Costs and Statistics Questionnaire Schedule D, Sheets 4, 6, 7, 8, 9, 10, 11, 12, 13, 14; Schedule F, Sheets 3 and 4; Schedule G, Sheet 2; Schedule H, Sheet 6; Schedule I, Sheets 2 and 4; and Schedule M, Sheet 10, should not be reported by the respondents for the following areas until further order of the Commission:

	Area code
Appalachian	01
Illinois Basin	02
Mississippi	03
Northern Louisiana	04
East Texas-Arkansas	06
Texas Railroad Commission District No. 1	10
Texas Railroad Commission District No. 5	11
Texas Railroad Commission District No. 7–B	12
Texas Railroad Commission District No. 9	13
Other Oklahoma-Arkansas	18
Aneth Field	20
San Juan Basin	21
Unitah-Green River Basin	22
Colorado-Julesburg Basin	23
Montana-Wyoming	24
Montana-Dakota	25
Other Area	88

Commissioner Ross *dissents* to the issuance of this questonnaire at this time for the reasons stated in his dissent to the order instituting area rate proceedings issued November 27, 1963, in Dockets Nos. AR64–1 and AR64–2, Hugoton-Anadarko Area and Texas Gulf Coast Area, 30 FPC 1354, 1358.

OPINION NO. 414

UNION PRODUCING COMPANY, ET AL., DOCKET NOS. G–13811, G–13820, G–14114, G–14352, G–14553, G–16725, G–17589, G–17606; UNION PRODUCING COMPANY (OPERATOR), ET AL., G–18354

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER AND REMANDING PROCEEDINGS

(Issued January 9, 1964)*

Syllabus

1. Cost of service is proper basis for determining rates where, as here, producer is producing arm of pipeline. P. 43.
2. Producer having failed to make its own case, as it must to justify rate increase, cannot claim that staff failed to make company's case for it. P. 47.
3. Producer's depreciation and depletion reserve figures properly rejected; Staff's study while not wholly adequate demonstrates deficiency in Union's case is substantial. P. 47.

---

*Initial decision appears on p. 59. Clarified and rehearing denied by Opinion 414–A, issued March 6, 1964, 31 FPC 503. [Ed. Note: Union's Petition to Review filed in CA5 (#21339) was withdrawn on February 2, 1965, following settlement order—See 31 FPC 1506]

4. Union has not justified a return above 6.5 percent. P. 47.
5. Because of insufficient evidence upon which to determine producer's rates for future, Commission *remands* 5(a) proceeding to Examiner with appropriate instructions. P. 47.
6. In determining fair rate of return, Commission *finds* Union must be considered as producing arm of pipeline and not comparable to independent producer. P. 47.
7. Upon remand Union will be permitted to introduce evidence of type suggested in *El Paso* and *Southern* in support of claim for additional return. P. 48.
8. Commission *finds* allocation of joint products cost necessary here—allocates such costs under *Phillips* relative cost method. P. 48.
9. Minimum bank balances excluded as working capital allowance. P. 49.
10. Claimed Federal income taxes *disallowed* since producer had no tax liability for test year. P. 49.
11. Commission *disallows* increased rates in proceedings arising under Section 4(e) of the Natural Gas Act; *remands* Section 5(a) proceeding for further hearing and decision. P. 51.

Commissioner Black *concurring.*

Commissioner O'Connor *concurring* in part and *dissenting* in part.

Commissioner Woodward *dissenting.*

Winston W. Brown, Thomas Fletcher, J. D. Daniel, E. J. Freibeg, Vernon Woods, and *C. H. Lewis* for Union Producing Co.

Winston W. Brown and *John T. Guyton* for Union Producing Co. (Operator), *et al.*

J. David Mann, Jr., William W. Ross, and *John E. Holtzinger* for the Philadelphia Gas Works Division of the United Gas Improvement Company.

Cleon L. Burt for Mississippi River Fuel Corporation.

James O'Malley, Jr. and *John A Lodge* for Consolidated Edison Company of New York.

Harry G. Hill, Jr. and *Edwin F. Russell* for Brooklyn Union Gas Company.

Garner W. Green, Thomas M. Knebel, Bryce Rea, Jr., and *Gordon Allison Phillips* for Willmut Gas & Oil Company.

George E. Morrow and *Reuben Goldberg* for Memphis Light, Gas & Water Division.

Reuben Goldberg for Mississippi Valley Gas Co.

Henry P. Sullivan and *Samuel G. Miller* for Philadelphia Electric Co.

Barbara M. Suchow, Kent H. Brown, and *Lawrence M. DeVore* for Public Service Commission of New York.

J. Harry Mulhern and *William R. Duff* for Public Service Electric & Gas Company.

Robert W. Perdue for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

This is a rate case arising upon filings made by Union Producing Company (Union) under Section 4 of the Natural Gas Act (Act) for increases in certain of its rates applicable to sales of natural gas from Texas, Louisiana, and Mississippi gas fields. Union is the production affiliate of United Gas Pipe Line Company, but this proceeding involves production property and field rates, rather than transmission property and city-gate rates as in the case of pipelines. Pursuant to motions, the increases were put into effect subject to refund. Subsequently we enlarged these proceedings by ordering an investigation and hearing concerning all of Union's jurisdictional gas rates pursuant to Section 5(a) of the

Act. The case is now before us on exceptions to the presiding examiner's initial decision. Oral argument on the exceptions was held on April 26, 1963.

To establish proper rates for Union, both Union and the Staff relied on a companywide approach and a test year of 1958. Union seeks to support its rates with cost of service and field price economic evidence, while Staff presented cost of service evidence only. Both Union and Staff supplemented their initial presentations while the hearing was in progress in the light of the issuance of our Opinion No. 338 in *Phillips Petroleum Company*, 24 FPC 537, subsequently affirmed by the courts.[1]

Applying the principles announced in our *Phillips* Opinion, the Examiner found that Union's rates were excessive. Relying on cost of service evidence exclusively and accepting the parties' companywide approach for a 1958 test year, the Examiner found a proper average companywide unit cost for Union's jurisdictional gas sales to be 8.652 cents per Mcf. In comparison, he found that Union's jurisdictional sales realized average revenues of 10.9467 cents per Mcf, or an excess of some 4.1 million dollars for the test year. Accordingly the Examiner ordered Union to file reduced companywide rates to conform insofar as possible to the area pricing standards of the Commission's Statement of Policy No. 61–1, 24 FPC 818, as amended, with refunds to be made as we might subsequently order.

Only Union filed exceptions to the Examiner's decision. Staff and the other principal parties to the proceeding—the Interveners, Memphis Light, Gas and Water Division (Memphis), Mississippi Valley Gas Company (Mississippi Valley), Philadelphia Electric Company and the United Gas Improvement Company (Philadelphia Interveners), and the Public Service Electric and Gas Company (Public Service)—basically agree with the Examiner's decision and request that we adopt it. Union excepts to the Examiner's reliance on cost of service evidence, and to his findings increasing the company's depreciation and depletion reserve above the book figure, allowing only a 6.5 percent rate of return on production property, allocating production costs, excluding bank balances from working capital, disallowing claimed Federal income taxes, using seven-eighths of Union's production in determining unit production costs, and allegedly making inadequate findings.

We conclude that the Examiner's decision was correct insofar as he found Union's rate increases unjustified under Section 4(e) of the Act. For the reasons set forth below we conclude that the 5(a) proceeding must be remanded for a more complete evidentiary presentation on certain issues and in so doing we feel it is appropriate to supplement and modify the Examiner's discussion respecting certain of these issues.

In excepting to the Examiner's reliance exclusively on cost of service evidence in considering its rates, and his refusal to consider certain field price and economic evidence, Union contends that our Opinion No. 338 and our Statement of General Policy No. 61–1 contemplate that field price and economic data also be considered in fixing producer rates. In this connection Union contends that the Examiner erred in treating it as the producing arm of a pipeline company rather than an independent producer.

We conclude that cost of service evidence was properly the basis for determining rates where, as here, the producer is the producing arm of a pipeline company. See *Panhandle Eastern Pipe Line Company*, 25 FPC 787, and *Northern Natural Gas Company*, 28 FPC 4. The status of Union Producing as the producing arm of a pipeline company is not in doubt. Union is the wholly owned producing subsidiary of United Gas Corporation, which also wholly owns the pipeline subsidiary, United Gas Pipe Line Company, to which Union sells over 80 percent of its gas production. In referring to Union in *Mississippi River Fuel Corporation* v. *F.P.C.*, 252 F. 2d 619 (CADC), cert. denied, 355 U.S. 904, the court said "A 100 percent affiliate stands in the same position as does the integrated producing arm of a pipeline company."

---

[1] *Wisconsin* v. *FPC*, 303 F. 2d 380, CADC 1961, affirmed *Wisconsin* v. *FPC*, 373 U.S. 294, 83 Sup. Ct. 1266 (1963).

We cannot accept the suggestion in the dissenting opinion that affiliation should not be controlling in this case. Whether the Commission should depart from the method by which it has consistently regulated affiliated producers is not a decision to be made on the basis of conjecture as to the dire consequences which may follow if Union is limited to rates based upon cost of service including a fair return. This is especially true because for the purposes of fixing all of Union's future rates we are remanding the proceedings to be certain of using current and accurate figures as well as allowing whatever higher return can be justified on the basis of Union's value to United's customers.

Turning now to a discussion of Union's cost of service, the first issue presented is the proper amount of its depreciation and depletion reserve. The balance in the depreciation and depletion reserve account consists of the total of the amounts properly accumulated annually by charges against earnings for depreciation and depletion, less the net cost of the properties retired and charged to the reserve. The average reserve is deducted from the company's average gross plant to arrive at the average net plant, which is the principal element in the rate base on which the company is permitted to earn a future return. The larger the depreciation and depletion reserve, the smaller the rate base and the less the return.

The Examiner rejected the 62.5 million dollars of depreciation and depletion reserve claimed by Union as shown on Union's books, and approximately 68 million dollars, as shown by Union under a reserve requirement study put in evidence through its witness Dunn. Instead the Examiner, following Staff's recommendation, increased Union's reserve to approximately 93.8 million dollars, thus arriving at an average net plant figure of 108 million dollars compared to the net plant figure of 138.6 million dollars contended for by Union. The Examiner rejected Union's depreciation and depletion reserve figures on the ground, basically, that Union's reserve requirement study adduced in evidence to support the book figure was "too closely allied with Union's book reserves, whose calculation through the years or relationship to plant did not conform to generally accepted practices of the industry and of the Commission."

Union initially contended that its book reserve had been properly accrued under a sound and conventional unit of production method[2] of accruing depreciation and depletion which the company has applied since 1941, and which was referred to as the "Hargrove formula," so-called after the name of the Union official who devised it.

Prior to Union's 1941 adoption of its Hargrove formula, questionable depreciation and depletion practices had been applied to its properties. Union came into existence in 1937 as the subsidiary of United Gas Corporation, and for many years previously the properties which it acquired had been subject to a retirement reserve method of depreciation and depletion rather than the unit of production method generally followed today and contemplated by our system of accounts. Cf., account 111.1 (Class A and B). The requirement reserve method tends to result in irregular and insufficient charges to operations in the early years when replacement expenditures are small, so that such a method may fail to build up a reserve commensurate with the expired service life of all the property in the early years. It is clear from the record that Union has never made any adjustment to its books to correct for the unsound past depreciation practices.[3]

---

[2] A unit of production method of computing depletion is a method of accounting under which an annual depletion charge reflecting the cost of each unit produced—Mcf of gas, barrel of oil, etc.—is determined and applied in order to charge the cost of the depletable property to annual expense and to provide the basis for an accrued depletion reserve. Depletion is computed for each lease separately, or sometimes on an aggregation of leases. The procedure is to divide the total cost of remaining reserves by the estimated number of recoverable units to get a unit depletion charge. The charge applicable to revenues for the year is found by multiplying the number of units sold by the unit charge. Revisions to date may be required in computing the annual depletion and the reserve for a number of reasons; including additions to property, retirements, changes in reserve estimates, etc. The unit of production method is to be distinguished from the retirement reserve method. See Wickson, Accountants Handbook, Fourth Edition, Sec. 15.14, 17.52.

Under the Hargrove formula, initiated in 1941, depreciation is booked on a straight line basis at a rate of 8 percent applied to estimated depreciable property other than well equipment at the beginning of each period. Depletion is booked on the basis of a unit rate of 25 cents per barrel placed on oil reserves and wells. The rate of depletion of gas computed at 1.35 cents per Mcf hinges on the rate for oil since it is computed by dividing the balance of plant remaining for gas reserves and wells by the estimated gas reserves. Depreciation and depletion are not booked on oil and gas separately or any particular unit of property but are determined for total oil and gas properties.

The record is wholly lacking in evidence to show that the 25-cent unit rate for oil has, or ever had, any relationship to the investment costs related to finding or acquiring the oil production properties. It is evident from the continued use of the 25 cents per barrel figure that Union has employed a fixed unit rate for determining the depletion provision for oil production and not a rate that properly follows the conventional unit of production method described above. Such a fixed unit rate method could not produce valid results if there were substantial change in the average investment costs per barrel of oil. Although we find no data in the record respecting average investment costs for oil, the record does show that the total United States average value for crude oil in 1942 was $1.13 per barrel, and the average price of Union's crude oil in 1958 was a little in excess of $3 a barrel. Thus it appears to be a reasonable inference that oil costs have risen materially since Union adopted its accounting method in 1941. Clearly there is no substantial basis for Union's use of the 25-cent oil figure applied under the Hargrove formula, and the depreciation rate for gas is correspondingly unsupported because it hinges on the oil figure.

A unit of production method, conventionally applied, also contemplates computations based on the units of oil or gas produced from the oil and gas leases or aggregations, not on an over-all basis. Because Union has accrued depletion on its books in total only, its method fails to take into consideration possibly wide differences in rates of depletion, investment per barrel or Mcf of recoverable reserves, and retirements among Union's numerous depletable reserves, necessarily producing inaccuracies in the resulting depletion reserves. Nor does the Hargrove formula automatically correct for the earlier erroneous depreciation and depletion practices discussed above. The application of a unit of production method for the entire remaining productive life of a property will not bring the book reserve for accrued depletion into balance with the actual accrued depletion until the moment of retirement.

Union's reserve requirement study adduced in evidence as an alternative to the Hargrove formula produces a reserve figure closely comparable to the book figure resulting from the application of the Hargrove formula. This study also fails to meet the standards of a proper unit of production method of depletion and therefore fails to support Union's claimed depreciation and depletion reserve.

---

[3] The SEC, at 16 SEC 546, has also noted that the appropriations to the reserve for depreciation and depletion in the early years of United Gas Corporation's history were low and were subject to serious question.

Again Union's computations in determining annual depletion involved applying to a total depletion base a percentage derived by adding together all production and all estimated recoverable reserve properties, and not on the basis of separate leases. Because of Union's failure to separate depletable units in its computations, we cannot know either what is the proper depletion base for each property or the applicable depletion factor. Union's erroneous application of an over-all depletion factor to property units with widely varying costs, reserves and production will, over the years, undoubtedly result in a significant error. Union's reserve as computed under this study also fails to reflect any recomputation for changes in annual depletion accruals resulting from the revisions of recovery estimates. Obviously, if original estimates of volumes of recoverable reserves are later revised, accruals for previous years should also be revised in order to provide an accurate estimate for the reserve requirement as of the date of the revised estimate and for succeeding years. Union's presentation fails to reflect any such changes in recovery estimates or any related recomputation of depletion accruals, even though many such changes affecting Union's properties were evidently made and recomputations would have been justified.

Staff tested Union's book figures by computing what it considered to be a proper reserve requirement for Union based upon information furnished by the company respecting hydrocarbon reserve data by fields and products. Staff used the information Union provided to compute percentages reflecting the ratio of total production at the end of 1958 to the total of recoverable reserve by fields. Where appropriate, such reserves were allocated between gas and oil (including liquids) and a relative cost basis consistent with *Phillips* (*supra*). Staff applied these percentages by fields to Union's gross plant balance, which totaled $166,443,674 on December 31, 1958. Staff thus arrived at a reserve requirement for producing properties of $90,890,159 as of December 31, 1958. The staff witness testified that on this basis Union's producing properties were 54.61 percent depleted. Applying this depletion percentage to Union's gross general plant of $8,010,796, Staff arrived at a general plant reserve requirement of $4,374,696, which, when added to the reserve requirement for producing properties in the amount of $90,890,159, produced a total reserve requirement of $95,264,855 on December 31, 1958. When averaged for the test year 1958, this produces a reserve requirement of approximately 93.8 million dollars.

Union, while not pointing out any particular error in the Staff's testimony or computations, contends that Staff's method does not follow the requirements of a proper unit of production method, but it is clear that the Staff method applied in computing the depreciation and depletion reserve for Union was not intended to be a complete reserve requirement study. It was an abbreviated study, undertaken because of the evident weaknesses in Union's initial presentation to enable the examiner and the Commission to determine whether the inadequacies of the Union presentation and its failure to meet its burden thereon were purely technical (in which case they might have been overlooked) or appeared to be of substantial import. In the circumstances it was a suitable, if not the only then available method for arriving at a reasonable estimate of a proper reserve for use in testing the Union figures.

In order to compute depletion properly by the method normally applied, complete plant records would have to be available from the inception of Union to date showing the data by years and by properties respecting gas reserves, additions to plant, production, retirements, and other pertinent facts. The staff witness did not have all this necessary information as he makes clear on the record. Union, however, having failed to make its own case, as it must do to justify rate increases, cannot validly complain that Staff did not make the company's case for it.

We conclude, therefore, that the Examiner properly rejected Union's depreciation and depletion reserve figures (both per its books and its reserve requirement study) and that the Staff study while not wholly adequate in itself demonstrates that this deficiency in Union's case is substantial to the point of being controlling. Union's proposed increases amounted to about $730,000 for the test year. Its excess revenues as found by the Examiner amounted to about $4,100,000. Using the net plant of $108,000,000 the increases could only be justified by using a rate of return of over 10%. Conversely, if Staff's depreciation and depletion figures were substantially modified there would still be no justification for the increased rates on this record unless other elements of Union's cost were also adjusted in Union's favor, and we do not find that any such adjustments are warranted. If the $30,000,000 of depreciation and depletion in dispute were all added to Union's rate base at a return of 6.5 percent it would add costs of less than $2,000,000. As discussed below, Union, on the evidence in this proceeding, has not justified a return above 6.5 percent. We note, however, that even if we were to allow as much as an additional 2 percent on the entire net plant claimed of almost $140,000,000, it would still add less than $3,000,000 to Union's costs and would leave a revenue excess after deducting the $730,000 in increases from the $4,100,000 of excess revenues.

While we find that Staff's presentation was sufficient to demonstrate that Union's rate increases were not justified by Union's presentation and clearly shows that Union's revenues in the test year exceeded its costs by an amount substantially in excess of the proposed rate increases, we do not believe that the Staff presentation provides a sufficiently accurate basis upon which to determine Union's rates for the future. We will therefore remand Docket No. G-18354 to the Examiner with instructions that he obtain from Union an accurate depreciation and depletion figure based upon complete data consistent with our Uniform System of Accounts. Since the 5(a) proceeding must be remanded for this purpose we will also direct that a more current test year be adduced and that further rate of return evidence may be presented as discussed below. With regard to the other issues concerning Union's costs we believe they have adequately been disposed of as set forth hereinafter. The principles which we note below should therefore be applied to a current test year containing a proper depreciation and depletion study and additional evidence on rate of return insofar as it may be relevant.

The next question presented in determining the proper cost of service for Union is the rate of return. The Examiner would allow Union an overall rate of return of 6.5 percent, denying the 12 percent or more requested. Following the Staff's position, the Examiner considered that since all of Union's capital has been supplied by its parent, United Gas Corporation, Union's rate of return requirements should be gauged primarily by the financing experience of United Gas Corporation, and of pipelines generally, rather than by the experience of producers.

In arguing that it is entitled to a 12 percent return, Union contends that its affiliation with United Gas Corporation is not controlling and that the affiliation does not reduce the risks of its operations below those of an independent producer. As stated earlier in this opinion, the Examiner was correct in finding that Union must be considered as the producing arm of a pipeline and is not comparable to an independent producer.

Determining a fair rate of return for the producing arm of a pipeline has been the subject of considerable discussion in recent decisions by the Commission in *El Paso* and *Southern Natural*.[4] It seems unnecessary to repeat what we so lately said in those cases. We add only that the proof in this proceeding with respect to an additional return did not meet the tests specified in the El Paso and Southern Natural opinions. If Union can demonstrate the public benefits referred to in those opinions it would be entitled to an additional return. Accordingly, in the remand Union should be permitted to introduce evidence of the type suggested in El Paso and Southern Natural in support of its claim for an additional return.

Another issue raised is that of the allocation of costs of producer joint products. Union, like most producers, produces gas from some wells, oil from others, and joint products (gas and oil, or gas and condensate) from other wells. The Examiner allocated these costs of Union by the relative cost method approved in our *Phillips* opinion, *supra*. This method simply takes the cost of producing gas in the virtual absence of liquids (the gas "leg"), and the cost of producing oil in the virtual absence of gas (the oil "leg"), and applies the ratio of these two known costs to the costs of producing gas and liquids jointly.

Union contends that its gas and oil costs (except exploration and development costs) were properly recorded directly to gas and oil on its books, and that the amount of joint products is minor (condensates only 2 percent and casinghead gas only 3 percent of total gas production), so that no allocation of joint products costs was necessary.

In addition, Union contends that the Examiner in applying the relative cost method erred in treating gas condensate production like gas production, and in combining the former with the latter for purposes of finding the gas leg. Union argues that gas condensate wells are gas wells and not oil wells, and that condensate is a part of the gas and not oil. Also, Union contends that the Examiner erroneously used non-representative low-cost gas wells and thus improperly shifted gas costs to oil.

In our judgment, the foregoing and other objections advanced in Union's exceptions are without merit. Union's gas and oil costs as recorded directly to its books do not provide a proper basis for developing a cost of service. To a material extent, the costs to gas and oil recorded by Union to its books reflect allocations previously made by Union personnel which were not supported on the record. Union derived approximately 17 percent of its revenues from condensates in the test year, compared to approximately 45 percent from gas and 38 percent from oil. Clearly, an allocation of joint products costs was necessary.

The Examiner, in applying the relative cost method, concluded that Staff's gas-only production, or gas leg, was too small to be properly representative, since it concluded only about 6 percent of Union's total gas production. He used instead the gas leg of the Philadelphia interveners, which embraced all of Union's gas fields having a gas-liquids ratio exceeding 100 Mcf of gas per barrel of liquids. This resulted in including 19 gas-condensate fields, and gave a gas leg which included 31 percent of Union's gas production for the test year. In our view, the Examiner's inclusion of some gas-condensate production in the gas leg in order to produce a more representative gas leg was fully justified in the circumstances.[5] Likewise, the Examiner was justified in using Staff's oil leg. Although Union complains the oil production covered is not representative, the oil leg embraces some 29 percent of Union's total liquids production, compared to some 30 percent in *Phillips*. Under the circumstances, we conclude that the oil leg is adequate and the Examiner's allocations are correct.

---

[4] *El Paso Natural Gas Company*, 28 FPC 688; *Southern Natural Gas Company*, 29 FPC 323.

[5] *Cf.* the provisions of the Texas Civil Statute, Title 102, Art. 6008, p. 8 (dec. 23), which define "gas well" as any well which, *inter alia*, produces more than 100 Mcf of natural gas to each barrel of crude petroleum oil from the same producing horizon.

Union has also excepted to the exclusion of bank balances from working capital. The Examiner, following staff's recommendation, excluded bank balances of some $3.3 million (monthly average) from Union's working capital in determining its rate base. Working capital is an allowance in the rate base, on which a return is permitted, for the amount a company must supply from its own funds to meet obligations arising in the current operation of the business. The Examiner allowed the items claimed and normally permitted in working capital, such as one-eighth of annual cash operating expenses (45 days), prepayments, and an allowance for material and supplies. The Examiner excluded the claimed bank balances, however, holding that the Commission has consistently done so in other cases, citing *El Paso Natural Gas Co.*, 22 FPC 260, 270, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606, 611, and the *Phillips* opinion, 24 FPC at 566. The Examiner also pointed out that from these bank balances, Union pays dividends and interest on common stock and fixed obligations owned by its parent, United Gas Corporation.

Union contends that producers generally need much larger amounts of cash working capital than do pipelines. And it argues that record evidence establishes that Union needs the $3.3 million a month bank balances over and above the cash working capital already allowed to meet cash requirements for exploration and development, lease acquisition costs, and well-drilling expenses requiring internally-generated cash. Union argues that the 45 days' annual cash operating expenses permitted in working capital covers the period before the cash from related revenues is collected and does not provide sufficient cash balance for the above needs. Under *Trunkline Gas Company* v. *F.P.C.*, 247 F. 2d 159, says Union, minimum bank balances should be allowed if factually justified. In addition, Union contends that in the *El Paso* case, 22 FPC at 270, the Commission recognized that the company needed an additional $2.3 million for minimum bank balances, but did not allow it since El Paso had available over $2 million accruals from taxes other than income. However, Union contends that it has no such other cash available, and it says working capital was not ruled on in *Phillips* at all, 24 FPC at 566. Finally, it contends that the Examiner's summary grounds for excluding bank balances are inadequate and arbitrary.

We conclude that minimum bank balances should be excluded as an addition to the working capital allowance on which a return is permitted, because it does not appear that such balances are required to enable Union to carry on its business. Our exclusion of bank balances from working capital does not deny their use to the company but merely denies the company a return on them until they are invested. We also point out that Union has available as cash working capital adequate amounts received as advances from its affiliate, United, and on which United is already receiving a full return. We note also as we did in *Hunt Oil Co.*, 28 FPC 623, 625, the use of a year end rate base assures that Union will receive a full return on any investments during the year, even though some properties may not be purchased until late in the test year.

The issue of disallowance of claimed Federal income taxes requires little discussion. Union claimed in its test year cost of service an amount of some $13.3 million, comprising Federal income taxes as computed without giving effect to the deductions for statutory depletion and intangible drilling and development costs permitted by Sections 613 and 263(c), respectively, of the Internal Revenue Code. The Examiner excluded this $13.3 million from the cost of service on the ground basically, that Union in fact had no Federal income tax liability for the test year.

Union excepts, contending that as a producer the tax benefits from statutory depletion and intangible drilling and development costs are essential to carry out vital exploratory and drilling activities and supplying needed gas. Union says that during 1954–58, such tax benefits provided almost one-fourth of its total expenditures for exploratory and development activities, that denying them to Union would adversely affect its search for and production of oil and gas, and that such would be contrary to the interest of the consumer. Certain other objections are also advanced.

The Examiner should be affirmed on this issue also, basically for the reasons he gave. As the Examiner found, Union in fact had no tax liability and filed no return for the test year, but experienced an income deficit for that year, as computed for tax purposes in accordance with the tax laws and regulations, of some $15 million. The Examiner's decision cites the numerous judicial and Commission decisions dealing with this issue and supporting the conclusion that financing needs for exploration and development, etc., should be met through a sufficient rate of return allowance.

Another exception of Union arises from the fact that in determining Union's unit production costs for natural gas, the Examiner used only the seven-eighths, or net interest volumes of Union's production, excluding royalty expenses from operating expense. Also the Examiner adjusted Union's revenues from gas sales during the test year to reflect revenues received by Union from the sales of wet gas to purchasers who later processed the wet gas and subsequently reimbursed Union for the liquids extracted.

Union excepts to the foregoing and other related determinations of the Examiner. Union contends, *inter alia*, that the Examiner should have followed its presentation which reflects the gross eight-eighths production in determining unit production costs for natural gas. Union also contends that the Examiner's procedure erroneously treated $1.5 million of royalty revenues from condensates and products as jurisdictional sales of natural gas, whereas it says that the sale of products from gas is a separate nonjurisdictional business of Union, as we have recognized.

We conclude that the procedures employed by the Examiner in the foregoing connection, which Staff and certain interveners recommend, were appropriate in the circumstances and produced a reasonable end result. Nor has Union shown that its procedures are more valid or are otherwise to be preferred. Determining the royalty interests by separating out ⅛ of the volume before determining the unit cost rather than using ⅞ of the volume and adding ⅛ to the unit cost avoids constant recomputation and gives essentially the same result. The revenue received from the products extracted from the gas stream was part of the total price paid for the gas by the purchaser and was properly credited against the cost of service. We perceive no justification, therefore, for disturbing the Examiner's judgment concerning these matters.

Union also contends that the Examiner's findings respecting the depreciation and depletion reserve issue, rate of return issue, working capital issue and certain other issues are inadequate. Reviewing the Examiner's decision as supplemented by this opinion, we think that the path the Examiner followed is clearly discernible, the parties' material arguments are dealt with, and all the findings required by law are made.

We turn now to the question of rates and refunds. As indicated at the outset, the Examiner, to effectuate his decision, directed Union to file within 30 days rates which will produce no more than the jurisdictional cost of service found to be proper, with supporting data from which it can be determined that such rates are satisfactory. He also directed that such rates conform, insofar as possible, to the area pricing standards as set forth in our Statement of General Policy No. 61-1, 24 FPC 818, as amended. The Examiner also required Union to refund to its jurisdictional customers, with interest at 6 percent per annum, all amounts collected under its Section 4(e) rate increase filings made effective subject to refund in all the dockets in this proceeding except Docket No. G-18354. Refunds cannot be required, of course, with respect to the rates which are the subject of the Section 5(a) proceeding in Docket No. G-18354.

Staff evidently sees no objection to effectuating the 5(a) determination in the above manner. Union also evidently considers that levels of particular rates should be based upon the area pricing standards. Public Service at the oral argument proposed certain modifications to the Examiner's procedures, including permitting more recent cost evidence to be adduced.

We conclude that the Examiner's procedures, summarized above, are reasonable and should be followed in substance in fixing Union's rates at the conclusion of the remanded proceeding. We have already noted that more recent cost evidence should be adduced. Full refunds of all increased rates collected in the 4(e) proceedings should be made to the purchasers immediately.

The Commission orders:

(A) The decision of the Presiding Examiner issued in these proceedings on June 26, 1962, is modified as herein set forth and as so modified is adopted by the Commission as its decision in this case.

(B) Union's increased rates and charges contained in its filings in Docket Nos. G-13811, G-13820, G-14114, G-14352, G-14553, G-16725, G-17589, and G-17606, are hereby disallowed and denied.

(C) Within 30 days from the date of issuance of this order Union shall make refunds in the dockets referred to in paragraph (B) above, of all amounts collected subject to refund together with interest and shall within 15 days of making such refunds report to the Commission the amount of such refunds, to whom they were made and the method of computation.

(D) Union shall within 30 days of the date of issuance of this order file reduced rates where appropriate consistent with ordering paragraph (B) and subject to Commission approval.

(E) The proceedings in Docket No. G-18354, are hereby remanded to the Examiner for further hearing and decision consistent with the principles set forth above.

(F) All exceptions to the Examiner's decision not granted herein are hereby denied.

Commissioner Black *concurring.*

Commissioner O'Connor *concurring* in part and *dissenting* in part.

Commissioner Woodward *dissenting.*

BLACK, Commissioner, *concurring:*

I agree with the result reached in this case but I am disturbed by the Commission's comments concerning Union's rate of return on account of its production activities. The Commission appears to be holding out the promise of some additional, extra, or premium rate of return (the quantum of which and the manner by which it would be measured I do not know) if the company can show that "public benefits" will result. Our opinion also contains language that a "higher return can be justified on the basis of Union's value to United's customers." While the majority opinion pays lip-service to the *El Paso* and *Southern Natural* decisions, it appears that we have considerably softened the requirements set forth in these cases. As I read them, these two cases require much more than a showing of "benefits" or "value" from pipeline production as a basis for an "extra" rate of return.

The majority has correctly stated that "Union must be considered as the producing arm of a pipeline and is not comparable to an independent producer." It is fundamental to pipeline rate regulation by this Commission that utilities subject to our jurisdiction are entitled to recover their costs of service including a reasonable return on their investment devoted to serving their jurisdictional customers. We should not abandon or substantially modify this orthodox cost of service philosophy for some woolly and uncertain concept of value, or benefit, or incentive, or what have you, with resulting higher price gas to the consumer except upon a most compelling showing.

In *Southern Natural* the Commission observed that the company had not demonstrated that pipeline production activities involve the same degree of risk as that encountered by an independent producer. Perhaps it can be shown in the Union-United situation that measurable "overall financial risk" (to use the words of the *Southern Natural* decision) is present and that the ultimate cost of providing service reflects this risk. If this can be demonstrated on the record, then of course this Commission must allow the company rates which will recover these costs. This might mean a higher rate of return—reflecting higher cost of capital—than would be permissible without the extra risk factor.

But to provide an "additional" rate of return, as the majority indicates we will do, simply upon a showing of "benefits," presumably as an incentive to continued pipeline production activities, is farther than I am prepared to go. If there are not real additional economic risks in pipeline production, and if such method of operation is cheaper than purchase of gas from independent producers, then I cannot believe that enlightened management will abandon its own production, or that it will not seek to expand production activities. We observed, both in *El Paso* and in *Southern Natural* that if the company's "production activities result in lower overall costs and thus lower rates to its consumers, it has every reason to continue such operations in the normal course of the prudent, business-like operation of its system." I suggest that we should not depart from this premise, and until it can be shown that actual consumer benefits will be lost without a premium rate of return, we have no business promising it.

O'CONNOR, Commissioner *concurring in part* and *dissenting in part:*

In October of 1962 this Commission issued its decision in *El Paso Natural Gas Company*[1] the first of three recent opinions involving a contested rate of return for pipeline production of natural gas. Prior to deciding that rates of return of 6 percent and 6⅛ percent were "just, fair and reasonable" for the entirety of El Paso's integrated system, this Commission was ordered by the Federal Court of Appeals for the 5th Circuit to assign ". . . the incentive necessary to attract capital to the exploration and development activities of the company."[2] This the Commission refused to do but vaguely suggested the conditions precedent to our assignment of this incentive factor which four months later, in *Southern Natural Gas Company*[3] we more clearly enumerated. These conditions as enunciated are first, that the pipelines must be engaging in production for the benefit of its pipeline customers, and secondly, that the production must be a demonstrable economic benefit to the pipeline customers.

---

[1] 28 FPC 688 (1962).

[2] *El Paso Natural Gas Co.* v. *Federal Power Comm'n.*, 281 F. 2d 567, 574 (5th Cir., 1960).

[3] 29 FPC 323 (1963).

A considerable portion of the natural gas industry, the pipeline producers, whose ratio of gas produced to gas purchased has decreased sharply in recent years, paid close attention to these words. They were eager to see if, and to what extent this Commission would give effect to its previous words in the July 1960 interim order in *Southern Natural* when we said: "The Commission has heretofore expressed its opinion as to the desirability of encouraging pipeline companies in the development of their own natural gas production . . ."[4] If such development was desirable then, ". . . it follows that this must result from regulatory policies designed to encourage rather than penalize such activities."[5] If ever this Commission has had before it an affiliated producer which would justify the initiation of such a policy, it is Union Producing; and, although I concur in the decision to remand the Section 5(a) proceeding, I am compelled to dissent to the rejection of those Section 4(e) increases to levels below our area guidelines for increased rates. My reasoning is as follows: had the majority treated Union Producing as an independent producer these increases would have been allowed. I contend that Union Producing is sufficiently comparable to an independent producer of similar size to be regulated as one, and consequently I contend that the increases were justified.

The first step that should be taken in deciding whether an affiliated producer is to be regulated on a cost of service basis, or, because of extraordinary circumstances, on an independent producer basis, is to focus an inquiry on the extent of the unity resulting from the affiliation. The United Gas Pipe Line-Union Producing affiliation is the "cleanest" in the entire industry. First, Union Producing has been operating for 33 years; it was not brought into being, as several producing affiliates have been, in order to avoid a disadvantageous application of the cost of service method of regulation. Thus, there is no taint attached to its inception. Secondly, unlike El Paso and Southern Natural, Union Producing is not a division or a department of one corporate structure; it is an entirely separate corporation run on an entirely separate basis. The clear distinction between transmission operations and producing operations goes deeper than separation of personnel. What crucially differentiates the Union-United affiliation from both of those previously reviewed and what causes my severe disapproval of the majority's opinion is the fact that not one cent of any exploration and development expense incurred by Union Producing is included, prior to delivery of gas, in a United Gas Pipe Line cost of service, nor, aside from prepayments of gas common to non-affiliated producers has there ever been one advance to Union from United. In short, Union recovers its exploration and development expenses in the same manner as every other independent and in a manner decidedly different from the ordinary affiliate. A thorough appreciation of this fact must be kept in mind if we are to make any meaningful inquiry into the risk factor inherent in Union's operations. As was well stated by Mr. Justice Jackson in *Federal Power Commission* v. *Hope Natural Gas Company*,[6] it is this element of risk which totally differentiates the production industry from the transmission industry. Thus, if an affiliated producer is to be regulated as an independent, he should be able to show that risks are comparable.

In the *Southern Natural Gas Company* case this showing could not be made. The majority of this Commission disposed of Southern Natural's risk argument with three observations: First, all of its dry hole expenses were included in its cost of service; second, Southern Natural had a ready market for its production; and third, Southern Natural could blend high cost gas with low cost gas to produce a return on the former.[7] As to the first observation, it is meaningless when considered in the context of the Union-United affiliation, because the latter includes the exploration and development expenses of the former only *after* merchantable gas has been received. Thus, by the time the United customer pays for his bill, there is no risk that he will be paying for nothing. He has already received what he paid for, and, unlike previously considered affiliations, he is not sponsoring *future* dry holes. This means that the entire risk is undertaken by Union; they explore and attempt to develop without any assurance that production will ever be sufficiently established to repay their investment. If not established, these expenses will be written off against Union's current production and will not be recovered through ratepayer contributions or United Gas Pipe Line advances. If production is established, the price at which Union can sell to United is then established by the Commission in a cost of service procedure which, in turn, involves a risk not faced by independent producers. These procedures involve numerous decisions on complex issues of cost allocations between jurisdictional and non-jurisdictional activities, and the risk is substantial that costs will be improperly allocated to non-jurisdictional activities and never recovered. A still further risk involves marketing the gas, and the existence of United Gas Pipe Line does not obliterate this risk. In a very real sense it increases it because Union's sales policy is such that it is completely dependent upon United Gas Pipe Line, and their successes are mutually interdependent. Thus instead of minimizing its own marketing risks, Union, unlike suppliers who sell to numerous purchasers, has inherited all the marketing risks of one purchaser, and as recent proceedings have revealed these risks are not illusory. Inheriting the marketing risks of United thus potentially negates any assurance on Union's part that the per Mcf price set in its cost of service study will finally be realized. This is because United, if unable to continually find new sales will find increasing costs causing a disproportionate rise in the per Mcf price it must obtain to recover a fair return on its investment. In order to combat this United will have to either increase the price of its gas, which makes a still less attractive offer and is liable to further decrease its sales, or reduce the cost of its purchased gas. In the event it takes the latter alternative, Union will be forced to accept less for its gas than a fair rate of return would dictate. In short, any statement that Union has no marketing problem is an unwarranted oversimplification.

---

[4] 24 FPC 26, 31 (1960).

[5] *Panhandle Eastern Pipe Line Co., et al.* v. *Federal Power Comm'n.*, 13 FPC 53, 352 U.S. 891 (1956).

[6] 320 U.S. 591 (1944). "The service one renders to society in the gas business is measured by what he gets out of the ground, not by what he puts into it, and there is little more relation between the investment and the results than in a game of poker." *Id.* at p. 649.

The second observation made in Southern Natural, as to the existence of a ready market, is misleading for in each of the three states where Union operates United Gas Pipe Line has always purchased ratably from non-affiliated producers in order to aid them in protecting their leases. Thus they, as Union Producing, have always had a ready market for their gas because United has always deemed it in the best interests of the industry to keep these non-affiliated producers in business. Any intimation of the non-affiliated producer eager to sell his gas but withering on the vine because of United's preference to its affiliate, cannot be seriously entertained. It might also be noted that large independents, in general, have a ready market for their gas for a number of reasons: large producers can offer more stability than small independents by assuring large volumes over long periods; large producers generally have lower unit costs than small independents producing the same volume, which results in lower unit prices; large producers can operate in wide areas and therefore have a greater chance of establishing production near prospective purchaser. Thus, Union Producing does not derive its ready market solely from its affiliation; as an independent of equal size it would have ready potential buyers, as well as a more diversified and thus less risky sales policy.

---

[7] *Southern Natural Gas Company*, 29 FPC 323, 336 (1963).

The third observation made in *Southern Natural*, that unlike an independent producer it could mix high cost gas with low cost gas to guarantee a return on the former is inapplicable to Union Producing because it begs one very serious question; namely, what return is Union Producing guaranteed if *no* gas is produced? To say that a return is guaranteed regardless of whether gas turns out to be high cost or low cost is very little compensation to Union Producing which is engaged in a highly speculative industry. Union Producing, unlike El Paso and Southern Natural which recover their expenditures regardless of whether production is established, cannot possibly be expected to venture into increasingly high cost production when the chances and the extent of remuneration are so very small.

Reaching the conclusions that United Gas Pipe Line and Union Producing are separate operations and that Union Producing has risks comparable to an independent producer states only a part of Union's case. Further inquiries should then be made as to the extent to which United Gas Pipe Line-Union Producing affiliation acts to the detriment or to the benefit of the public interest. It must be understood at the outset of this inquiry that uncontroverted testimony reveals that United Gas Pipe Line has, during the entirety of its 34-year history, taken ratably from all producers in the fields in which it operates, even prior to the advent of ratable-take statutes. United has at no time entered into a policy of production manipulation to the detriment of the general public or the industry, but, on the contrary, its policy of self-imposed ratable takes has at all times been compatible with the public interest.

Even more relevant in any overall "public interest" examination of Union's operations is the undeniably low prices charged by Union to United, the benefit of which is then passed to United's customers in the form of lower rates. Exhibit 13, an FPC release dated November 12, 1958, shows that in 1957, Union sold 232 MMcf of natural gas at an average price of 9.8 cents. Of this 90 percent went to United Gas Pipe Line at 9.4 cents, while the remaining 10 percent went to unaffiliated purchasers at 13.4 cents. These figures approximate 1958 results. This same report reveals that out of the 247 producers listed therein, only 38 have an average sale price less than that shown for Union Producing. Thus, 84.6 percent of the listed producers received greater than 9.8 cents per Mcf. As the majority is aware, the current United Gas Pipe Line proceeding[8] reveals that the price paid by United to other independent producers is roughly twice the price paid to Union Producing. Taking an overall view at Union's pricing policy, Exhibit 12 reveals that the weighted average purchase price paid for gas by 13 major transmission companies for up to a 10-year period is as much as 10.5 cents per Mcf higher than the weighted average of Union's sales prices to major transmission companies. Of even broader importance than the price paid to or received by Union is the fact that RP63-1 has clearly indicated that United Gas Pipe Line pays less for gas in fields where Union Producing operates than it pays in fields where Union Producing does not operate. When a pipeline without any compulsion from a regulatory body, uses the leverage created by its affiliation with an independent producer to force other independent producers to hew to a lower price line, substantial consumer benefit is derived. This benefit is not to be lightly disregarded.

---

[8] Docket No. RP63-1.

As a minor point to this decision, but one not without its public interest implications, is the fact that Union Producing has extremely few contracts in which take-or-pay provisions are found. As to the contracts which include these provisions, Union Producing has always made extensions in time in order to assure that no gas was paid for which was not actually taken. There was no distinction on Union's part between United and nonaffiliated purchasers vis-a-vis these extensions. As we are currently considering the merits of the take-or-pay obligation in R–199, the point is worthy of note.

* * * * * * *

It is incontrovertible that this country will continue to require large quantities of natural gas. Studies estimate that the market requirements for the years 1960 to 1965 will increase from 10,757 MMMcf to 14,414 MMMcf. Reserve addition requirements for the same years will increase from 25,880 MMMcf to 32,470 MMMcf even though estimated reserve additions will be only 21,344 MMMcf. Studies reveal that by 1965, there will be a 52.12 percent deficiency of gross additions when compared to the reserve addition requirements. Thus, the Statement of the 5th Circuit that ". . . there is a public interest in the creation of an incentive to cause additional exploration and development in the oil and natural gas industries"[9] has never been more accurate than today. In light of this ever growing need, it is crucial for the majority to fully comprehend the plight of Union Producing. Their exhibits reveal the following facts: From 1950 to 1960 the cost per unit of gas produced doubled, and the cost per unit of gas sold more than doubled. Geological and geophysical expenditures per unit of reserve additions nearly doubled from 1950 to 1958. Bonus costs per acre trebled from the 1948–1953 period to the 1954–1959 period, and the total costs per unit of unproven acreage rose 72 percent for the same period. Royalty payments per unit of gas sold doubled from 1950 to 1960. These costs are nearly three times what normal inflation indices reveal. The average depth of producing gas wells increased from the 1946–1950 period by 2,824 feet. The necessity for deeper depth in itself resulted in the tons of casing and tubing per well, the drilling time per well, and the construction time per well showing astounding cost increases. As might be expected, Union's exploration and development expenses per billion Btus of reserves added more than doubled from 1950 to 1958, but what is significant is that from 1950 to December 31, 1959, their total reserves fell from 3,844 MMMcf to 3,385 MMMcf. This decrease of some 12 percent is reflected in a comparison of Union's production as a percent of the total U.S. production for the years 1955 through 1959: 1955 (2.52%), 1956 (2.49%), 1957 (2.25%), 1958 (2.19%), 1959 (1.88%).

The sum and substance of all this is that at a time when gas production is far behind gas demand, a producer faced with spiralling costs has appeared before us for authorization to increase its prices from a near confiscatory level to one where a minimal return on its investment will be realized. This the majority of the Commission has refused to do, but with full knowledge of all facts has disallowed contractually authorized price increases. It has, however, deferred for future consideration the most crucial question: establishing a "just and reasonable" rate of return for an affiliated producer which is operationally comparable to an independent of equal size. I emphasize now that if the Commission later ignores this comparability and establishes a rate of return at or approximately near the same level as established in the *El Paso* and *Southern Natural* proceedings, the repercussions will be serious, farreaching and harmful not only to Union Producing but to the entirety of the gas-consuming public.

---

[9] *El Paso Natural Gas Company* v. *Federal Power Comm'n.*, 281 F. 2d 567, 571 (5th Cir. 1960).

The immediate repercussion of an option which continued the El Paso-Southern Natural low rate of return policy for pipeline production would, of course, be felt by Union Producing, United Gas Pipe Line and United Gas Corp. The latter would then in all probability follow one of three alternatives, all equally undesirable. The first would be to completely integrate Union Producing with United Gas Pipe Line. This, of course, would cause the customers of the latter to underwrite the exploration and development expenses of the former prior to the establishment of production. The second alternative would be to transfer Union Producing to an unaffiliated party thereby giving the successor the right to collect area guideline rates far in excess of those Union is now collecting. The third alternative would be to liquidate Union Producing with the result of forcing United Gas Pipe Line to purchase its gas from independent producers at approximately 5 cents more per Mcf than they now pay to Union Producing. The prospect of a general gas price increase resulting solely from a corporate disposition or liquidation makes prophetic words written fifteen years ago:

> Continued rigid adherence to the cost standard may, therefore, induce the divorcement of producing properties from the interstate operations of pipeline companies, with the resultant loss of whatever advantages there may be in such integrated operations from the standpoint of both the companies and their customers.[10]

The secondary repercussions will be felt by interests far broader than those represented by Union Producing, United Gas Pipe Line and United Gas Corporation and certainly as significant. These are the interests of the royalty owners in the States of Mississippi, Louisiana, and Texas. Although the instant rejection of the increased rates has resulted in a temporary reduction of royalty payments, a final decision by this Commission that Union must forever pay royalties based on gas priced far below what independents can pay would place Union in an impossible leasing dilemma: either pay higher bonuses, or royalty payments, or both, or else watch desirable leases be negotiated with producers whose gas is either not subject to our jurisdiction, or if subject, not shackled to a low rate of return. The third repercussion of such a decision would be felt by the State Governments of Mississippi and Texas—the latter State being the largest producer of natural gas in the United States—by severely limiting the amount they will be able to realize from state severance and ad valorem taxes.[11] The amount these States collect annually by the vehicle of these taxes is considerable. They furnish to a substantial extent the funds necessary for schools, old age assistance, and child welfare. Any decision of this Commission which would unjustifiably limit affiliate sales prices would not only be unwarranted in itself, but it would also impair the rights of these States to the income which they for years enjoyed, and utilized to the benefit of their citizens.[12]

---

[10] Smith & Wimberly, *Natural Gas Investigation*, at p. 215 (1948).

[11] Louisiana, which taxes its gas production on a per Mcf basis, will be unaffected by a reduction in prices assuming that that production is not thereby reduced.

[12] Those who erroneously consider this tax contribution as insignificant would do well to study the latest fiscal reports of the State of Texas. It reveals that for the year ending August 31, 1963, Texas collected $64,050,842.00 through a 7 percent natural gas wellhead tax. This tax alone paid for over 12 percent of the State Government's cost of public education, and over 25 percent of the cost of teacher retirement, old age assistance, and aid to the disabled, the blind, and to dependent children.

These conclusions are neither new nor unsubstantiated. They were amply developed in Smith and Wimberly's 1948 report to Congress on the Natural Gas Investigation, where in reference to the effect of insufficient gas price levels, the following statement was made:

> It is pointed out also, that the adverse effects of this tendency are widespread, being seriously detrimental to conservation efforts, to the interests of gas producers and royalty owners as a whole, and to the entire economies of the producing States whose tax income from gas values and production are reduced thereby. Insofar as there may be such undesirable results, it is not in the broad public interest to ignore them in applying ratemaking policies.[13]

The majority of this Commission must face the facts that pipelines are engaging in the production of natural gas, and that as long as there is a Federal Power Commission in existence, there will be this production to regulate. The admittedly complex problem is: How? I contend that those affiliations where production and transmission are distinct, so that the risks of the former are not subsidized by the customers of the latter, are sufficiently comparable to an independent producer to warrant their regulations as such. Consequently, I would now, while presented with this record of operational divorcement likely to be unequalled in the near future, initiate the policy of giving pipeline producers the option of being regulated on an individual cost of service basis or on an area guideline basis. In those operations where the exploring and development expenses have never been underwritten by the consumer, no regulatory problems would arise upon the exercise of the option to be regulated on an area guideline basis. In those operations, however, where the consumer has underwritten some or all of these expenditures a situation involving different considerations is presented. As to these operations, I would suggest the following approach: Allow the creation of a producing affiliate conditioned upon the exploration and development funds being generated independently of consumer subsidies or extraordinary parental advances. Then, as to all production established after the creation of this affiliate, allow area guidelines to set the maximum rates. As to all production established prior to this date, this Commission should set applicable rates, giving due consideration to the consumer's previous payments of all or part of the exploration and development expenses. I stress, however, that this option would be exercisable only once: affiliates would not have the option of weighing the benefits of cost regulation against area regulation at the outset of each rate case. If in subsequent years the alternative followed resulted in a lesser return than the alternative rejected, the affiliate would nevertheless be bound to his previous decision. Thus the option does not forever guarantee the higher of two returns.

Consistent with well established Commission policy, the price established for gas sales to affiliated pipelines would not be controlling as a cost of purchased gas figure in any pipeline rate case.[14] One plausible method by which this figure might be determined, however, is as follows. First, calculate the actual gas price paid to the affiliated producer. Second, calculate the price that would have been paid had the producer been regulated on a cost basis. The difference between the two would then be discounted by the average interest of the producer in the wells involved. The amount discounted would then be subtracted from the price actually paid to reach the cost of purchased gas. Thus, if the affiliated producer had a 25 percent interest in the wells involved, sold gas at 16 cents, but, had he been regulated on a cost basis, would have sold it at 12 cents, the pipeline's cost of purchased gas would be 15 cents. (25% of 4¢ (16–12) = 1¢. 16¢ minus 1¢ = 15¢.)[15] The advantages of this approach would be to prevent penalizing both individual[16] and State interests which, solely because of co-ownership with an affiliated producer, are being given discriminatory regulatory treatment.[17]

---

[13] Smith & Wimberly, *Natural Gas Investigation*, p. 212 (1948).

[14] E.g., *An-Son Corporation, et al.*, Docket No. G–6693, *et al.* issued October 31, 1963. "The authorization granted in Docket Nos. CI61–212, CI62–1053 and CI63–1561 determines only the payments which may legally be made by the buyer to the seller and does not estop the Commission from considering the appropriate cost to be attributed to the subject sale, should buyer's purchased gas costs be in issue in a future rate proceeding under Sections 4(e) or 5(a) of the Act." *Id.* p. 8.

This approach is not without its shortcomings, but it is far preferable to continuing a low rate of return cost concept policy under conditions which strongly justify other approaches. The substantial evidence adduced in this proceeding as to the degree to which Union and United have always operated commensurate with the public interest serves to reinforce my opinion.

INITIAL DECISION

UPON PROCEEDINGS PURSUANT TO SECTIONS 4 AND 5 OF THE NATURAL GAS ACT

(Issued June 26, 1962)

FRAZEE, *Presiding Examiner:* From time to time since October 31, 1957, the Union Producing Company (Union), the applicant herein, has, pursuant to the provisions of Section 4 of the Natural Gas Act, tendered for filing proposed changes in certain of its currently effective rate schedules (which are more specifically referred to below) for sales of natural gas subject to the jurisdiction of the Commission. Pursuant also to the provisions of Section 4 of the Act the Commission from time to time suspended the effective date of such proposed changes and directed that a hearing be held in each instance to determine the lawfulness of such increased rate, charge, classification, or service. On April 29, 1959, the Commission pursuant to the provisions of the Natural Gas Act, particularly Sections 5, 14, 15 and 16 thereof, issued at Docket No. G–18354, 21 FPC 607, an order instituting an investigation into and concerning all of Union's rates, charges, or classifications, demanded, observed, charged or collected in connection with any transportation or sale of natural gas subject to the jurisdiction of the Commission, or any rules, regulations, practices or contracts affecting such rates, charges or classifications.

---

[15] The one-cent discount would thus be absorbed by the pipeline.

[16] Particularly inequitable is the plight of the involuntarily affiliated royalty owner. To draw an oversimplified hypothetical: A, property owner, enters into a gas lease with B, independent operator, who later assigns his interest to Union Producing. Union then commences sales to its affiliate, United. A thus receives less royalties than he would have received had B sold gas to United, due to an assignment over which he generally has no control.

[17] *Mississippi River Fuel Corp.* v. *Federal Power Comm'n.*, 252 F. 2d 619 (D.C. Cir. 1957) cert. denied 355 U.S. 904 (1957) does not pose any legal prohibition against regulating an affiliated producer on an area guideline basis. Further, the full discount of the affiliated producer's interest negates any potential price manipulation and thus prevents the results anticipated in the court's forbiddance of using contract prices negotiated between affiliates as purchased gas costs.

By its order issued on April 29, 1959, the Commission consolidated the Section 4 proceedings then pending[1] with the Section 5 proceeding in Docket No. G-18354 for hearing and found that Union was an independent producer of natural gas and a natural gas company[2] within the meaning of the Act and engaged in the

---

[1] See the following table:

Docket No.	Date notice filed	Rate schedule No.	Supplement No.	Existing price	Proposed increased price	Amount of proposed increase
				Cents	*Cents*	*Cents*
G-13811		78	5 & 6	8	14	6
		92	1 & 2	15	20	5
		215	1	10	17	7
	10-31-57	216	1	10	17	7
G-13820	10-31-57	72	3	15	15.5	0.5
G-14114	12- 2-57	218	1	9	18.5	9.5
G-14352	1- 2-58	78	7	14	14.5	.5
G-14553		95	5 & 6	8.7659	13.75	4.9841
	1-27-58	96	5 & 6	8.7659	13.75	4.9841
G-15549		66	5	(•)	(•)	(•)
		68	5	(•)	(•)	(•)
		69	4	(•)	(•)	(•)
		75	5	(•)	(•)	(•)
		77	3	(•)	(•)	(•)
		83	1	(•)	(•)	(•)
		84	5	(•)	(•)	(•)
		197	8	(•)	(•)	(•)
		199	7	(•)	(•)	(•)
		200	7	(•)	(•)	(•)
		206	7	(•)	(•)	(•)
	6-30-58	217	1	(•)	(•)	(•)
G-15550		76	4	(•)	(•)	(•)
		86	5	(•)	(•)	(•)
		88	4	(•)	(•)	(•)
		89	4	(•)	(•)	(•)
		207	12	(•)	(•)	(•)
	6-30-58	208	6	(•)	(•)	(•)
G-15661		72	4	(•)	(•)	(•)
		90	5	(•)	(•)	(•)
		215	2	(•)	(•)	(•)
		216	2	(•)	(•)	(•)
		218	2	(•)	(•)	(•)
		219	4	(•)	(•)	(•)
		223	1	(•)	(•)	(•)
	6-30-58	225	1	(•)	(•)	(•)
G-15745	6-30-58	91	2	(•)	(•)	(•)
G-16336	8-29-58	200	8	(•)	(•)	(•)
G-16725	9-29-58	220	2	9.153	9.337	.184
G-17589		228	1 & 2	10	20	10
	12-24-58	229	1 & 2	10	20	10
G-17606	12-30-58	78	8	14.5	15	.5

• The Louisiana Gas Gathering Tax of 1¢ per Mcf imposed pursuant to Act No. 8 of 1958, approved June 16, 1958, was in effect from August 1,1958 through November 30, 1958. The Louisiana Supreme Court held the aforesaid Act No. 8 of 1958 to be unconstitutional. *Bel Oil Corporation, et al.* v. *Rufus W. Fontenot*, 238 La. 1002, 1175.2d 571; *Southern Natural Gas Company* v. *Robert Q. Roland, Collector of Revenue*, 1235.2d 891. The State of Louisiana made refunds of the taxes collected, which had been paid under protest. The Federal Power Commission on February 21, 1961, as amended on May 29, 1961, in *Texaco Inc., et al.*, Docket No. G-15546, *et al.*, disallowed Union's increased rate filings in G-15549, G-15550, G-15661, G-15745 and G-16336, ordered refunds within 90 days of the amounts refunded and terminated the proceedings in these dockets. Union has reported to the Commission that refunds have been made. Accordingly, these dockets are not herein considered.

[2] Union had heretofore been found to be a natural-gas company on October 3, 1957, ***Union Producing Company*** and ***United Gas Pipe Line Company***, 18 FPC 387, and by a further order of the Commission issued on June 1, 1959 in G-10060.

sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption.

By various orders the Commission permitted the following interventions:

Brooklyn Union Gas Company
Consolidated Edison Company of New York, Inc.
Memphis Light, Gas & Water Division, City of Memphis
Mississippi River Fuel Corporation
Mississippi Valley Gas Company
Philadelphia Electric Company
Public Service Commission of New York
Public Service Electric and Gas Company
United Gas Improvement Company
Willmut Gas and Oil Company

Hearings were held pursuant to the Commission's order at which an opportunity was afforded all parties desiring to do so to offer evidence, and a substantial volume was received directly and by reference to other records. Further, those desiring to do so were permitted to file briefs, and briefs were filed by Union, several of the intervenors and by the staff of the Commission.

The proceedings herein pursuant to Section 4 of the Act concern the lawfulness of the rates, charges, classifications or services in connection with the changes proposed by Union in the several notices of increases filed herein as more specifically shown in footnote 1, *supra*, and the proceeding pursuant to Section 5 of the Act is for the purpose of determining whether any rate, charge, or classification demanded, observed, charged or collected by Union in connection with any transportation or sale of natural gas subject to the jurisdiction of the Commission is unjust, unreasonable, unduly discriminatory, or preferential.

Union Producing Company (Union) is a corporation organized in September, 1937 under the laws of the State of Delaware. Union's principal place of business is located at 1525 Fairfield Avenue, Shreveport, Louisiana. Union is a wholly-owned subsidiary of the United Gas Corporation, owning all of Union's securities. The United Gas Corporation also owns the United Gas Pipe Line Company.

Union is engaged, almost exclusively, in the exploration, development, production and sale of natural gas, condensate and crude oil principally in the States of Louisiana, Mississippi and Texas. Union sells its natural gas production at the wellhead or at the tailgate, or downstream side, of a separator set adjacent to the well. Union neither gathers nor transports natural gas. Union does not purchase natural gas for resale. Except for minor interests in one gasoline plant and four recycling plants[3] where natural gas is processed and from which Union receives revenue for liquids extracted and sold, and revenues from plant residue gas sold, Union does not own or operate any gasoline or processing plants through which its gas production is processed or from which its gas is sold.

The test year used in these proceedings is 1958. On December 31, 1958, Union owned an interest in gas and/or oil producing properties in 161 fields located in

---

[3] See the following table:

Plant name	*Percent Union ownership*
Pledger Gasoline Plant	4.0045
Benton Recycling Plant	1.3545
Cotton Valley Recycling Plant	3.5 approximately
Elk City Recycling Plant	0.3212
Katy Recycling Plant	0.49

five states as follows, 55 in Louisiana, 19 in Mississippi, 1 in Oklahoma, 1 in Arkansas and 85 in Texas. On this date Union's producing wells, operating and shut in, numbered 2207 gross wells or 1463.65 net company interest wells. Union classified 856 of its gross wells, or 612.47 net wells, as crude oil producers; 1023 of its gross wells, or 814.05 net wells, as gas wells; and 328 of its gross wells, or 37.13 net wells, as recycling wells. Union held acreage proven for production, or acreage held for future exploration, in fee or under lease in 11 states.[4]

In the test year of 1958, Union sold oil and/or gas from approximately 127 fields in five states. Crude oil, condensate and plant liquids, totaling 9,675,993 barrels were sold from 112 of these fields, 32 per cent of such sales being made in Texas, 28.38 per cent in Louisiana and 39.44 per cent in Arkansas. Also natural gas totaling 202,821,626 Mcf at 14.9 psia was sold from 110 of these fields, of such sales 51.72 per cent were made in Texas, 45.03 per cent in Louisiana and 3.25 per cent in Mississippi. Royalty income only was received by Union from 13 fields, seven of which were in Texas, five in Louisiana and one in Mississippi.

Also during the test year of 1958, Union held an ownership in 18 fields which produced no revenue. Three of these fields were abandoned during 1958, four were fields in which Union had a farm-out or royalty interest only and four of the fields had previously been producing fields but were entirely depleted at the beginning of 1958. The remaining seven fields were shut-in and which, at December 31, 1958, contained intact all of the recoverable reserves, five of these shut-in fields were in Texas, one in Louisiana and one in Mississippi.

During the test year of 1958, Union was active in exploration and development operations. In the test year Union owned a gross interest in 16 completed oil wells, for a net interest of 10.26 oil wells, a gross interest in 30 completed gas wells, for a net interest of 19.79 gas wells, also in 1958, Union completed 14 gross wells or 8.89 net wells as dry holes. Thus, on a net well basis, 26.36 per cent of Union's total 1958 well completions were oil wells, 50.82 per cent were gas wells and 22.82 per cent were dry holes.

The record herein shows for the five-year period, 1954 through 1958, Union had a total of 391.43 net well completions of which 41.10 per cent were oil wells, 34.60 per cent were gas wells and 24.20 per cent were dry holes.

The rate schedules under consideration herein are:

---

[4] See the following table:

	Approximate fee and mineral fee	Acreage leased
Alabama		75,023
Arkansas	60	24,961
Florida		15,217
Louisiana	91,035	343,328
Mississippi	290	188,261
Montana		2,646
New Mexico		22,099
North Dakota		38,839
Oklahoma		5,897
South Dakota		25,973
Texas	2,973	832,695
Total	94,358	1,574,939

Union Producing Company's F.P.C. Gas Rate Schedule No. 72

On January 11, 1955, Union contracted with Frank S. Kelly, Jr., H. L. Hawkins and H. L. Hawkins, Jr., to sell for 10 years natural gas produced in the Epps Field in East Carroll and West Carroll Parishes, Louisiana. The initially filed rate was 15¢ per Mcf at 15.025 psia, with Union paying certain of the then imposed taxes and the buyers to pay others. The contract was accepted for filing by the Commission on October 31, 1957.

On October 31, 1957, a notice was filed increasing the rate 5¢ from 15¢ per Mcf plus 1¢ per Mcf Louisiana gathering tax, to 15.5¢ per Mcf plus the 1¢ per Mcf Louisiana gathering tax, at 15.025 psia, effective January 1, 1957. This filing, designated Supplement No. 3 to Union's F.P.C. Gas Rate Schedule No. 72, was suspended by Commission order dated November 29, 1957 in Docket No. G–13820, but was permitted to become effective on December 2, 1957, subject to refund.

Union Producing Company's F.P.C. Gas Rate Schedule No. 78

On July 12, 1951, Union entered into a contract[5] with the United Gas Pipe Line Company, a Delaware corporation, to sell for 10 years natural gas produced in the Greta and Tom O'Connor Fields in Refugio County, Texas. The initial filed rate was 6¢ per Mcf at 14.65 psia for the first five years and 8¢ per Mcf thereafter. Union to pay all taxes imposed prior to January 1, 1950, and prior to delivery; United Gas to pay all taxes imposed upon the gas after delivery. Any new taxes imposed prior to delivery to United Gas, after January 1, 1950, and paid by Union, was to be split 50–50 between Union and United Gas. The contract was accepted for filing by the Commission on October 31, 1957.

On October 31, 1957, an amendment dated February 28, 1956, to the contract between Union and United Gas dated July 12, 1951, was filed involving certain tax reimbursement changes[6] and an increased change in rates from the 6¢ per Mcf to 13.5¢ per Mcf from the effective date of the agreement to February 1, 1957, with an increase of 5¢ per Mcf per year for the following 10 years when the price would reach 19¢ per Mcf. Also the term of the contract was extended from 10 to 20 years. This filing of the amendment to the contract was designated as Supplement No. 5 to Union's F.P.C. Gas Rate Schedule No. 78 and was suspended[7] by Commission order dated November 29, 1957, in Docket No. G–13811, but was permitted to become effective on May 1, 1958, subject to refund.

On October 31, 1957, Union filed a notice of an increase in price to 14¢ per Mcf for gas being sold to United Gas from the Mary F. Lambert wells A–4 and A–6 and from the W. J. Fox *et al.* wells 24, 29, 30 and 33 in the Greta—Tom O'Connor Fields. This increase in price filing was designated as Supplement No. 6 to Union's F.P.C. Gas Rate Schedule No. 78 and was suspended[8] by Commission order dated November 29, 1957, in Docket No. G–13811, but was permitted to become effective on May 1, 1958, subject to refund.

On January 2, 1958, Union filed a notice of an increase in price from 14¢ per Mcf to 14.5¢ per Mcf at 14.65 psia, for the gas being sold to United Gas from the six (6) wells as described in Supplement No. 6, to Union's F.P.C. Gas Rate Schedule No. 78, *supra*. This increase in price filing was designated as Supplement No. 7 to Union's F.P.C. Gas Rate Schedule No. 78 and was suspended[9] by a Commission order dated January 31, 1958, in Docket No. G–14352 but was permitted to become effective on July 2, 1958, subject to refund.

---

[5] The effective date being February 12, 1951. Art. XXII of the filed contract.

[6] United Gas, the purchaser, agreed to reimburse Union, the seller, for three-fourths of all taxes imposed which would be in excess of seven percent of the value of the gas at the well.

[7] See footnote 2 *supra*.

[8] Except insofar as they provide for tax changes due Sept. 1, 1954, and Sept. 1, 1955, and for a periodic increase due Feb. 15, 1956, together with the tax component applicable thereto.

On December 30, 1958, Union filed a notice of an increase in price from 14.5¢ per Mcf to 15¢ per Mcf, at 14.65 psia, for gas being sold to United Gas from the six (6) wells as described in Supplements No. 6 and 7 to Union's F.P.C. Gas Rate Schedule No. 78, *supra*. This increase in price filing was designated as Supplement No. 8 to Union's F.P.C. Gas Rate Schedule No. 78 and was suspended[10] by Commission order dated January 29, 1959, in Docket No. G–17606 but was permitted to become effective on July 1, 1959, subject to refund.

Union Producing Company's F.P.C. Gas Rate Schedule No. 92

On June 23, 1954 Union contracted with United Gas to sell for 20 years natural gas produced in Forrest, Lamar and Pearl River Counties, Mississippi. The initial filed rate was 15¢ per Mcf at 15.025 psia from the date of initial delivery to January 1, 1955, and 20¢ per Mcf for the following four years, with further price escalation provisions for the remainder of the 20 years. Union to pay all taxes imposed on the gas prior to delivery. United Gas to pay any taxes imposed on the gas after delivery. United Gas to pay Union for three-fourths of the amount of any new taxes that may be imposed upon the gas and paid by Union. The contract was accepted for filing by the Commission on October 31, 1957.

On October 31, 1957, an amendment dated December 1, 1954, to the Gas Purchase Contract entered into between Union and United Gas on June 23, 1954, was filed involving increased rates from those set out in the original contract. The increased rates were as follows: 20¢ per Mcf from November 24, 1954, to November 24, 1959, with a 1¢ per Mcf escalation each five-year period thereafter, the term of the contract was extended to 20 years from the date of the amendment. The filing of the amendment was designated as Supplement No. 1 to Union's F.P.C. Gas Rate Schedule No. 92 and was suspended[11] by Commission order dated November 29, 1957, in Docket No. G–13811 but was permitted to become effective on May 1, 1958, subject to refund.

On October 31, 1957, Union filed a notice of an increase in price from 15¢ per Mcf to 20¢ per Mcf at 15.025 psia effective December 1, 1954, and for .1324¢ per Mcf at 15.025 psia, additional severance tax effective April 1, 1955, for the gas being sold to United Gas under Union's F.P.C. Gas Rate Schedule No. 92, *supra*. This increase in price filing was designated as Supplement No. 2 to Union's F.P.C. Gas Rate Schedule No. 92, and was suspended[12] by Commission order dated November 29, 1957, in Docket No. G–13811 but was permitted to become effective on May 1, 1958, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 95

On April 27, 1944, Union contracted with the Houston Gulf Gas Company to sell to December 31, 1962, natural gas produced in the McFaddin Field in Victoria County, Texas. The initial filed rate was 3¢ per Mcf at 15.025 psia. The contract was accepted for filing on October 31, 1957.

On October 31, 1957, an amendment dated November 26, 1949, to the Gas Purchase Contract entered into between Union and Houston on April 27, 1944, was filed with the Commission. The filed amendment is between Union and United Gas and recites that United Gas has succeeded to the "rights and obligations" of the Houston Gulf Gas Company under the April 27, 1944 contract with Union. The filed amendment provided for a price increase from 3¢ per Mcf to 6.5¢ per Mcf at 14.65 psia from the effective date of the amendment for a period of five years and for 7.5¢ per Mcf for the following five years, the term of the contract to be 10 years. Union to pay taxes imposed on the gas prior to delivery, United Gas to pay taxes imposed after delivery. Any additional taxes imposed on Union to be split 50-50 between seller, Union, and buyer, United Gas.

---

[9] See footnote 4 *supra*.

[10] See footnote 4 *supra*.

[11] Except insofar as they provide for a tax change due April 1, 1955.

[12] See footnote 7 *supra*.

On January 27, 1958, Union filed a further amendment to the aforesaid Gas Purchase Contract and dated January 14, 1958. The filed amendment provides that buyer, United Gas, will reimburse seller, Union, for all production, severance or gathering taxes paid by Union, the amendment also provides for increased rates from the effective date of the amendment from 7.5¢ per Mcf to 13.75¢ per Mcf at 14.65 psia to June 7, 1962, with 1¢ per Mcf price escalations each 5-year period thereafter for a 20-year term. The filing of the amendment was designated as Supplement No. 5 to Union's F.P.C. Gas Rate Schedule No. 95 and was suspended by Commission order dated February 26, 1958, in Docket No. G–14553 but was permitted to become effective on July 27, 1958, subject to refund.

On January 27, 1958, Union filed a notice of an increase in price from 8.7659¢ per Mcf at 16.7 psia to 13.75¢ per Mcf at 14.65 psia with tax reimbursement to remain the same, *i.e.* seven percent of the value of the gas delivered. The increased price filing was designated as Supplement No. 6 to Union's F.P.C. Gas Rate Schedule No. 95 and was suspended by Commission order dated February 26, 1958, in Docket No. G–14553 but was permitted to become effective on July 27, 1958, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 96

On November 3, 1947, Union contracted with United Gas to sell natural gas produced in the North McFaddin Field in Victoria County, Texas to United Gas for 3¢ per Mcf. This contract was accepted for filing on October 31, 1957. Notice of a change increasing the rate from 3¢ per Mcf to 6.5¢ per Mcf was filed on October 31, 1957, and, on that same date, a further notice of change was filed to increase the rate to 8.7659¢ per Mcf effective in November, 1954.

On January 27, 1958, Union filed an amendment to Gas Purchase Contract dated November 3, 1947, providing for a further increase in rates from 8.7659¢ per Mcf to 13.75¢ per Mcf at 14.65 psia effective from that date to June 7, 1962. The amendment was for a 20-year term.

On January 27, 1958, a notice was filed of an increase from 8.7659¢ per Mcf (including tax reimbursement) to 13.75¢ per Mcf. This filing was designated as Supplement No. 6 to Union's Rate Schedule No. 96 and was suspended by order of the Commission on February 26, 1958, in Docket No. G–14553 but was permitted to become effective on July 27, 1958, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 215

On September 12, 1957, Union contracted with United Gas to sell for 20 years natural gas produced in the Lirrette Field, Terrebonne Parish, Louisiana. The initially filed rate was 17¢ per Mcf at 15.025 psia, to become effective on September 1, 1957. The rate previous to this date had been 10¢ per Mcf plus 1¢ tax reimbursement. United Gas agreed to pay Union for three-fourths of the amount of any new taxes imposed on Union. The contract was accepted for filing on October 31, 1957. On that date Union filed a notice increasing the rate from 10¢ per Mcf to 17¢ per Mcf at 15.025 psia effective September 1, 1957, plus 1¢ per Mcf tax reimbursement. This filing was designated as Supplement No. 1 to the aforesaid Rate Schedule No. 215 and was suspended by Commission order dated November 29, 1957, in Docket No. G–13811 but was permitted to become effective on May 1, 1958, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 218

On November 29, 1957, Union contracted with United Gas to sell for 20 years natural gas produced in the Lafourche and Terrebonne Parishes, Louisiana at an initial price of 18.5¢ per Mcf plus three-fourths of any new taxes imposed on seller. Deliveries had previously commenced at 9¢ per Mcf at 15.025 psia plus 1¢ per Mcf tax reimbursement under Union's Rate Schedule No. 62, which is superseded by Rate Schedule 218.

On December 2, 1957, a notice was filed of an increase from 9¢ per Mcf to 18.5¢ per Mcf at 15.025 plus 1¢ tax reimbursement effective December 1, 1957. This filing was designated as Supplement No. 1 to Union's Rate Schedule No. 218 and was suspended by order of the Commission on December 27, 1957, in Docket No. G–14114 but was permitted to become effective on June 2, 1958, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 220

On October 1, 1957, Union contracted with the United Gas Company, Inc., to sell for 20 years natural gas produced in the Palo Blanco Field in Brooks and Duval Counties, Texas at an initial price of 9.70¢ per Mcf at 14.65 psia from the date of initial delivery to November 1, 1957, with price escalations each year thereafter, but without tax reimbursement.

On September 29, 1958, a notice was filed of an increase from 9.153¢ per Mcf to 9.337¢ per Mcf at 14.65 psia, without tax reimbursement, to be effective November 1, 1958. This filing was designated as Supplement No. 2 to Union's Rate Schedule No. 220 and was suspended by order of the Commission on October 29, 1958, in G–16725 but was permitted to become effective on April 1, 1959, subject to refund.

Union Producing Company's F.P.C. Rate Schedule No. 228

On December 12, 1958, Union contracted with United Gas to sell for 20 years natural gas produced in the DeLarge Field in Terrebonne Parish, Louisiana at an initial price of 20¢ per Mcf at 15.025 psia, plus reimbursement of three-fourths of any new taxes, for the first 5-year period with 1¢ per Mcf price escalation each five years thereafter.

On December 24, 1958, two notices were filed increasing rates. The first notice pertained to the Louisiana gathering tax referred to in footnote 1–a *supra*, and was designated as Supplement No. 1. The second notice pertained to an increase in rates from 10¢ per Mcf—deliveries had previously been made under Union's Rate Schedule No. 69, at 10¢ per Mcf, which is superseded by Rate Schedule No. 229—to 20¢ per Mcf at 15.025 psia effective November 1, 1958, plus tax reimbursement of 2.05¢ per Mcf at 15.025 psia. This second filing was designated as Supplement No. 2 to Union's Rate Schedule No. 229 and was suspended on January 22, 1959, in Docket No. G–17589 but became effective on June 24, 1959, subject to refund.

Union's gross revenues for the test year 1958 were derived 50.118 per cent from the sale of oil and oil products and 49.882 per cent from the sale of natural gas.[13] Of the natural gas sales, 74.8 per cent were jurisdictional and 25.2 per cent nonjurisdictional. Of the jurisdictional sales, 62.9 per cent were made to United Gas Pipe Line Company, a wholly-owned subsidiary of United Gas Corporation. One of the several problems here is to allocate to (a) oil and liquids, (b) nonjurisdictional natural gas sales and (c) jurisdictional natural gas sales, each a proportionate share of Union's costs.

The Commission directed Union to proceed first in the presentation of its evidence in both the Section 4 and the Section 5 cases. The hearing was convened on July 23, 1959, and concluded on June 3, 1961. In the meantime the Commission issued its Opinion No. 338 on September 28, 1960, in *Phillips Petroleum Company*, 24 FPC 537 and on that same date the Commission issued its Statement of General Policy No. 61-1, 24 FPC 818, as later amended, in which the Commission stated it did not consider the cost-of-service method workable for determining rates for the future for producers, since they cannot be considered or classified as public utilities, and further, that producer rates should, and would be in the future, determined on an area basis by determining a fair price for the gas itself and not a separate price for each individual producer. However, the Commission on numerous occasions [14] has stated it did not intend to abandon the traditional cost-of-service method for determining rates for the future and especially in those cases which were in the hearing, or briefing, stage at the time the *Phillips* opinion was issued.

---

[13] Appendix 6, col. 7.

In support of its Section 4 filings for increased rates, Union presented companywide cost-of-service evidence in six separate studies with differing allocation methods, all utilizing a 12 per cent rate of return, together with evidence of prevailing prices in Union's area of operations. Each of the six cost-of-service studies reduced the various products to one of two common denominators, one, utilizing heat or energy content, converting all products to Mcf equivalents while the second conversion was to the weight of the various products. In its rebuttal evidence Union presented evidence of a vapor volume unit of measurement (Ex. 43-A). These methods of allocation resulted in unit costs for jurisdictional gas ranging from 23.599 to 24.694¢ per Mcf.[15] The Staff's area by area cost-of-service study, based on the sales realization allocation method, resulted in unit costs for jurisdictional gas ranging from 7.91¢ to 11.73¢ per Mcf.[16] The Philadelphia Electric Company and the United Gas Improvement Company, intervenors herein, introduced a joint cost-of-service study based upon the relative cost allocation method for production costs and the reserves-added-realization (RAR) allocation method for exploration costs, resulting in unit costs for jurisdictional gas ranging from 7.13¢ to 8.95¢ per Mcf,[17] while the Memphis Light, Gas and Water Division and the Mississippi Valley Gas Company, also intervenors herein, introduced a joint cost-of-service study based upon the relative cost allocation method for production costs and the net revenues allocation method for exploration costs, resulting in unit costs for jurisdictional gas of 5.8¢ per Mcf.[18]

By applying the *Phillips* (24 FPC 537) principles to its 1958 test year operations, as reflected in this record, Union, using an 11 per cent rate of return, arrived at a unit cost of service of 11.966¢ per Mcf,[19] while the staff, using a 6.5 per cent rate of return, arrived at a unit cost of service of 8.408¢ per Mcf [20] and the intervenors, using an 11 per cent rate of return, arrived at a unit cost of service of 9.216¢ per Mcf.[21]

In the disposition of this case on the cost-of-service basis, the principles and methods utilized by the Commission in the *Phillips* opinion will be applied to the facts of record herein, insofar as is possible, and as illustrated in detail in

---

[14] *Amerada Petroleum Corporation*, G-9385 *et al.*; *Tidewater Oil Company*, G-13310; *Hunt Oil Company*, G-9065; *Slade, Inc.*, G-19986; *Cities Service Production Co.*, G-9510; *Shell Oil Company*, G-9446; *Alfred C. Glassell, et al.*, G-9278, 25 FPC 1071.

[15] Ex. 6, 23.599¢; Ex. 4, 24.694¢.

[16] Ex. 18 and Ex. 25, Texas Gulf Coast and East Texas, 7.91¢; North Louisiana, 9.60¢; Mississippi, 10.54¢; and South Louisiana, 11.73¢ per Mcf.

[17] Ex. 32, Mississippi, 7.13¢; Texas, 7.21¢; and Louisiana, 8.95 per Mcf.

[18] Ex. 27.

[19] Ex. 44-A.

[20] Ex. 51.

[21] Ex. 33.

Appendices 1 through 8 attached hereto and incorporated herein as a part of this decision.

The principal issues herein concern:

(1) The depreciation and depletion reserve of Union.

(2) Working capital.

(3) The method of allocating production costs and exploration and development costs to liquids and to gas.

(4) Federal income taxes.

(5) The rate of return.

Depreciation and Depletion

The principal differences between the derivation of the rate base by Union and the staff was the staff's recomputation of the depreciation and depletion reserve and the elimination of certain items of working capital. When Union was organized and started in the oil and gas business in 1937 it acquired certain producing and other properties from the United Gas Corporation at their appraised value as of June 30, 1932. To this appraised value of the property Union thereafter added book additions to the plant account. A Union witness testified that no original cost study had ever been made for Union, the appraised valuation being accepted as the original cost. These properties had been subject to the United Gas Corporation's method of computing the book reserves for depreciation and depletion up to the date of their transfer to Union in 1937. Union continued this method until 1941 when a formula ascribed to one of the company officials was adopted under which an estimated dollar amount of plant was depreciated at the annual rate of 8 percent, gas depreciated at the rate of 1.35¢ per Mcf, and oil production depreciated at 25¢ per barrel.

In its Exhibit 8, Schedule 3, Union shows $216,748,385 as its gross plant for January 1, 1958 and $226,189,675 as its gross plant on December 31, 1958. Each of these totals include an amount of $19,628,921 identified (Ex. 8, Sch. 2, ln. 14) as "undistributed plant." This "undistributed plant" amount was explained by a Union witness as being an amount which could not be associated with any physical property of Union's. The staff and intervenors properly eliminated this item from the gross plant totals above referred to, as not being an amount which Union would be entitled to recover through depreciation charges from its rate payers, and therefore not a legitimate part of the rate base on which to compute allowable return to be included in cost of service. Apparently, it was not associated with any items of the physical property and, as a staff witness testified, it appeared to be an "appraisal write-up" over and above the cost of the property. The Commission has eliminated a comparable item in *United Gas Pipe Line Company*, 25 FPC 26, 50. Union, seeking to remove the controversy over this item, presented its Exhibits 38 and 42-A, excluding the amount of $19,628,921 of "undistributed plant" (p. 10, Union's initial brief) from its gross plant totals. The item has also been eliminated by the Examiner for the reasons indicated above and as set out by the Commission in the *United Gas Pipe Line* case, *supra*. See Appendix 2-A.

The staff requested, and Union furnished, by field and products its original recoverable hydrocarbon reserves data and its reserves remaining on December 31, 1958. The staff then computed percentages reflecting the ratio of total production up to the end of 1958 to the total of recoverable reserves by fields, and then applied these percentages to Union's gross plant balance by fields on December 31, 1958, totaling $166,443,674 (Ex. 14, Sch. 7, Sh. 6 of 6, Col. 3, ln. 42) to arrive at a reserve requirement for producing properties of $90,890,159 at December 31, 1958. A staff witness testified that on this basis Union's producing properties were 54.61 percent depleted. Also applying this depletion percentage to Union's gross general plant of $8,010,796 (Ex. 14, Sch. 7-A, Col. 8, ln. 17) the staff arrived at a general plant reserve requirement of $4,374,696 which, when added to the reserve requirement for producing properties in the amount of $90,890,159, produced a total reserve requirement of $95,264,855 at December 31, 1958 (Ex. 14, Sch. 6, Sh. 6, Col. 5, ln. 40).

As illustrated in Appendix 2-A, the Examiner has adopted the staff's average gross plant amount of $201,840,109, represented by $164,302,237 for producing properties and recycling units (Ex. 14, Sch. 7, Sh. 6, Col. 4, ln. 42), and $7,865,758 for general and intangible plant (Ex. 14, Sch. 7-A), together with $29,672,114 of exploration and development plant (Ex. 14, Sch. 5, Col. 3, ln. 10). Also adopted was the staff's year end reserve requirement, determined as shown above, in the amount of $95,264,855 which was averaged with the reserve of $92,417,524 at the beginning of the test period on January 1, 1958, to arrive at the average reserve requirement for the test year in the amount of $93,841,189. This computation of the average reserve requirement carries out a consistent practice of the Commission of using the average, rather than year end plant figures, unless there are compelling reasons for other treatment. See, *Phillips*, p. 565.

Summarizing, the $93,841,189, the average reserve requirement was deducted from the average gross plant of $201,840,109 to arrive at the average net plant for 1958 test year in the amount of $107,998,920. See Appendix 2-A, Col. 6.

Union, in its Exhibit 44-A, Schedule 4, shows a net plant of $138,640,258 as taken from Exhibit 38, Schedule 1. This reflects a Union witness' reserve requirement study and testimony by which a reserve requirement for the test year 1958 was found to be $67,920,496. Deducting this reserve requirement from Union's year end gross plant of $206,560,754, the witness arrived at a net plant figure of $138,640,258. The Examiner has rejected Union's reserve requirement study as being too closely allied with Union's book reserves whose calculation through the years or relationship to plant did not conform to generally accepted practices of the industry and of the Commission.

Working Capital

The question of a proper and adequate amount of working capital for Union is an issue to be considered. In its Exhibit 1, Schedule 2, Union claims an allowance of $3,336,143 for bank balances. A Union witness testified this amount was the average of the twelve end-of-the-month bank balances for the test period. From this bank balance Union pays its common stock dividends and interest on its fixed obligations, all of which are owned by the United Gas Corporation. Union included this average bank balance in its working capital in addition to the traditional 45-day allowance for cash expenses. The staff, and the intervenors, properly eliminated the bank balance item from their computations.[32] The Commission has consistently and traditionally excluded minimum bank balances from working capital allowances. See: *El Paso Natural Gas Co.*, 22 FPC 260, 270; *Panhandle Eastern Pipe Line Co.* v. *F.P.C.* 236 F. 2d 606, 610-11. In *Phillips Petroleum Company*, 24 FPC 537, 566, the Commission applied the rule to an independent producer.

Working capital, as shown on Appendix 3 herein, has been computed from the average balances of the several accounts set out in the staff's Exhibit 14, Schedule 7-B, with the exception of the staff's elimination of 80 per cent, an item of $6,031,562, of the materials and supplies on the premise this amount related to construction work in progress. So adjusted the staff's Exhibit 14, Schedule 7-B, would allow only $1,507,890 for materials and supplies. The staff's elimination of the $6,031,562 item from the materials and supplies account as related to construction work in progress is disallowed. By its Exhibit 1, Schedule 1, line 5, Union's evidence reflects "Construction Work in Progress" for December 31, 1957, in the amount of $1,678,222 and for December 31, 1958, in the amount of $5,271,758. Also by Exhibit 1, Schedule 2, lines 10-24, Union shows an average monthly balance for materials and supplies in the amount of $7,967,511. In computing the average of 12 monthly balances of materials and supplies, the staff witness arrived at $7,823,856 (Ex. 14, Sch. 7-B, ln. 3), which amount is comparable to the $7,967,511 average monthly balance shown by Union in its Exhibit 1, Schedule 2.

---

[32] Exs. 18, 25, 27, 32, 33 and 5.

The size—the number of dollars invested—of the materials and supplies (inventory) account is a decision to be made by management based upon its experience in conducting its particular business operations. The size of the inventory required will depend upon the present operation and the prospective drilling program.

Items purchased by the company (except large items delivered direct to construction jobs) would normally be charged to the materials and supplies inventory) account for subsequent issuance as may be required in the company's operations. Here Union's management utilized the account to include the maintenance of items which, in large part, were to find their way into company construction. The evidence of record is not clear, or does not show, the nature of the numerous and varied items included in Union's materials and supplies account. However, it is assumed the account of this company is composed of those items normally to be found in the inventory of an *independent producer*.

There appears to be little difference in the final result between the handling of the $6,031,562 by the staff in Exhibit 14, Schedule 7-B and its handling by the Examiner. If the $6,031,562 is not allowed in the materials and supplies account as part of the rate base, but instead is classified directly as part of the construction work in progress, Union would be permitted to capitalize interest thereon during the construction period, and would be in a position to earn on such capitalization later on as a part of a future rate base. See *El Paso Natural Gas Co.*, 13 FPC 421, 428; *F.P.C. Uniform System of Accounts for Natural Gas Companies*, p. 439, Acct. 432. As will be hereinafter considered, Union is allowed a 6½ per cent rate of return upon its rate base. Therefore it appears the overall effect of the different handling of this account by the staff and by the Examiner would amount to only one-half of one per cent of interest.

The distribution of working capital, as shown on Appendix 3, to producing properties and general plant follows the staff treatment in its Exhibit 14, Schedule 7-B. The distribution to exploration and development follows the method and treatment of this account as developed by the staff in Exhibit 14, Schedule 5, line 15.

Union in its Exhibit 2, Schedule 1, Column 4, line 12, Joint Costs, Administrative and General, account lists an adjusted item of $6,142,785 which includes $1,619,547 for geological, geophysical and land and lease expense. Union later, in its Phillips-type presentation in Exhibit 44-A, Schedule 1, Column 2, line 6, removed this item of cost from administrative and general expenses and included it in its exploration and development costs as geological, geophysical and land and lease expense, as shown on line 10 of the exhibit "in order that we would have all of the exploration and development costs in one place" according to Union's witness. The Union adjustment of this $1,619,547 is approved and the treatment accorded same will be found in Appendix 1 and in Appendix 3. The effect of this adjustment is to increase the working capital figure for exploration and development costs for the test year (Ex. 14, Sch. 5, ln. 14) of

$6,598,096 by the amount of the adjustment as shown in Appendix 3, to which was applied the 45 days, or one-eighth, working capital allowance as shown in this appendix. The working capital allowance for general plant and producing properties in the amount of $8,915,412, and for exploration and development of $1,027,205 was transferred to Appendix 2. The $8,915,412 was distributed to production net investment on the basis of the dollar amounts shown in net investment applicable to Union's production operations.

The transfer of the $1,619,547 item, as above considered and approved, reduced the administrative and general production expense of $4,098,776 as shown by the staff (Ex. 14, Sch. 2, Sh. 6, Col. 5, ln. 42 and Ex. 51, Sch. 1, Col. 2, ln 9 or 13) to $2,479,229. (Appendix 3) but, when transferred to the exploration and development expense, it increased the five year average amount of $8,922,988, as used by the staff (Ex. 14, Sch. 5, Col. 3, ln. 33 and Ex. 51, Sch. 1, ln. 14 or 21), to $10,542,535 (Ex. 44–A, Sch. 1, Col. 3, ln. 13 and Appendix 1, Col. 3).

Allocation of Joint Product Costs

To allocate production costs, Union and the staff initially utilized the gross sales of natural gas, and the revenues derived thereform (Ex. 16, Sch. 1), during the test year as representing all of Union's marketed natural gas production, including the royalty interest. No adjustments were made by the staff to Union's sales as shown on Union's books. The staff made two adjustments to Union's revenues from gas sales during the test period. The first was to exclude gross revenues collected by Union which were subject to refund in rate proceedings pending before the Commission and, second, to reflect revenue received by Union from the sales of wet gas to associated[23] and non-associated[24] purchasers who later processed the wet gas and subsequently reimbursed Union for the liquids extracted. This method of handling the revenues received from liquids extracted follows the decision of the Court in *City of Detroit* v. *F.P.C.*, 230 F. 2d. 810, 819; *Panhandle Eastern Pipe Line Company*, 25 FPC 787, 797. The staff witness testified he was unable to ascertain from Union's books how it determined or classified its production costs or how Union allocated such costs to oil and gas on its books. He therefore found it necessary, in his judgment, to classify Union's producing fields by the product actually produced therefrom during the test year (Ex. 17) to derive allocation ratios based on revenues which were subsequently used (Ex. 18) to allocate Union's joint costs for producing oil and/or liquids and natural gas in the test year. Thus, in its Exhibit 18, the staff used the sales realization method for the allocation of costs. This method of allocating production costs was rejected by the Examiner and the Commission in *Phillips*, page 553. Later in this hearing the staff as well as Union and certain intervenors introduced evidence which apply the *Phillips* principles of allocation to the cost of service of Union for the test year of 1958.

Union produces only natural gas from some of its producing wells, from others it produces only liquids, while from others a combination of gas and oil is produced. This same situation was encountered in *Phillips*. Here, as in *Phillips*, the problem is to determine the cost of producing gas when it is produced jointly with liquids. In this record the joint production costs, including return and tax allowance, amounts to $15,656,655 (Appendix 5, Col. 6). In the allocation of these joint production costs between liquids and natural gas, the relative cost method will be employed. To allocate these joint production costs to gas and to liquids, it is first necessary to establish a representative cost of producing the single product of gas and of liquids. To make this determination a representative number of wells producing only gas and only liquids is required to establish the so-called "gas leg" and "oil leg." The staff by its Exhibit 51, Revised, arrived at a gas leg, or gas only production, consisting of six gas only producing wells (Ex. 52), of 12,040,208 Mcf, which compared to Union's total gas production of 199,962,477 Mcf[25] (Appendix 6, Col. 2, ln. 4) amounts to about six per cent of the total (Tr. 3890, lns. 2–7). This was acknowledged by the staff witness to be a small percentage of the total. The percentage in *Phillips* ran to about 60 per cent of the total. Also, in Exhibit 51, Revised, the staff arrived at an oil leg, or liquids only production, consisting of 16 liquids only producing wells (Ex. 53), of 2,772,685 barrels, which compared to Union's total liquids production of 9,470,538 barrels, amounts to 29.28 per cent of the total. In *Phillips* the liquids only group comprised 30.14 per cent of the total. One of the gas only producing units in the staff's gas leg, the Monroe #426, produces 10,864,725 Mcf of the total gas leg of 12,040,208 Mcf (Ex. 52, Col. 5, lns. 6–7) and one of the liquids only producing units in the staff's oil leg, the Tinsley #590, produces 2,076,854 barrels of the total oil only leg of 2,772,685 barrels (Ex. 53, Col. 5, lns. 14 and 17). As stated by the staff witness, before the relative cost method can be meaningful, the average cost for producing one Mcf of gas or barrel of oil, respectively, derived for the single product production of gas or liquids, respectively, must be reasonably representative of the probable cost of producing the same product in the fields and wells that produce gas and liquids jointly. In cases where the gas leg does not afford a representative sample then the Commission has used other methods as it did in *Alfred C. Glassell, et al.*, 25 FPC 1071.

---

[23] The only associated buyer was stated by staff witness Blair to be the United Gas Pipe Line Company which, with Union, are both subsidiaries of the United Gas Corporation (Tr. 821, ln. 18 to Tr. 822, ln. 5).

[24] The term "non-associated buyers" means buyers who are not affiliated with Union (Tr. 822, ln. 19–20) and who are specifically named in Ex. 16, Sch. 3, Col. 1.

The Philadelphia Intervenors found a more representative gas leg to represent Union's single product gas production by using all of Union's gas fields having a gas-liquids ratio exceeding 100 Mcf per barrel of oil.[26] The 25 fields which they used accounted for the 12,040,208 Mcf[27] production from the six gas only fields used by the staff as well as 49,890,321 Mcf produced from 19 gas condensate fields with gas liquids ratios exceeding 100 Mcf per barrel of oil (Ex. 32, Sch. 8, ln. 2) for a total of 61,930,529 Mcf or approximately 31 per cent of Union's total gas production during the test year. The Philadelphia Intervenors' oil only leg is the same as the staff's. This inclusion of the 19 gas condensate wells with gas-liquids ratios exceeding 100 Mcf per barrel of oil may, or may not, be a deviation from the method used to determine the gas only leg in *Phillips*, since Phillips has a Natural Gas Department which includes only those leases from which no liquids are extracted from the gas produced on the lease, however, the dry gas production of Phillips represented about 60 per cent of its total gas production, yet the bulk of this Phillips alleged dry gas, or about 58 per cent, was processed. *Cf.* Appendix 9 to *Phillips*, 24 FPC 537, 588. As has been stated, Union extracts liquids from its gas condensate wells at two points, one, in a separator at the wellhead and, two, in a processing plant. Phillips sent

---

[25] Exclusive of royalty interests amounting to 2,859,149 Mcf.

[26] Texas Oil and Gas Conservation Laws, Title 102 Revised, Civil Statutes of Texas, Railroad Commission of Texas, January 1957, page 8:

> The term "gas well" is any well (a) which produces natural gas not associated or blended with crude petroleum oil at the time of production, or (b) which produces more than one hundred thousand (100,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon, or (c) which produces natural gas from a formation or producing horizon production of gas only encountered in a well bore through which crude petroleum oil also is produced through the inside of another string of casing.

[27] Staff's gas leg, Ex. 51, Revised.

58 per cent of its dry gas through its extraction plants. Therefore the inclusion of these 19 gas condensate wells, as above considered in arriving at a representative gas leg is found to be proper under the circumstances in this case.

To determine the costs of producing the single products, the methods used by the Philadephia Intervenors have been used in this decision to arrive at, what appears to be, a broader base for the gas only leg. By use of the method of the Philadelphia Intervenors, direct expenses in the amount of $1,348,790 were assigned to the natural gas leg (Ex. 32, Sch. 8, ln. 6) and $2,248,127 to the oil only leg (Ex. 32, Sch. 7, ln. 1). In assembling costs for the indirect expenses the Examiner, as above discussed, transferred $1,619,547 from administrative and general expenses to exploration expenses for a balance of indirect expenses in the amount of $5,090,882, *Cf.* Appendix 1, Col. 2. This sum was then distributed to the various product columns in Appendix 1 on the basis of the amounts in the direct expense columns. This allocation of indirect expense on the basis of the allocation of the direct expense is somewhat different from its handling in ***Phillips***. There a portion of the indirect expense was assigned to products on the basis of "Net Capital Employed" (***Phillips***, p. 554). Since the "net capital employed" formula employed in ***Phillips*** was not spelled out in the opinion, it is necessary here to allocate the indirect expenses on another basis—the difference in the two methods of distribution probably being rather small as to the net result.

Federal Income Taxes

Union in its testimony and Exhibit 2, Schedule 2, Column 3, line 5, claims an allowance of $13,272,492 for Federal income taxes for the test year, related to a 12 per cent rate of return, reflecting tax deductions applicable to the production of natural gas and the retention by Union of the tax benefits from gas percentage depletion and intangible drilling costs of producing gas wells. Union alleges the retention of such tax benefits are justified upon the showing that they are, and have been in the past, used as a part of the funds required for lease acquisition and drilling costs.

The cost of service exhibits and testimony of the intervenors and the staff reflect no allowance for Federal income tax. The staff witness testified that from his examination of Union's records for the test year, using the Federal income tax return items as shown in Exhibit 14, Schedule 8, there would be an income deficit in excess of $15 million ($29,189,853—$13,976,187=$15,213,666 deficit). Union filed no Federal income tax return for the test year. A consolidated return was filed by Union's parent, the United Gas Corporation, in which Union's taxable income deficit was used to off-set taxable income gains. In such cases it has been the consistent practice of the Commission to disallow any claim for taxes not actually paid, on the premise that the gas consumer should be charged for only the actual liability for Federal income taxes. If, by filing a consolidated return, a reduction of the tax is effected, such reduction should be reflected in the costs charged to the consumer. ***Mississippi River Fuel Corp.***, 4 FPC 340; ***Colorado Interstate Gas Co.***, 11 FPC 324, 380; ***Transcontinental Gas Pipe Line Corp.***, 11 FPC 94; ***United Fuel Gas Co.***, 12 FPC 251, 265. The Court of Appeals for the Fifth Circuit recently held only such Federal income taxes as had actually been paid for the test year were to be treated, for gas rate purposes, as part of the cost of service, regardless of whether such taxes were less than would have been paid but for depletion allowance and deductions for intangible drilling expense. *Cf. El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d. 567; see also the decision of the Fourth Circuit stating they "are in accord with the decision" in the foregoing *El Paso* case, *Cities of Lexington, Kentucky, et al.* v. *F.P.C.*, 295 F. 2d. 109, 117. It therefore follows that the $13,273,492 claimed Federal income taxes paid by Union (Ex. 2, Sch. 2, Col. 3, ln. 5) are disallowed as a part of the cost of service as more fully reflected in the staff's Exhibit 14, Schedule 8 herein.

Rate of Return

Union seeks a rate of return, after taxes, of not less than 12 per cent claiming, under the *Bluefield Water Works and Improvement Company* v. *Public Service Commission*, 262 U.S. 679 and the *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U.S. 591, as a producer of natural gas and oil it is entitled to a return comparable to that earned by other producers having similar risks. Union further seeks to show it operates as a separate corporate entity and that as an independent producer none of its operating costs are borne by any company with which it is affiliated. Union further contends its rate of return should not be interrelated with the cost of capital to the United Gas Corporation, its parent.

The Philadelphia Intervenors used illustrative rates of return of 6.5 and 11 per cent in their Exhibit 32 and 11 per cent in their Exhibit 33, in deference to the rate used by the Commission in *Phillips*.

The Memphis Intervenors used a 6.5 per cent rate of return in their evidence contending that Union, as the evidence shows, is the production department of the integrated production, transmission and distribution operations of the United Gas Corporation system and, therefore, the fair rate of return for Union should be determined upon the consideration of the cost of capital to the United Gas Corporation, the parent organization.

On the issue of a fair rate of return for Union the staff witness testified that Union was a wholly-owned subsidiary of United Gas Corporation, and that all of Union's capital to the extent of $160 million had been supplied by that company, therefore, in his opinion the financial affairs and capital raising experience of the United Gas Corporation must be given primary consideration in determining a fair rate of return for Union. In *Mississippi River Fuel Corporation* v. *F.P.C.*, 252 F. 2d 619, 622, cert. den., 355 U.S. 904, the Court said, "A 100 per cent affiliate stands in the same position as does the integrated producing 'arm' of a pipeline company." The staff's evidence properly related to money rates and security prices of pipeline companies, a description of several of the principal pipeline companies with trends of their revenues, earnings and dividends together with the market prices of their common stocks as well as their earnings-price ratios. In addition to this general information on the principal pipeline companies, the staff offered testimony and exhibits showing the record of earnings and other financial details of the United Gas Corporation.

The Commission considered the rate of return for the integrated producing arm of a major pipeline company in *Panhandle Eastern Pipe Line Company*, 25 FPC 787, 802, and there allowed the pipeline company a 5.75 per cent rate of return on its pipeline investment and a six per cent rate of return on its "well mouth properties." Being the producing arm of United Gas Corporation assures Union of a guaranteed market for its gas. Union says it spent practically all of its cash from net income, depletion and abandoned leases during the 10-year period immediately preceding the test year in drilling for, and adding to its reserves of oil, gas and condensate. The record shows that during this 10-year period Union paid substantial sums of money in interest and dividends from its gross earnings to the United Gas Corporation, the owner and holder of all of Union's outstanding securities. The Commission determined a fair rate of return for the United Gas Pipe Line Company, 25 FPC 26, 32, to be 6.25 per cent which would provide a 10 per cent return on equity. The allowance here of a 6.5 per cent rate of return, as urged by the staff, would provide a 10.23 per cent return to Union's common equity. Upon the evidence in this case it is here determined that 6.5 per cent is a fair, reasonable and adequate rate of return for Union. Applying this rate of return to the total rate base, found by the Examiner to be $117,941,537, produces a return of $7,666,200. (Appendix 2)

Returning now to further discussion of the oil only and gas only legs in developing the amount of return on the production rate base applicable to natural gas fields and 100 per cent oil fields, these amounts being $604,878 for the natural gas fields (Appendix 2, Col. 3) and $748,959 for the 100 per cent oil fields (Appendix 2, Col. 5), it was first necessary to ascribe the net investment shown on Appendix 2 to these respective fields. Such net investment was identified by natural gas fields and oil fields in accordance with the method used by the Philadelphia Intervenors, as hereinabove discussed and approved. The individual gas and oil only fields were identified individually in the staff's Exhibit 14, Schedule 7. Amounts relating to average net investment were accumulated and totaled to show the net investment in gas only fields to be $2,553,577 (Appendix 1, Col. 3) and in the oil only fields to be $3,997,036 (Appendix 1, Col. 5). The dollar amounts from Appendix 1 applicable to direct expenses, indirect expenses, and return were carried to Appendix 5 for the purpose of allocating the joint products costs. Such costs being the joint products field costs shown in Appendix 1, Col. 6, for the amount of $15,656,655. Appendix 5 follows the pattern of the Commission's opinion in *Phillips* which causes the joint product costs to be allocated to liquids in the amount of $9,772,886 (Appendix 5, Col. 7) and to gas in the amount of $5,883,769 (Appendix 5, Col. 8).

In allocating the exploration and development expense, the Examiner has followed the Phillips modified BTU method as exemplified in Appendix 6, and, as indicated thereon, the data contained in the first seven columns were taken from the staff's Exhibit 51, Schedule 4. As developed and shown on Appendix 1, Col. 7, the exploration and development expense totaled $10,542,535, the return of 6.5 per cent thereon amounts to $1,995,456 for a total of $12,537,991 (Appendix 1, Col. 7). The percentages developed in Column 7 of Appendix 6—49.882 per cent for gas and 50.118 per cent for liquids—were applied to the exploration and development expenses in Column 8 and the same percentages then were applied to the return on exploration and development investment in Column 9. Column 10 represents the totals of Columns 8 and 9 and reflects the distribution of these total exploration and development costs between gas and liquids.

The development of the unit or Mcf costs, both direct and allocated for the production of natural gas by Union during the test year of 1958 is illustrated in detail on Appendix 4. The direct costs were taken from Appendix 1, the allocated costs were taken from Appendix 5, and the exploration and development costs were taken from Appendix 6, which when totaled amount to total production costs of $17,124,604 for natural gas.

Union's testimony and exhibits reflect the gross eight-eighths production of 242,111,495 Mcf (Ex. 3, Sch. 3) with royalty expense in the amount of $6,136,111 (Ex. 3, Sch. 2) included as a part of Union's operating expenses. These royalty expenses were excluded from operating expenses by the staff (Ex. 51) and the Philadelphia Intervenors (Ex. 33) in their use of the seven-eighths volumes. It will be observed the Examiner in this decision has used only the seven-eighths, or net interest volumes of production in determining unit production cost for natural gas by Union. Thus by dividing this total cost of producing gas, $17,124,604 by the seven-eighths volumes of 199,962,477 Mcf, a unit, or Mcf, cost of 8.564¢ is determined as the production cost for natural gas. Appendix 4 also shows the per barrel costs of $2.28 for the production of liquids for the test year.

Since the 199,962,477 Mcf represent the net interest production volume for Union's entire system, the remaining step is to determine the amount and the per unit or Mcf costs for jurisdictional gas. It has hereinbefore been found that 74.8 per cent of Union's natural gas sales were made in interstate commerce for resale and thereby subject to the jurisdiction of this Commission. Therefore by multiplying 199,962,477 Mcf by 74.8 per cent a figure of 149,571,933 Mcf is found to be the jurisdictional volumes of natural gas. This jurisdictional volume multiplied by 8.564¢ produces the total costs in the amount of $12,809,340 for producing the jurisdictional volumes of natural gas.

Union advised and the staff accepted (Ex. 14, Sch. 1, note 2) that rate case (regulatory) expense incurred to that date and budgeted by Union for 1960 amounted to $350,000. One-third of this amount, $116,667, plus a return of $15,167 on the unamortized balance of $233,333 by applying thereto the 6.5 per cent rate of return, or a combined total of $131,834 should be added to the cost of jurisdictional gas which is found to be reasonable.

As will be noted on Appendix 4, Col. 4, this regulatory expense has been added to the costs for producing jurisdictional gas to arrive at a total cost for producing 149,571,933 Mcf of gas in the amount of $12,941,174 or a unit or Mcf production cost of 8.652¢ which is found to be the just and reasonable per Mcf cost of Union's jurisdictional gas production.

Union's average test year jurisdictional sales realization was 10.9467¢ per Mcf.[28] Accordingly Union's revenues for the sales of jurisdictional gas during the test year were excessive by $4,111,679.[29]

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) The Union Producing Company (Union), a Delaware Corporation whose principal place of business is located at Shreveport, Louisiana, is a natural-gas company within the meaning of the Natural Gas Act.

(2) The rates and charges of the Union Producing Company (Union) for the sales of natural gas which are on file with the Federal Power Commission are subject to the jurisdiction of the Commission under Section 4 and Section 5 of the Natural Gas Act.

(3) The total system-wide jurisdictional cost of service herein determined for the Union Producing Company for the test year of 1958 is $12,941,174 or an average of 8.652¢ per Mcf, which is more fully set forth in Appendix 4 attached hereto.

(4) Such jurisdictional cost of service developed by the methods and principles used by the Commission in its *Phillips* opinion is less than the jurisdictional revenues collected by the Union Producing Company during the test period—the 12 months of 1958.

(5) The Union Producing Company in Docket Nos. G-13811, G-13820, G-14114, G-14352, G-14553, G-16725, G-17589 and G-17606, all as set out in detail in

---

[28] Staff, in its Ex. 24, Sch. 1, sh. 3 of 3, Col. 7, ln. 33, show Union's gross (eight-eighths) working interest volumes to be 179,179,934 Mcf for total actual revenues of $19,614,326.75. Dividing the revenue by the volume produces the average Mcf sales realization price of 10.9467¢.

[29] Derived by deducting from $19,614,327 (the eight-eighths actual revenue, see Ex. 24, Sch. 1, Sh. 3 of 3, Col. 9, ln. 33), the amount of $15,502,648, this latter amount was determined by multiplying 8.652¢ (the unit or Mcf cost for producing jurisdictional gas in the test year of 1958, see Appendix 4) by 179,179,934 Mcf, the eight-eighths jurisdictional sales volumes for the test year of 1958, See Ex. 24, Sch. 1.

footnote 1 hereto, has failed to sustain the burden of proof imposed upon it by Section 4 of the Natural Gas Act.

(6) No justification is found in this record for departing from the jurisdictional cost-of-service formula, or method, as developed by the Commission in *Phillips*, as the primary guide in fixing jurisdictional rates for the future for the Union Producing Company.

(7) The evidence adduced by the Staff, as supported generally by each of the intervenors, in this proceeding requires the Presiding Examiner to set just and reasonable rates for the Union Producing Company under Sections 4 and 5 of the Natural Gas Act.

(8) The Union Producing Company is directed to file, within 30 days from the effective date of this order, rates which will produce no more than the jurisdictional cost of service, as set forth in Finding (3) above, with supporting data from which the Commission can determine whether or not the filings fulfill this purpose.

(9) The new rates to be filed as provided in Finding (8) above shall conform, insofar as is possible, to the area pricing standards as set out in the Commission's Statement of General Policy, No. 61-1, 24 FPC 818, as amended.

(10) The Union Producing Company should be required to make refunds, with interest at 6 per cent thereon from the date of payment, to its customers in accordance with the undertakings hereto filed by Union and the Commission orders issued in each of the dockets enumerated in Finding (5) above, of all amounts collected by it from its jurisdictional customers and subject to refund under Union's proposed rate increases.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The Union Producing Company is hereby directed to file, within 30 days from the effective date of this order, rates for all of its jurisdictional natural gas sales which conform to Findings (3), (8) and (9) above.

(B) The Commission reserves the right to reject all or any part of the schedules of rates and charges referred to in ordering paragraph (A) above and in lieu thereof prescribe by further order herein the appropriate rates, charges, classifications, rules, regulations, practices, or contracts.

(C) Upon approval by the Commission of the rates filed pursuant to ordering paragraph (A) above, the approved rates shall immediately become the legally effective rates to be observed and in force unless and until changed by a subsequent order of the Commission.

(D) The increased rates and charges, as amended and substituted, tendered for filing by the Union Producing Company in Docket Nos. G-13811, G-13820, G-14114, G-14352, G-14553, G-16725, G-17589 and G-17606 are thereby disallowed and denied.

(E) The increased rates and charges which have been collected, subject to a refund undertaking, by the Union Producing Company in those dockets enumerated in ordering paragraph (D) above and consolidated with this proceeding, will be refunded by the Union Producing Company in accordance with the terms and conditions of subsequent orders of the Commission.

HARRY W. FRAZEE,
Presiding Examiner.

APPENDIX 1

UNION PRODUCING COMPANY

COST OF SERVICE YEAR 1958

Description	Total	Adjustment[1]	Adjusted total	Natural gas fields	Oil and gas production			Exploration and development
					Total	100 percent oil fields	Joint product fields	
(1)	(2)		(3)	(4)	(5)	(6)	(7)	(8)
Direct expenses:								
Operating expenses	$4, 672, 330	----------	$4, 672, 330	$258, 027	$4, 414, 303	$1, 441, 444	$2, 972, 859	----------
Ad valorem and other taxes	1, 252, 053	----------	1, 252, 053	222, 070	1, 029, 983	66, 363	963, 620	----------
Depletion and depreciation	5, 521, 259	----------	5, 521, 259	868, 693	4, 652, 566	740, 320	3, 912, 246	----------
Total direct expenses	11, 445, 642	----------	11, 445, 642	1, 348, 790	10, 096, 852	2, 248, 127	7, 848, 725	----------
Percent	100. 00	----------	100. 00	11. 784	88. 216	19. 642	68. 574	----------
Indirect expense:								
District general office expenses	2, 050, 515	----------	2, 050, 515	241, 633	1, 808, 882	402, 762	1, 406, 120	----------
Administrative and general expense	4, 098, 776	($1, 619, 547)	2, 479, 229	292, 152	2, 187, 077	486, 970	1, 700, 107	----------
Depreciation of general plant	265, 958	----------	265, 958	31, 340	234, 618	52, 239	182, 379	----------
Mississippi State income taxes	295, 180	----------	295, 180	34, 784	260, 396	57, 979	202, 417	----------
Total indirect expense	6, 710, 429	(1, 619, 547)	5, 090, 882	599, 909	4, 490, 973	999, 950	3, 491, 023	----------
Exploration operations:								
Exploration and development expenses	8, 922, 988	1, 619, 547	10, 542, 535	----------	----------	----------	----------	10, 542, 535
Return on exploration investment at 6.5 percent	1, 995, 456	----------	1, 995, 456	----------	----------	----------	----------	1, 995, 456
Federal income tax allowance	----------	----------	----------	----------	----------	----------	----------	----------
Total exploration operations	10, 918, 444	1, 619, 547	12, 537, 991	----------	----------	----------	----------	12, 537, 991
Return on production rate base at 6.5 percent	5, 670, 744	----------	5, 670, 744	604, 878	5, 065, 866	748, 959	4, 316, 907	----------
Federal income tax allowance	----------	----------	----------	----------	----------	----------	----------	----------
Total return and tax allowance	5, 670, 744	----------	5, 670, 744	604, 878	5, 065, 866	748, 959	4, 316, 907	----------
Total cost of production and exploration operations[2]	34, 745, 259	----------	34, 745, 259	2, 553, 377	19, 653, 691	3, 997, 036	15, 656, 655	12, 537, 991

[1] See p. 21 of Decision.

[2] Excludes royalty expenses, also excludes State production, gathering and severance taxes, and rate case expenses which are directly assigned on App. 4 herein.

APPENDIX 2

UNION PRODUCING COMPANY

RATE BASE AND RETURN YEAR 1958

Description	Total	Natural gas fields	Oil and gas production			Exploration and development
			Total	100 percent oil fields	Joint product fields	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Net investment [1]	$107,998,920	$8,354,812	$69,971,994	$10,344,995	$59,626,999	$29,672,114
Percent	100.00	7.736	64.790	9.579	55.211	27.474
Gross working capital	9,942,617	951,007	7,964,405	1,177,458	6,786,947	1,027,205
Total rate base	117,941,537	9,305,819	77,936,399	11,522,453	66,413,946	30,699,319
Return at 6.5 percent	7,666,200	604,878	5,065,866	748,959	4,316,907	1,995,456
Federal income tax allowance						
Total return and tax	7,666,200	604,878	5,065,866	748,959	4,316,907	1,995,456

---

[1] Production Net Investment derived from Staff Exhibit No. 14, Schedule No. 7; Exploration and Development Net Investment from Staff Exhibit No. 14, Schedule No. 5.

APPENDIX 2-A

UNION PRODUCING COMPANY

RATE BASE AND RETURN YEAR 1958

Description (1)	Producing property and recycling units (2)	General and intangible plant (3)	Subtotal (4)	Exploration and development (5)	Subtotal (6)	Undistributed plant [1] (7)	Total gross plant (Union Exh. #8, Sch. 3) (8)
Exh. #14, sch. 5, 7, 7-A:							
Gross plant—1/1/58	$162, 160, 801	$7, 720, 719	$169, 881, 520	$27, 237, 943	$197, 119, 463	$19, 628, 921	$216, 748, 384
Gross plant—12/31/58	166, 443, 674	8, 010, 796	174, 454, 470	32, 106, 284	206, 560, 754	19, 628, 921	226, 189, 675
Combined	328, 604, 475	15, 731, 515	344, 335, 990	59, 344, 227	403, 680, 217		
Average gross plant	164, 302, 237	7, 865, 758	172, 167, 995	29, 672, 114	201, 840, 109		
Exh. #14, sch. 5, and 7, 7-A:							
Reserve for depreciation:							
Depletion—1/1/58	88, 208, 929	4, 208, 595	92, 417, 524		92, 417, 524		
At—1/31/58	90, 890, 159	4, 374, 696	95, 264, 855		[2] 95, 264, 855		
Combined	179, 099, 088	8, 583, 291	187, 682, 379		187, 682, 379		
Average reserve	89, 549, 544	4, 291, 645	93, 841, 189		93, 841, 189		
Average net plant, year 1958	74, 752, 693	3, 574, 113	78, 326, 806	29, 672, 114	107, 998, 920		
Working capital			8, 915, 412	1, 027, 205	9, 942, 617		
Total rate base			87, 242, 218	30, 699, 319	117, 941, 537		
Return at 6.5 percent			5, 670, 744	1, 995, 456	7, 666, 200		

---

[1] Undistributed plant was not included as part of the rate base in the Phillips adaptation by all parties including the staff.

[2] Reserve requirement arrived at by Commission Staff (Staff Brief, p. 12).

APPENDIX 3

UNION PRODUCING COMPANY

WORKING CAPITAL YEAR 1958

Description (1)		Total (2)	Producing properties and general plant (3)	Exploration and development (4)
Materials and Supplies:				
Average of 12 monthly balances	$7,823,856			
Less: Reserve for Inventory Adjustments (Average)	284,404			
		$7,539,452	$7,539,452	
Prepayments: Average of 12 monthly balances		225,701	225,701	
Cash Working Capital:				
Operating expenses	4,672,330			
Interest general office expenses	2,050,515			
Administrative and general expenses	2,479,229			
	9,202,074			
45 days or ⅛ of $9,202,074		1,150,259	1,150,259	
General exploration	2,785,961			
Dry holes	3,812,135			
Geological, geophysical and land and lease expenses	1,619,547			
	8,217,643			
45 days or ⅛ of $8,217,643		1,027,205		$1,027,205
Total working Capital requirements		9,942,617	[1] 8,915,412	1,027,205

[1] Distributed to oil and gas production on basis of production net investment.

Source: Staff Exhibit No. 14, Schedules 5 and 7-B.

APPENDIX 4

UNION PRODUCING COMPANY

SUMMARY OF COST OF PRODUCTION, DIRECT AND ALLOCATED, YEAR 1958

Description	Natural gas			Liquids		
	Direct	Allocated	Total	Direct	Allocated	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total direct lease expenses	$1,348,790	$2,796,629	$4,145,419	$2,248,127	$5,052,096	$7,300,223
Total indirect expenses	599.909	1,243,878	1,843,787	999,950	2,247,145	3,247,095
Return and tax allowance	604,878	1,843,262	2,448,140	748,959	2,473,645	3,222,604
Subtotal production	2,553,577	5,883,769	8,437,346	3,997,036	9,772.886	13,769,922
Exploration operations:						
Exploration expense		5,184,713	5,184,713		5,170,797	5,170,797
Return and tax allowances		961,345	961,345		978,711	978,711
Subtotal exploration		6,166,058	6,166,058		6,149,508	6,149,508
Production taxes	2,521,200		2,521.200	1,657,215		1,657,215
Total	5,074,777	12,049,827	17,124,604	5,654,251	5,922,394	21.576,645
Unit costs:			*Mcf*			*Bbls.*
Volume			199,962,477			9,470.538
Unit cost			8.564¢			$2.278

74.8% [1] ×199,962,477 (Mcf)=149,571,933 (Mcf—Jurisdictional) 149,571,933 (Mcf)×8.564¢=	$12,809,340
Rate case expense (see note)	131,834
Total cost to producer—jurisdictional gas	12,941,174
Total jurisdictional volumes	149,571,933
Jurisdictional unit cost	8.652¢

---

[1] Staff Brief, page 4.

NOTE: Staff Exhibit No. 14, Schedule 1, Footnote 2, indicates rate case expenses (applicable to jurisdictional sales of gas) would amount to $131,834 for the test year 1958.

APPENDIX 5

UNION PRODUCING COMPANY

ALLOCATION OF JOINT PRODUCTS COSTS ON THE BASIS OF RELATIVE COST 1958

Relative cost method

Cost of single product production

Description (1)	Volume (2)	Amount (3)	Unit cost (4)
Direct expense:			
100 percent oil fields	2,772,685	2,248,127	0.81081226
Natural gas fields	61,930,529	1,348,790	.02177908
Indirect expense:			
100 percent oil fields	2,772,685	999,950	.36064320
Natural gas fields	61,930,529	599,909	.00968680
Return and tax allowance:			
100 percent oil fields	2,772,685	748,959	.27012047
Natural gas fields	61,930,529	604,878	.00976704

Cost of joint production

	Volume	Unit cost	Amount	Percent	Allocated Amount
Direct expense:					
Liquids	6,697,853	$0.81081226	$5,430,701	64.36836	$5,052,096
Gas	138,031,948	.02177908	3,006,209	35.63164	2,796,629
Total			8,436,910	100	7,848,725
Indirect expense:					
Liquids	6,697,853	.36064320	2,415,535	64.36925	2,247,145
Gas	138,031,948	.00968680	1,337,088	65.63075	1,243,878
Total			3,752,623	100	3,491,023
Return and tax allowance:					
Liquids	6,697,853	.27012047	1,809,227	57.30133	2,473,645
Gas	138,031,948	.00976704	1,348,164	42.69867	1,843,262
Total			3,157,391	100	4,316,907

Description (5)	Joint products (6)	Allocated to— Liquids (7)	Gas (8)
Total direct expense	$7,848,725	$5,052,096	$2,796,629
Total indirect expense	3,491,023	2,247,145	1,243,878
Return and tax allowance	4,316,907	2,473,645	1,843,262
Total	15,656,655	9,772,886	5,883,769
Volume		6,697,853	138,031,948
Unit cost		$1.459	(cents) 4.263

APPENDIX 6

UNION PRODUCING COMPANY

ALLOCATION OF EXPLORATION AND DEVELOPMENT COSTS YEAR 1958

Description (1)	Volumes (2)	Average weighted Btu ratio (millions) (3)	Total Btu's (millions) (4)	Application of economic factor (5)	Adjusted Btu's (millions) (6)	Percent (7)	Allocated exploration and development expense (8)	Allocated return on exploration and development investment (9)	Total cost of exploration operations (10)	Unit costs (Col. 10+Col. 2) cents Mcf (11)
Gas:										
Total gas sales	199, 962, 477	1.0	199, 962, 477	----------	199, 962, 477	49. 179	$5, 184, 713	$981, 345	$6, 166, 058	3. 084
Royalty sales	2, 859, 149	1.0	2, 859, 149	----------	2, 859, 149	. 703	74, 114	14, 028	88, 142	3. 083
Total gas	202, 821, 626	----------	202, 821, 626	----------	202, 821, 626	49. 882	5, 258, 827	995, 373	6, 254, 200	3. 084
Liquids:										
Crude Oil	6, 452, 634	5. 5	35, 489, 487	4	141, 957, 948	34. 913	3, 680, 715	696, 674	4, 377, 389	67. 839
Condensate	1, 311, 943	5. 1	6, 690, 909	4	26, 763, 636	6. 582	693, 910	131, 340	825, 250	62. 903
Plant products	1, 705, 961	4. 5	7, 676, 825	4	30, 707, 300	7. 552	796, 172	150, 697	946, 869	55. 504
Subtotal	9, 470, 538	5. 3	49, 857, 221	4	199, 428, 884	49. 047	5, 170, 797	978, 711	6, 149, 508	64. 933
Royalty sales	205, 455	5. 3	1, 088, 912	4	4, 355, 648	1. 071	112, 911	21, 372	134, 283	65. 359
Total liquids	9, 675, 993	----------	50, 946, 133	----------	203, 784, 532	50. 118	5, 283, 708	1, 000, 083	6, 283, 791	64. 342
Total gas and liquids	----------	----------	253, 767, 759	----------	406, 606, 158	100. 000	10, 542, 535	1, 995, 456	12, 537, 991	----------

Source: Columns 1 through 7 from Staff Exhibit No. 51, Schedule 4.

APPENDIX 7

UNION PRODUCING COMPANY

EXPLORATION AND DEVELOPMENT EXPENSES YEAR 1958

Description (1)	*Amount* (2)
Book cost, 1954–58 average:	
General exploration	$2,785,961
Dry holes	3,812,135
Abandoned leases	2,324,892
Subtotal	8,922,988
Administration and general expenses applicable to exploration operations[1]	1,619,547
Total	$10,542,535

[1] Identified on Exhibit 44–A, Schedule 1, as Geological, Geophysical and Land and Lease Expenses.

UNION PRODUCING COMPANY

COST OF SYSTEM GAS

COMPARATIVE SUMMARY

	Union exhibit 44-A		Staff exhibit 51		Philadelphia intervener's exhibit 33		Examiner		Phillips Petroleum Corp. Commission's decision—9/28/60		Phillips Petroleum Corp. Commission's decision—9/28/60	
	System cost for gas	Unit cost	System cost for gas	Unit cost	System cost for gas	Unit cost	System cost for gas	Unit cost	System cost for gas	Unit cost	Jurisdictional cost for gas	Unit cost
Production costs:		*Cents*		*Cents*		*Cents*		*Cents*		*Cents*		*Cents*
Direct expenses	[1] [3] $11,878,635	4.964	$4,951,512	2.475	$4,145,419	2.074	$4,145,419	2.073	$5,052,058	1.345	$3,063,021	0.6230
Indirect expenses			1,382,061	.692	2,287,830	1.144	1,843,787	.922	4,333,089	1.153	2,627,038	.5349
Return on production net investment	(11%) 7,540,749	3.151	(6.5%) 2,595,310	1.298	(11%) 4,139,769	2.070	(6.5%) 2,448,140	1.224	(11%) 10,010,891	2.665	(11%) 6,069,335	1.2356
Subtotal	19,419,384	8.115	8,928,883	4.465	10,573,018	5.288	8,437,346	4.219	19,396,038	5.163	11,759,394	2.3941
Exploration costs:											7,936,703	1.6158
Exploration expenses	[2] 158,138 4,940,232	.066 2.064	4,388,236	2.195	3,307,822	1.654	5,184,713	2.593	13,090,967	3.484		
Return on exploration net investment	(11%) [2] 49,608 1,549,769	.020 .648	(6.5%) 974,874	.487	(11%) 2,026,173	1.013	(6.5%) 981,345	.491	(11%) 2,968,908	.796	(11%) 1,812,095	.3690
Subtotal	6,697,747	2.798	5,363,110	2.682	5,333,995	2.667	6,166,058	3.084	16,079,875	4.280	9,748,798	1.9848
Production, severance, and gas gathering taxes	2,521,200	1.053	2,521,200	1.261	2,521,200	1.261	2,521,200	1.261	2,448,465	.652	1,484,347	.3022
Purchase gas											17,661,599	3.5958
Gathering systems, gasoline facilities, residual systems											(11%) 3,625,826 8,327,298	.7382 1.6953
Raw gas sales											1,518,054	.3091
Regulatory commission expense											400,000	.0814
Total cost of service	28,638,331	11.966	16,813,193	8.408	18,428,213	9.216	17,124,604	[4]8.564	37,924,378	10.095	54,525,316	11.1009
System Total Sales Volume—Mcf at 14.9# (8/8)	239,338,077		199,962,477		199.962,477		199,962,477		375,690,912		491,178,953	
System Production Volume—Mcf (net interest 7/8)												
Jurisdictional Sales Volume—Mcf												

---

[1] Includes $446,022 relative to casinghead gas allocated to Gas out of total of $487,669 allocated to Gas and Gas-Liquids from joint oil cost (Exhibit 44-A, Schedule 7).

[2] Exploration and Development costs allocated to casinghead gas (Exhibit 44-A, Schedules 5 and 7).

[3] Direct expenses includes Royalties of $4,367,720 allocated to Gas, out of total Royalties of $6,136,111. Staff and Examiner's costs do not include Royalties, while Philadelphia Interveners shows only $22,500 of Royalty expense.

[4] See Appendix 4, Col. 4, for calculation of 8.652¢ per Mcf as the unit cost to produce jurisdictional gas.

NOTE: Union's test year 1958; Phillips, 1954. Exhibits 44-A, 51 and 33 are cost presentations of Union's System Costs for gas adapted to the Commission's Decision in Phillips 9/28/60.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-118

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 9, 1964)

On November 22, 1963, as supplemented on December 13, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-118 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of the following natural gas facilities:

(a) A 2" tap valve at approximate Milepost 58.8 on Applicant's 10" Bogalusa line, located in Section 52, Township 1 South, Range 14 East, Washington Parish, Louisiana;

(b) A 2" tap valve at approximate Milepost 63.9 on Applicant's 10" Bogalusa line, located in Section 47, Township 2 South, Range 14 East, Washington Parish, Louisiana; and

(c) A 2" tap valve at approximate Milepost 66.3 on Applicant's 10" Bogalusa line, located in Section 24, Township 2 South, Range 13 East, Washington Parish, Louisiana;

together with the leasing of certain meters from the purchaser, all as more fully set forth in the application.

Applicant states that the facilities will be used for the sale and delivery of natural gas to Gas Utility District No. 1 of the Parish of Washington, State of Louisiana, for resale and distribution through the proposed distribution system of said Utility District located in Washington Parish, Louisiana, as described in the application herein. This proposal will make natural gas available to residents in the area for the first time.

The facilities for which a certificate is sought will cost $1,700, which will be financed for current working funds.

During the first year of operation Applicant will sell and deliver to Gas Utility District No. 1 of the Parish of Washington, State of Louisiana, approximately 23,050 Mcf.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The above finding with respect to jurisdiction is subject to the Commission's final determination on the petition for rehearing now pending in United Gas Pipe Line Company Docket No. CP62-161.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate facilities as hereinbefore described, all as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operations, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G-10029; PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G-10038; EL PASO NATURAL GAS COMPANY, DOCKET NO. G-10088

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1964)

On October 15, 1963 and on November 5, 1963, El Paso Natural Gas Company (El Paso) and Colorado Interstate Gas Company (Colorado Interstate), respectively, filed petitions to amend the order, as amended, issued on September 5, 1956, in the above designated consolidated Docket Nos. G-10029, G-10038 and G-10088. Said order authorized the sale of natural gas on an exchange basis between El Paso and Colorado Interstate and the transportation of such gas between these parties by Pacific Northwest Pipeline Corporation (Pacific) (now El Paso Natural Gas Company), all for a term ending December 31, 1963.

Petitioners state that intervening circumstances have precluded the return by El Paso to Colorado Interstate of 30,622,395 Mcf of such gas and therefore a period extending from September 1, 1964, to December 31, 1968, is requested to allow for the payback.

El Paso Natural Gas Company has filed revised tariff sheets as follows: Rate Schedule X-4 to El Paso's FPC Gas Tariff, Third Revised Volume No. 2: Third Revised Sheet No. 3, Second Revised Sheet No. 4, First Revised Sheet Nos. 5 through 9, and Original Sheet No. 9-A. Rate Schedule X-5 to CIG's FPC Gas Tariff, Second Revised Volume No. 2: First Revised Sheet Nos. 4 through 11 and Original Sheet No. 11-A. These said revised tariff sheets establish appropriate charges under which natural gas will be returned by El Paso Natural Gas Company to Colorado Interstate Gas Company.

Due notice of the filing of the petitions to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 11, 1963 (28 F.R. 13417). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the said revised tariff sheets filed by petitioners herein be accepted and that the Commission's order issued September 5, 1956, in Docket Nos. G-10029, G-10038 and G-10088 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued September 5, 1956, in Docket Nos. G-10029, G-10038 and G-10088 be and the same is hereby amended by authorizing El Paso Natural Gas Company and Colorado Interstate Gas Company to exchange natural gas during the period from September 1, 1964, to and including December 31, 1968.

(B) The revised tariff sheets hereinbefore described are hereby accepted and shall become effective as of the date on which this order is issued.

(C) In all other respects said order of September 5, 1956, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HUNT OIL COMPANY, DOCKET NO. G-14082

ORDER TERMINATING PROCEEDING

(Issued January 10, 1964)

On August 27, 1963, Hunt Oil Company (Hunt) filed a motion requesting that the above-designated rate suspension proceeding be terminated. This proceeding involves the jurisdictional sale of natural gas by Hunt, under its FPC Gas Rate Schedule No. 33, to El Paso Natural Gas Company (El Paso) from the Amacker-Tippett field, Upton County, Texas (Texas Railroad Commission District No. 8).

On November 29, 1957, Hunt tendered for filing a notice of change in its FPC Gas Rate Schedule No. 33. The proposed periodic rate increase, from 9.5¢ per Mcf to 10.5¢ per Mcf at 14.65 psia, plus tax reimbursement, designated as Supplement No. 3 to Hunt's FPC Gas Rate Schedule No. 33, was suspended and later became effective subject to refund on June 1, 1938.

On April 25, 1958, the proceeding in Docket No. G-14082 was consolidated with the *Hunt* proceedings in Docket No. G-9065, *et al.* A hearing was held and an examiner's decision issued on October 2, 1961. In Opinion No. 365[1] the Commission remanded the proceeding in Docket No. G–14082 to the examiner for further hearing. On July 16, 1963, the Commission issued an order approving a settlement of the proceedings involved in Opinion No. 365, but excluding the proceeding in Docket No. G–14082, *inter alia*, because the sale involved there is made in the Permian Basin area. However, the proceeding was not consolidated in Docket No. AR61–1.

---

[1] Opinion No. 365, *Hunt Oil Company, et al.,* Docket No. G-9065, *et al.,* issued October 17, 1962, 28 FPC 623.

In support of its motion, Hunt states that the increased rate involved in this proceeding is below the area price level of 11.0¢ per Mcf at 14.65 psia, for increased rates, announced in the Commission's Statement of General Policy No. 61–1.[2] No protests have been filed with respect to the instant motion.

Since Hunt's increased rate does not exceed the area price level announced in the Statement of General Policy, the rate suspension proceeding in Docket No. G–14082 should be terminated.

The Commission finds:

For the reason set forth above, it is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the proceeding in Docket No. G–14082 be terminated and that Hunt's refund obligation with respect thereto be discharged.

The Commission orders:

The proceeding in Docket No. G–14082 is hereby terminated effective as of the date of issuance of this order, and Hunt's refund obligation with respect thereto is hereby discharged.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MC ALESTER FUEL COMPANY, DOCKET NO. RI62–300

ORDER DENYING MOTION TO TERMINATE PROCEEDING

(Issued January 10, 1964)

McAlester Fuel Company (McAlester) on December 2, 1963, filed a motion requesting that the increased rate of 14.475¢ per Mcf, suspended and thereafter made effective subject to refund on August 6, 1962, in the above-entitled proceeding, be accepted and that its refund obligation in Docket No. RI62–300 be discharged. The increased rate, designated as Supplement No. 6 to McAlester's FPC Gas Rate Schedule No. 3, relates to the jurisdictional sale of natural gas to Texas Eastern Transmission Corporation in Fort Lynn Field, Miller County, Arkansas.

In support of its motion, McAlester states (1) the increase in rate relates solely to tax reimbursement; (2) the total collection from August 6, 1962 to November 1, 1963, as a result of the rate increase amounts to only $166.79; (3) the subject contract contains no indefinite pricing provisions; and (4) the Commission accepted by letter order issued October 19, 1961, the underlying increased rate of 14.3¢ per Mcf for the same sale.

In determining whether to accept or suspend a proposed increased rate the fact that the increased revenues would be small or that the rate increase relates solely to tax reimbursement is not controlling. Nor does the previous acceptance of the underlying increased rate in any way limit the exercise of our discretion under Section 4(e) of the Act to suspend a proposed higher increased rate. Moreover, when a contract does not contain indefinite escalation provisions, a proposed increased rate relating thereto would not come within the increased rate ceilings set forth in the Second and Seventh Amendments to the Statement of General Policy No. 61-1 for cases in which indefinite pricing provisions are eliminated from the contract.[1] In view of the foregoing, we conclude that McAlester's motion to terminate the suspension proceeding should be denied.

---

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

The Commission finds:

McAlester's motion to terminate the above-entitled proceeding filed on December 2, 1963, should be denied.

The Commission orders:

McAlester's motion to terminate the above-entitled proceeding filed on December 2, 1963, is hereby denied.

---

[1] *Sunray Mid-Continent Oil Company,* Docket No. RI62-196, order issued January 19, 1962, 27 FPC 94.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SUNRAY DX OIL COMPANY, ET AL., DOCKET NO. G-4281, ET AL.

ORDER REMANDING MOTION TO PRESIDING EXAMINER FOR APPROPRIATE ACTION

(Issued January 10, 1964)

On November 4, 1963, The People of the State of California and the Public Utilities Commission of the State of California (California) field a motion requesting that the Commission issue an order requiring that the producers and pipeline companies named as parties to these proceedings[1] make available certain information relating to extraction plant operations in which hydrocarbons are removed from the natural gas subject to these proceedings.

In Appendix A to its order of May 28, 1963, initiating these proceedings, the Commission specified that certain information be made available by those pipeline companies designated as parties to these proceedings. The information required by the Commission was designed to indicate the extent to which the BTU level of the gas stream is affected as a result of the removal of hydrocarbons from the natural gas subject to these proceedings. Appendix A also required that those pipeline companies supply information that was intended to portray the extent to which compensation was afforded to producers in order to reimburse them for furnishing their pipeline purchasers with a higher BTU content natural gas.

The additional information requested by California can be placed into two categories: (1) That information which is similar in nature to that required by Appendix A because it also reflects the nature and Btu level of the gas stream and the extent to which it is affected by extraction operations; and (2) that which is directed toward the obtaining of cost data with respect to the operation of extraction plants.

We clearly did not intend to limit the evidentiary scope of these proceedings by either Appendix A to our order of May 28, 1963, or the fact that certain section 7 certificate proceedings have been consolidated with these proceedings.

---

[1] See those parties listed in the caption of the Commission's Order dated May 28, 1963, initiating these proceedings relating to the propriety and necessity of BTU provisions in producer contracts.

These proceedings initiated an investigation under section 14 of the Natural Gas Act and are not to be limited by the fact that certificate applications under section 7 are consolidated therein. On the contrary, our order initiating these proceedings provided that the parties might be required to provide additional information on subsequent occasions.

While we agree with California that some or all of the data requested reflecting the effects of extraction on the nature of the gas stream[3] may be relevant, we do not believe this is true with respect to the producer extraction plant costs. It may well be that the producers can profit more from extracting liquid hydrocarbons, not required to meet minimum pipeline standards, than if we were to allow them extra compensation for high BTU gas geared to its value to the pipeline and its customers. Even if this is the case it would not justify allowing the producers a higher price for the extra BTUs than they are worth to the pipeline in order to induce its retention in the gas stream. We shall therefore remand this matter to the Presiding Examiner in order that he may take appropriate action on all requests other than those for producer extraction plant costs.

The Commission orders:

The above-mentioned motion filed by the People of the State of California and the Public Utilities Commission of the State of California be and hereby is remanded to the Presiding Examiner in order that he may take appropriate action thereon consistent with this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY

ORDER APPROVING HEADWATER BENEFITS AGREEMENT

(Issued January 10, 1964)

The Wisconsin Michigan Power Company (Company), subsidiary of the Wisconsin Electric Power Company, requested on August 15, 1963 that the Commission approve under section 13.1 of the Regulations under the Federal Power Act in lieu of a determination under section 10(f) of the Federal Power Act four agreements to compensate the Company for headwater benefits received at the downstream hydroelectric projects of the Kimberly-Clark Corporation, Wisconsin Public Service Corporation, Menominee Company (which is a wholly-owned subsidiary of the Marinette Paper Company), and City of Norway, Michigan, from the Company's *Way Dam* project, Project No. 1759, on the Michigamme River, Michigan, a tributary of the Menominee River.

The contracts provide that the Company's annual "fixed charges" and "operating expenses" upon the Way Dam project be borne by the above-named owners of downstream projects in proportion of each owner's operating head to total operating head, including that of the Company's various projects. The "fixed charges" under the contracts consist of taxes actually paid plus 7.5 percent of the Company's investment to cover sinking-fund depreciation and interest. "Operating expenses" are the costs of maintenance, operation, and repair.

---

[3] Information of this nature requested by California would certainly serve to augment and supplement the information that the Commission required in Appendix A.

Total payments through 1962 made by the owners of downstream projects and their predecessors are as follows:

Kimberly-Clark Corporation (Since 1941)	$167,009
Wisconsin Public Service Corporation (Since 1941)	69,140
Marinette Paper Company (Since 1941)	62,383
City of Norway (Since 1947)	43,160
Total	341,692

The Commission finds:

The agreements dated May 23, 1940 between the Wisconsin Michigan Power Company and (a) Kimberly-Clark Corporation, (b) Menominee and Marinette Light and Traction Company, predecessor of Wisconsin Public Service Corporation, and (c) Union Falls Power Company, assignor of its rights thereunder to Menominee Company, wholly-owned subsidiary of Marinette Paper Company, and the agreement dated April 3, 1947 and amended March 31, 1952 between the Wisconsin Michigan Power Company and (d) City of Norway, Michigan, establish an effective and reasonable method of compensating the Wisconsin Michigan Power Company for headwater benefits from its Way Dam project on the Michigamme River, Michigan.

The Commission orders:

The aforesaid agreements are approved under section 13.1 of the Regulations under the Federal Power Act and payments made thereunder shall be accepted in lieu of payments by the parties thereto made pursuant to a headwater benefits determination under section 10(f) of the Federal Power Act until further order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PLACER COUNTY WATER AGENCY, PROJECT NO. 2079

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued January 13, 1964)

On July 12, 1963, Placer County Water Agency, of Auburn, California, licensee for proposed Project No. 2079, filed application for Commission approval of certain Exhibits J, K, and L. The project affects lands of the United States within the Tahoe and Eldorado National Forests.

The licensee has made additional studies since the issuance of the license and has made modifications in the design of the project. The changes which are reflected in the exhibits would:

(1) Relocate Ralston Afterbay dam about 1,200 feet downstream on the Middle Fork of the American River and change the dam from a composite and earth-fill dam about 88 feet high with a crest length of 525 feet at elevation 1198 feet to a concrete gravity dam about 85 feet high with a crest 560 feet long at elevation 1189 feet; revise the length and diameter of the Oxbow tunnel from a 16-foot horseshoe tunnel 1320 feet long connecting to an 11-foot in diameter steel penstock extending about 100 feet to the Oxbow Powerhouse, to a 13¼-foot tunnel 403 feet long terminating at the penstock of 60-feet length; and make minor revisions in the Oxbow Powerhouse turbine setting and capacity; and

(2) Make other changes in the project boundaries primarily due to minor relocations of diversion dams on the North and South Forks of Long Canyon and realignment and minor relocations of tunnels and access roads.

The licensee has advised that further geologic studies and explorations revealed subsurface conditions that make desirable the proposed relocations, and that the proposed minor changes in the Oxbow Powerhouse turbine setting reflect the additional information furnished the licensee by turbine manufacturers.

The Department of Agriculture, in commenting on the application, advised that no special conditions for the adequate protection and utilization of National Forest land are deemed necessary, other than those already included in the license for the project.

The proposed changes result generally in improvements in the design of the project. No changes in the installed horsepower capacity of the project are herein involved. The Commission has reserved the right in the license to determine at a later date the amount of annual charges to recompense the United States for the use, occupancy, and enjoyment of its lands.

The Commission finds:

(1) Exhibit J, Sheets 1, 2, and 3 (FPC Nos. 2079-171, -172 and -173,), Exhibit K, Sheets, 1 17, 21, 24, 27, 28, 39, 40 and 41 (FPC Nos. 2079-174 through -182), and Exhibit L, Sheet 31A (FPC No. 2079-183)—all revised June 14, 1963—conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) Exhibit J, Sheets 1, 2, and 3 (FPC Nos. 2079-111, -112, and -113), Exhibit K, Sheets 1, 17, 21, 24, 27, 28, 39, 40 and 41 (FPC Nos. 2079-114, -124, -128 through -134), and Exhibit L, Sheet 31A (FPC No. 2079-156), which are now part of the license and which have been superseded, should be eliminated from the license for the project.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2079.

(B) The superseded exhibits described in finding (2) above are hereby eliminated from the license for the project.

OPINION NO. 415

POWER AUTHORITY OF THE STATE OF NEW YORK, PROJECT NO. 2000

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART EXEMPTIONS FROM PAYMENT OF ANNUAL CHARGES

(Issued January 13, 1964)*

Syllabus

1. Claim for total exemption from payment of annual charges on grounds that development is part of navigation project *rejected* as outside both spirit and letter of Section 10(e) exemption. P. 96.
2. Citing *Central Nebraska* Commission *denies* claim to total exemption based on contention that power was sold to public without profit. Pp. 96-97.

---

*Initial decision appears on p. 100. Application for rehearing rejected and denied on February 27, 1964, 31 FPC 467. Affirmed, *Power Authority of the State of New York* v. *F.P.C.*, 339 F. 2d 269 (CA2-1964); cert. denied, 381 U.S. 933 (1964).

3. Under authority of Section 10(e) of the Federal Power Act, Commission *grants* in part and *denies* in part exemption from payment of annual charges. P. 99.

Commissioner Ross *concurring* generally.

***Thomas F. Moore, Jr.* and *Lewis R. Bennett* for Power Authority of the State of New York.**

***Donald A. Sander* for Staff of the Federal Power Commission.**

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WOODWARD, *Commissioner:*

On July 15, 1953, Power Authority of the State of New York (the Authority) was issued a license by this Commission to construct certain hydroelectric works in the International Rapids section of the St. Lawrence River. Article 27 of that license provided for payment of annual charges in accordance with Section 10(e) of the Federal Power Act. In the proceeding the Authority seeks exemption from these annual charges for the period from July 17, 1958, through December 31, 1961. The presiding examiner allowed partial exemptions totaling $9,621.70, but decided that the balance of $114,232.50 was due and payable. The Authority has duly excepted to the examiner's decision and contends that it is entitled to exemption from all annual charges for the period.

The Claim for Exemption as Part of a Navigation Project

The Authority is an independent agency of the State of New York empowered by statute of that State to develop certain hydroelectric resources, including those of the St. Lawrence River. It is a "municipality" within the meaning of the Federal Power Act.[1] Section 10(e) of the Act exempts from annual charges "projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation." Although the Authority has been required by the terms of its license to make provision for navigation, the primary purpose of the project works constructed by the Authority was to provide hydroelectric power. This is clear from the original application for license, and the Authority does not dispute it. The Authority contends, however, that the "project" is not merely the works constructed by it under the license. It urges that the "project" is the complete development of the International Rapids section of the St. Lawrence River, of which development the Authority's works are but a part, and argues that this greater "project" was primarily designed to provide or improve navigation.

The original concept, when the license was issued in 1953, was that the power and navigation aspects of the seaway would be constructed by four agencies. The Authority was to construct the power works on the American side of the river. Its Canadian counterpart, The Hydro-Electric Power Commission of Ontario, was to construct the power works on the Canadian side. Agencies of the United States Government and the Canadian Government were to construct additional facilities solely concerned with navigation.

At the time of the application for the original license, it appears that all parties concerned regarded the Authority's works as a project in themselves or as part of a hydroelectric project constructed partly by the Authority and

---

[1] **Section 3(7) of the Act defines a "municipality" as "a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;"**

partly by The Hydro-Electric Power Commission of Ontario. The Authority's application for license stated:

> 6. The *project* covered by this application is conceived to develop the International Rapids Section of the St. Lawrence River for the purpose of producing and transmitting hydroelectric energy to meet present and future requirements of the region within economic transmission distance of the project. [Emphasis supplied.]

On August 15, 1953, Congress enacted an amendment to the Federal Power Act which made special reference to "any license issued for a hydroelectric development in the International Rapids Section of the St. Lawrence River." (67 Stat. 587, this portion repealed July 31, 1959, 73 Stat. 271.) Congress clearly had in mind the license to the Authority. (*Lake Ontario Land Development & Beach Protective Ass'n* v. *F.P.C.*, 212 F. 2d 227, 232 (CADC, 1954).)

The record on the original application for license makes it clear that the Authority fully intended to have the hydroelectric works in operation, to provide needed power, long before the navigation facilities of the St. Lawrence Seaway were completed. The hydroelectric works were intended to be a complete and operating unit in themselves. These works thus qualify as a "project" within the meaning of the Federal Power Act.[3]

Examination of the legislative history of the exemption for navigation projects is enlightening. As originally presented to Congress, the Federal Power Act contained no such language. The exemption was inserted to deal with a specific situation. The State of Illinois proposed to spend $20 million to deepen the Illinois River for 65 miles from Lockport to La Salle. This would open to navigation a part of a navigable waterway which had not been previously navigable as a practical matter, and thus provide the first practicable navigation from the Great Lakes to the Gulf. The City of Chicago, through its sanitary district, had already constructed a canal 200 feet wide and 20 feet deep connecting Lake Michigan with the Illinois River at Lockport. Both these projects were designed to provide navigation, and the power potential created by them was stated to be merely incidental. Representative Dennison summed up the exemption (58 Cong. Rec. 2132):

> The exception is this, that where there is no navigable stream and where the State at its own expense makes one for the benefit of the public, and incidental to providing a navigable stream, develops the power, the State ought to have the right free to use that power to finance the project.

Examination of the record leaves no doubt that this was an accurate summation of the legislative purpose (58 Cong. Rec. 1933–4, 1937–8, 2131–3).

In the case before us, Power Authority of the State of New York was concerned first and foremost with hydroelectric power. Any benefit to navigation was incidental to the development of power, or arose from requirements imposed upon the Authority by this Commission and the International Joint Commission as conditions of it being allowed to proceed to its primary goal—development of hydroelectric power. The circumstances of the case for which the statutory exemption was designed were entirely different. There, it was the purpose of the State of Illinois and the purpose of the municipality of Chicago to provide navigation, and the project works constructed or to be constructed by each were primarily designed to that end.

---

[3] Section 3(11) of the Act provides: "'project' means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;"

Also, in that case all the facilities necessary to navigation were constructed or to be constructed by the State of Illinois and the municipality of Chicago. The exemption drawn with this in mind was granted only to projects "constructed by States or municipalities." In the case before us, the various parts of the seaway were constructed by an agency of the United States Government, an agency of the Canadian Government, an agency of a Canadian province, and the Authority. The Authority is the only one which qualifies as a State or municipality.[3] If we accept (which we do not) the Authority's contention that the entire seaway is the "project," the exemption would still not apply, since the greater part of the seaway was not constructed by States or municipalities.

In view of the foregoing, we think it clear that the Authority is outside both the spirit and the letter of this exemption.

The Claim for Exemption for Power Sold to the Public Without Profit

The Authority claims total exemption from charges on an additional ground. Section 10(e) of the Act provides that States or municipalities shall be exempt to the extent that power "is sold to the public without profit." It has long been established that whether power was or was not sold at a profit is determined by whether revenues exceed costs, and the determination is made on the basis of the figures for each individual year. (*Matter of The Central Nebraska Public Power and Irrigation Dist.*, 5 FPC 165 (1946), aff'd *Central Nebraska Pub. P. & I. Dist.* v. *F.P.C.*, 160 F. 2d 782 (CA8, 1947).[4] Regulations under the Federal Power Act, Section 11.24(d)(2). Reserves for contingencies, reserves for new construction, accumulation of funds for working capital and amortization of principal indebtedness are not "costs" for the purpose of determining whether revenues exceed costs.

The Authority concedes that it operates at a profit if "profit" be defined as an excess of revenues over costs. The record indicates that the Authority operates at a very substantial profit indeed. Its annual report for 1960 showed net income in the amount of $13,184,174, consisting of $1,719,763 in the Construction Fund, $10,490,616 in the General Fund, and $973,795 in the Operating Fund. In 1961 each of these three funds showed increases. The Authority's general revenue bond resolution required a coverage ratio of 1.4 to 1. The engineer who designed its rates testified that these rates were intended to produce revenues 20 percent greater than costs, the excess being a margin for contingencies. Reserves have been provided for new construction, together with an accumulation of funds for working capital. The amount allotted to amortization of principal indebtedness has been far in excess of any proper annual allowance for depreciation.

---

[3] "Municipality" is defined in Section 3(7) of the Federal Power Act as a subdivision or agency of a State; a State is defined in Section 3(6) of the Act as "a State admitted to the Union, the District of Columbia, and any organized Territory of the United States." The Federal Government, Canadian Government, and the Province of Ontario are not States within this definition.

[4] At page 785, the court said: "The practice of the Commission has always been to allow exemptions from annual charges only to those State and municipal licensees whose annual accountings disclose no net balance of receipts over costs for the period. It has made no distinction in accounting requirements between the municipal licensees like the District whose gains from operation inure ultimately to the public benefit, and others, and its position has been and is, that it is the intent of the Act to require annual charges from all licensees whose sales of electrical power result in an excess of receipts over costs during the annual period as shown by the accountings. It denies any controlling effect in considering exemption to municipal licensees to their ultimate application of the profits from sales of power to the public benefit."

In the absence of a showing of the necessary facts, the Authority falls back upon a purely legal argument and urges that by its very nature it is a nonprofit organization and as such is entitled to exemption.[8] It recognizes that this contention is contrary to the prior decision of the Commission in *Matter of Central Nebraska Public Power and Irrigation Dist., supra,* to the Court of Appeals' decision affirming that case, and to Section 11.24(d)(2) of the Regulations under the Federal Power Act. The Authority asks that we repudiate our prior decision and the action of the court in affirming it, and that we declare Section 11.24(d)(2) of the Regulations to be invalid.

Matter of Central Nebraska Public Power and Irrigation Dist., supra, was not an isolated case. Previously, there was "a line of Commission decisions in which we have consistently held that the earning by a State or municipality licensee of annual revenue in excess of operating expenses and fixed charges, was enough to subject such licensee to the same license charges as would be assessed against a private corporation operated for profit." *Matter of Central Nebraska Public Power and Irrigation Dist., supra,* dissenting opinion of Chairman Olds at p. 172.) The present Section 11.24(d)(2) of the Regulations was derived from a prior section (11.24(a)(2)) dating back to 1938. The Commission's interpretation of the statutory exemption, publicly proclaimed in decisions and regulations, has been allowed to stand by Congress for over 25 years. It has been upheld in litigation, and has not been seriously challenged since 1947. We are not prepared to repudiate precedents so well established. The Authority's claim to total exemption upon this ground must be denied.

Further, it is not enough for the licensee to show that the licensee itself made no profit. Section 11.24(e) of this Commission's Regulations under the Federal Power Act provides that, even though a municipality itself make no profit,

> . . . it shall be subject to the payment of annual charges to the extent that electric power generated, transmitted, or distributed by the project is sold to another State, municipality, person, or corporation for resale, unless the licensee shall show that the power was sold to the ultimate consumer without profit. The matter of whether or not a profit was made is a question of fact to be established by the licensee.

In *The Central Nebraska Public Power and Irrigation District, supra,* this Commission said, at page 171:

> . . . Even if District had shown that it has not earned a net income or profit each year, we would not be authorized to allow the present claims for exemption on its sales for resale without a showing that the power was resold to the consuming public without profit . . . .

This principle is not contested in the case before us. The burden of proof is upon the Authority to introduce evidence which would show that sales to the ultimate consumer were made without profit. This burden, except to the extent exemption was allowed by the examiner, the Authority has failed to discharge.

The Exclusion of Evidence

Exception was taken by the Authority to the exclusion of certain statements purportedly relating to New York State Electric and Gas Corporation. This exception was apparently abandoned, as the Authority's brief did not mention it. The examiner said (p. 121):

---

[8] In support of this the Authority cites *Merritt-Chapman & Scott Corp.* v. *Public Utility District No. 2,* 319 F. 2d 94 (CA2, 1963.) We do not find the citation in point. The holding in that case was that a levy under an attachment in a quasi-in-rem proceeding against an out-of-state government agency will be permitted to stand unless it will substantially interfere with the performance of the agency's public duties. The case had nothing to do with the Federal Power Act, and the dicta as to the absence of business-type profit have no relevance.

> . . . no one was presented on behalf of the Authority nor of Electric and Gas who had participated in the preparation of such statements or who could assume responsibility in connection with the preparation thereof. They were, therefore, considered as having no probative value and were excluded.

We agree with this statement of the examiner.

Payment of Charges

The Authority has paid under protest the charges specified in Paragraphs (A) through (E) of the presiding examiner's proposed order. Consequently, Paragraph (G) of that order, providing for payment, should be deleted.

The Commission further finds:

(1) Power Authority of the State of New York (Authority or Licensee) is a "municipality" as defined in Section 3(7) of the Federal Power Act and within the meaning of Section 10(e) thereof.

(2) The Licensee is the holder of a license issued by this Commission on July 15, 1953, for project works designated as Project No. 2000, since erected on the United States' side of the United States-Canadian Border in the International Rapids section of the St. Lawrence River.

(3) As a Licensee pursuant to the Federal Power Act, the provisions of the license above described and the Commission's regulations thereunder, the Authority is subject to, unless otherwise exempt from, the payment of annual charges for the purpose of reimbursing the United States for the costs of administration of the Act.

(4) Licensee has failed to show that Project No. 2000 was primarily designed to provide or improve navigation.

(5) Project No. 2000 was primarily designed for the development of power on the United States' side of the St. Lawrence River.

(6) Licensee has failed to show that Project No. 2000 was a part of any project constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation.

(7) Project No. 2000 went into commercial operation on August 1, 1959.

(8) For the period July 17, 1958, through December 31, 1958, 0.0665 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(9) For the period July 17, 1958, through December 31, 1958, 21.4633 percent of the power available from Project No. 2000 was sold to general consumers and construction contractors without profit.

(10) For the period July 17, 1958, through December 31, 1958, the Licensee sold for resale 78.4702 percent of the power available from Project No. 2000, but the Licensee has wholly failed to show that this power was resold by its wholesale customers without profit.

(11) For the period January 1, 1959, through July 31, 1959, 0.0834 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(12) For the period January 1, 1959, through July 31, 1959, 29.1263 percent of the power available from Project No. 2000 was sold to general customers and construction contractors without profit.

(13) For the period January 1, 1959, through July 31, 1959, the Licensee sold for resale 70.7903 percent of the power available from Project No. 2000, but the

Licensee has not shown that this power was resold by its wholesale customers without profit.

(14) For the period August 1, 1959, through December 31, 1959, 0.1176 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(15) For the period August 1, 1959, through December 31, 1959, the Licensee sold 99.8824 percent of the power available from Project No. 2000, but the Licensee has failed to show that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

(16) For the year 1960, 0.0935 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(17) For the year 1960, the Licensee sold 99.9065 percent of the power available from Project No. 2000, but the Licensee has not shown that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

(18) For the year 1961, 0.0891 per cent of the power available from Project No. 2000 was used for State or municipal purposes.

(19) For the year 1961, the Licensee sold 99.9109 percent of the power available from Project No. 2000, but the Licensee has not shown that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

The Commission orders:

(A) The Licensee is exempted from the payment of annual charges for which it was billed for the period from July 17, 1958, through December 31, 1958, to the extent of 21.5298 percent, or $2,623.66, leaving a balance now due of $9,562.54 for that period.

(B) The Licensee is exempted from the payment of annual charges for which it was billed for the period from January 1, 1959, through July 31, 1959, to the extent of 29.2097 percent, or $6,913.16, leaving a balance now owing of $16,754.17 for the period.

(C) The Licensee is exempted from the payment of annual charges for which it was billed for the period from August 1, 1959, through December 31, 1959, to the extent of 0.1176 percent, or $20.09, leaving a balance of $17,060.58 for the period.

(D) The Licensee is exempted from the payment of annual charges for which it was billed for the year 1960 to the extent of 0.0935 percent, or $34.00, leaving a balance of $36,330.00 for the period.

(E) The Licensee is exempted from the payment of annual charges for which it was billed for the year 1961 to the extent of 0.0891 percent, or $30.79, leaving a balance of $34,525.21 for the period.

(F) Except to the extent exempted, as set out in paragraphs (A) through (E), Licensee's applications for exemption from the payment of annual charges for the several periods from July 17, 1959, through December 31, 1961, are denied.

(G) The exceptions to the initial decision of the presiding examiner are hereby denied.

Commissioner Ross *concurs* generally with the opinion except that portion which finds that the development of the International Rapids section of the St. Lawrence River can be separated into two projects, one navigation, and the other power. However, since the greater part of the Seaway was not constructed by the Authority, Commissioner Ross believes that an exemption to the Authority would be inconsistent with the legislative purpose of Section 10(e) of the Federal Power Act.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR EXEMPTION FROM ANNUAL CHARGES

(Issued July 18, 1963)

MARSH, *Presiding Examiner:* This proceeding is upon the several applications filed at various times by the Power Authority of the State of New York (Authority or Licensee) for exemption from the payment of annual charges levied by the Commission on Project No. 2000 pursuant to the provisions of Article 27 of the license for that project, Section 10(e) of the Federal Power Act and the Regulations of the Commission thereunder. The pertinent provisions of the Act are set out in the margin hereof.*

As will more particularly hereinafter appear, the Commission on July 15, 1953 (Opinion No. 255, 12 FPC 172) issued to the Authority a license for Project No. 2000 which contained, among other things, the provision, Article 27, for the payment of annual charges.

By an order issued on August 3, 1959, the Commission, acting upon the first of such applications, filed on April 30, 1959, found the Applicant *exempt* from the payment of annual charges for the period July 17, 1958, through December 31, 1958, to the extent of 21.5298 percent of such charges, or $8,191.83. That determination, however, left a *balance payable* of $29,856.98. On September 2, 1959, the Authority filed an application for rehearing on the Commission's order of August 3, 1959, claiming, among other things, that the development is primarily designed to provide or improve navigation and that all of the power which it produced was sold without profit. The Commission granted this request for a rehearing on September 24, 1959. Thereafter, on March 3, 1961, April 28, 1961, and June 21, 1962, the Authority filed applications predicated upon the same grounds for total exemption from annual payment for the years 1959, 1960 and 1961 respectively.

In its order of August 3, 1959, the Commission considered and disposed of each of the bases upon which the Authority in the application of April 30, 1959, had sought exemption. The application for rehearing filed on September 2, 1959, alleged that in the issuance of its order of August 3, 1959, the Commission failed to afford the Applicant an opportunity to produce evidence in support of its request for exemption from payment of annual charges. The Commission's order of September 24, 1959, granting rehearing was intended to afford the Authority an opportunity to present any such evidence.

Pursuant to the Commission's order, a public hearing was convened on November 14, 1962. Although the Commission's order setting the matter for hearing had included only the years 1958, 1959 and 1960, at the hearing it was agreed between the Applicant and the Staff of the Commission that the claim filed by the Applicant subsequent to the order setting the matter for hearing and related to the 1961 operations should be adjudicated in this proceeding also.

**Statutory provisions:*

Sec. 10. [as amended August 26, 1935] All licenses issued under this Part shall be on the following conditions:

(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; * * * *Provided further,* That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation licenses therefor shall be issued without charge; * * *.

At the hearing also the Authority was permitted to present such evidence in support of its applications as it saw fit. Thereafter, the Authority and the Staff of the Commission were afforded an opportunity to file briefs and briefs were submitted by each of them, the last of which was filed on May 7, 1963.

On May 17, 1963, the Authority filed with the Presiding Examiner a letter in which an opinion of the United States Court of Appeals for the Second Circuit, issued April 2, 1963 (*infra*, p. 116) was cited and discussed. Staff counsel was permitted an opportunity to reply to Authority's argument and such reply was filed on July 1, 1963. The matter is now ready for decision.

The Issues

In support of its several applications for exemption from the payment of annual charges, the Authority contends that,

(1) The "project" was primarily designed to provide or improve navigation,

(2) Project power was sold to the public without profit,

(3) During 1958, 1959 and part of 1960 the project was under construction,

(4) The Applicant is entitled to partial exemption from annual charges for the years 1958 to 1961 to the extent power was used for State or municipal purposes.

The Staff, on the other hand, contends that the project works were not primarily designed to provide or improve navigation, that power produced by the project works referred to as Project No. 2000 was sold to the public at profit, that power sold by the Authority for resale has not been shown to have been sold to the ultimate public without profit, and that the construction period under the license had ended by August 1, 1959, and no exemption under Section 11.24(g) was available to the Authority after that date.

The Applicant and Project No. 2000

The Power Authority of the State of New York is a corporate municipal instrumentality, a political subdivision, and public agency of the State of New York. It was created pursuant to the terms of the Power Authority Act of the State of New York, more particularly referred to hereinafter.

In its application for a license in Project No. 2000 filed with this Commission on July 16, 1948, the Authority recited that:

> The applicant is an independent agency of the State *created by law to develop the hydro-electric power resources of the St. Lawrence River*. No control or ownership is exercised by the applicant in any other organization or over applicant by any other organization. [Emphasis supplied.]

In that application the Authority proposed jointly with The Hydro-Electric Power Commission of Ontario (Ontario Hydro) to construct certain works in accordance with and conforming generally with the recommendations contained in an earlier joint report of committees named by the United States and of Canada. The Authority proposed to construct, and sought a license for, only such of the works described therein as would lie in the United States.

A supplement to the application was filed on September 23, 1948.

After a hearing before a Commission Hearing Examiner and the issuance by him of an initial decision in which he found that the application should not be approved but that the matter should be referred to Congress under the provision of Section 7(b) of the Federal Power Act, the Commission issued its Opinion No. 203. By that opinion the Commission referred the matter to Congress with the recommendation that the water resources of the St. Lawrence be developed not by the Authority but by the United States.

The Congress having in the meanwhile taken no action on the Commission's recommendation, the Authority on September 22, 1952, filed an amendment to its original application. Thereafter, hearings were held on the application as amended and on July 15, 1953, the Commission issued its Opinion No. 255 authorizing the construction, maintenance and operation of the project works authorization for which was sought. The license as then issued contained, among other provisions, the following:

> *Article 27.* The Licensee shall pay to the United States the following annual charges:
>
> For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed generator capacity (computed at 1,250,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made.

The license was accepted by the Power Authority on November 3, 1953.

Approval of certain exhibits having had the effect of reducing the computed generating capacity of Project No. 2000 from 1,250,000 horsepower to 1,216,000 horsepower the Commission by order issued January 14, 1957, amended the license to reflect that change.

On January 27, 1960, the Authority filed application for deletion from the license of Articles 14 and 15 relating to accounting and for the amendment of Article 27 as of July 1, 1958, in accordance with the Commission's Order No. 205 issued June 6, 1958. By order issued September 9, 1960, the Commission amended the Authority's license by eliminating therefrom Articles 14 and 15 and amending Article 27 to read as follows:

> *Article 27.* The Licensee shall pay to the United States the annual charges:
>
> For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's Regulations. * * * The authorized installed capacity for such purpose is 1,216,000 horsepower.

In the meantime the Authority had filed the applications for exemptions described above.

Discussion of the Authority's Contentions

Was the "Project" Primarily Designed to Provide or Improve Navigation?

Implementing the provisions of Section 10(e) of the Power Act, the Commission's Regulations under that Act provide that:

> Section 11.24. Exemption of State and municipal licensees.
>
> (a) *Bases for exemption.* A State or municipal licensee may claim total or partial exemption upon one or more of the following grounds:
>
> (1) The project was primarily designed to provide or improve navigation;
>
> * * * * * * *
>
> (b) *Projects primarily for navigation.* No State or municipal licensee shall be entitled to exemption from the payment of annual charges on the ground that the project was primarily designed to provide or improve navigation unless the licensee establishes that fact from the actual conditions under which the project was constructed and was operated during the calendar year for which the charge is made.

That the Authority is a municipal licensee within the meaning of these provisions is not questioned. We proceed then to Authority's contention that the project was primarily designed to provide or improve navigation.

But before doing so it may be desirable to arrive at an understanding of the term "primarily designed."

As defined in Webster's International Dictionary (Second Edition) "primarily" means: "In the first place; originally; preeminently; fundamentally; as, an action primarily based on policy."

"Fundamental" means, in turn, "of or pertaining to the foundation or basis; serving for the foundation."

Used intransitively, the verb "design" means "to plan; to intend; to proceed or start (for)."

Our purpose then is to determine the underlying or basic objective of the project.

At the outset of its argument on this issue the Authority asserts that "In order to determine whether the *St. Lawrence project* was designed primarily to improve or provide navigation or primarily to provide power the Commission must consider the entire *project* on both sides of the international boundary. This is true because the navigation and power phases on both sides of the boundary are physically interrelated to such an extent that one could not have been designed without regard to the others." (Emphasis supplied)

The argument continues: "Three entities in addition to the Authority were involved in construction of *the project:* the St. Lawrence Seaway Development Corporation, the St. Lawrence Seaway Authority (Canada) and The Hydro-Electric Power Commission (herein 'Ontario Hydro')." (Emphasis supplied)

The language here employed is both confused and confusing and raises a question as to what in the view of Authority is the "project" with which we are here concerned. It might, from this language, be construed to mean the entire Seaway Development, or at least the entire hydroelectric portion thereof. The words "St. Lawrence project" in the first sentence quoted above are defined in the Authority's General Bond Resolution (*infra* p. 113) as those portions located in the United States of America of "* * * structures and facilities to be constructed by the Authority either alone or jointly with the Hydro-Electric Power Commission of Ontario * * * pursuant to the Order of Approval, dated October 29, 1952, of the International Joint Commission, as from time to time amended: * * *" consisting of "(i) a concrete gravity dam (designated as Long Sault), * * * extending from the United States shore of the Saint Lawrence River in the vicinity of Massena, New York, to the upstream end of Barnhart Island, (ii) a concrete dam (designated as Iroquois), * * * located on the Saint Lawrence River at Point Rockway, * * * New York, (iii) a dam and powerhouse (designated Barnhart Island Powerhouse) with installation in the United States * * * of about 940,000 kilowatts in 16 units of equal size spanning the North channel of the Saint Lawrence River at the lower end of Barnhart Island, and * * * (iv) dikes, reservoirs, and appurtenant works and facilities, and all structures, fixtures, equipment, and facilities used or useful in the construction, maintenance or operation of the structures and facilities described in this definition and located on the project; including portable property as may be used or useful in connection with such structures or facilities or any portion thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the Saint Lawrence Project is approved or acquiesed in by the Federal Power Commission; * * *" together with all other improvements, buildings, structures, machinery, equipment, appurtenances of the Authority on or along the International Rapids Section of the Saint Lawrence River.

These are the project works for which the license for Project No. 2000 was issued and thus it seems clear that "the project" to which the Authority is directing this argument is indeed Project No. 2000. It becomes necessary then to determine what is meant by and the extent to which the St. Lawrence Seaway Development Corporation, the St. Lawrence Seaway Authority (Canada) and The Hydro-Electric Power Commission were "involved" in the construction of Project No. 2000. It thus becomes desirable to inquire into the basic purpose and objective of the Authority which in turn requires an understanding of the history of, and the events leading up to the construction and operation of, the project. There are in this record a large number of documents relevant to this question but it is thought necessary to refer to and quote from only a few.

An act of the legislature of the State of New York, approved March 29, 1930, declared the policy of the state in respect to its water power resources, provided for the appointment of a commission to devise and report a plan or plans for the development of hydroelectric power on the St. Lawrence River, and to effectuate such plan or plans when so reported and approved by the legislature. The commissioners were directed to study and consider the reports made by the International Joint Commission of the United States and Canada and the Federal Power Commission and any other available surveys or reports and confer with representatives of others then generating or distributing water or electric power within the state and those familiar with or interested in power sites and the development of power therefrom. The commissioners were required to report the results of such studies and investigations to the governor and legislature on or before January 15, 1931.

On the latter date the designated commissioners filed their findings and recommendations. They found it "entirely practicable to construct a dam in the St. Lawrence River in the International Rapids Section, and to *generate power in a manner which will permit meeting fully all requirements of navigation present and future.*" They found, too, that the development recommended by the advisory board promised to produce power at a cost which would make the project a sound one from an economic point of view.

The engineers employed by the commission estimated "the cost (to be shared equally between New York and Canada) will be $171,547,000 to construct all works necessary for power (a very large portion of which is likewise useful for improved navigation), to maintain navigation facilities without interruption, and so to arrange the work as to harmonize with and facilitate the execution of all contemplated plans for future navigational improvements in the International Rapids Section."

Under the plan one-half of the power produced would be available to Canada and one-half to New York. The report of the commission recited, among other things, that "Because of the regularity of the river's flow from season to season, the project can generate power to the plant's maximum firm capacity during practically the entire year. * * *"

As a result of the recommendations made in the foregoing report there was enacted by the legislature of the State of New York (approved April 27, 1931) the "Power Authority Act" which created the corporate municipal instrumentality of the state which is herein designated the "Authority." By that Act the Authority was authorized and directed to cooperate with the appropriate agencies and officials of the United States government to the end that any project undertaken under the authority of the Act should be consistent with and in aid of the plans of the United States for the improvement of commerce and navigation along the Niagara and St. Lawrence rivers and so planned and constructed as to be adaptable to the plans of the United States therefor, "so that the necessary channels, locks, canals, and other navigational facilities could be constructed and installed *by the United States in, through, and as a part of such project.*" [Emphasis supplied.]

The Authority was further authorized and directed, upon the completion of contracts for the sale, transmission and distribution of power produced at the project to proceed with the physical construction of the project including the erection of the necessary dams, powerhouses and other facilities, including transmission lines.

It seems quite apparent from a study of the foregoing documents that it was the policy and the basic purpose of the State of New York in the creation of the Authority and the construction and operation of the proposed project to develop the power resources of the St. Lawrence River situated and available on the New York side of the stream for the use and benefit of the people of that state. It is equally apparent that the committee and the legislature were aware that the state could not procure the authority necessary for that purpose without making provision for, and some contribution, perhaps, to the improvement and expansion of the navigational resources inherent in the stream.

There followed the passage of the Power Authority Act numerous surveys and reports on the methods and means by which the development of the International Rapids Section of the river could be accomplished. In 1940 engineers from the United States and Canada began consideration of the "controlled single stage project, 238-242" which, as we shall see, was the plan ultimately adopted and pursued. On July 16, 1948, as shown above, the Authority filed with this Commission an application for a license to authorize the construction, operation and maintenance of the project works described therein, all of which were to be situated in the State of New York. To that application there was attached the Power Authority Act above described (but with minor amendments) and a copy of an application, dated July 1, 1948, of the Authority to the International Joint Commission for an Order of Approval of joint construction of certain works to be located in the State of New York and the Province of Ontario by the Power Authority of the State of New York and The Hydro-Electric Power Commission of Ontario under the New York-Ontario Power Priority plan for development of the International Rapids Section of the St. Lawrence River. Among other things, the Authority stated in that application that:

> 5. The applicant, jointly with The Hydro-Electric Power Commission of Ontario, (a body corporate under and by virtue of The Power Commission Act, a Statute of the Province of Ontario) proposes to construct certain works in accordance with the project hereinafter described as the New York-Ontario Power Priority Plan for the development of the International Rapids Section of the St. Lawrence River. Under the plan the applicant will undertake to construct, pursuant to authority granted by the Federal Power Commission, those works provided for in the aforesaid plan which lie within the State of New York, on the United States side of the international boundary line, and The Hydro-Electric Power Commission of Ontario will undertake to construct those works which lie within the Province of Ontario, on the Canadian side of the international boundary. The power produced at the proposed project by the natural flow of the river will be divided equally between the applicant and The Hydro-Electric Power Commission of Ontario.
>
> 6. The project covered by this application is conceived to develop the International Rapids Section of the St. Lawrence River for the purpose of producing and transmitting hydro-electric energy to meet present and future requirements of the region within economic transmission distance of the project.

On September 28, 1951, the President of the United States and the Prime Minister of Canada discussed the St. Lawrence Development Project. They agreed on the vital importance to the security and the economies of both countries of proceeding as rapidly as possible with both the seaway and power phases of the project. The Prime Minister informed the President of the needs of Ontario for power and of the arrangement that the Canadian government could make with the government of that province for its participation with the appropriate federal or state authority in the United States for the power development. Thereafter, diplomatic notes were exchanged between the Canadian Ambassador and the Secretary of State of the United States. In a note from the Ambassador to the Secretary dated January 11, 1952, appears the following statement:

> The Canadian Parliament has recently passed legislation providing on the one hand for a power development on the St. Lawrence River to be undertaken by The Hydro-Electric Power Commission of Ontario and an appropriate agency of the United States, and on the other hand, for the establishment of the St. Lawrence Seaway Authority to construct the seaway either in cooperation with the United States, as provided for in the 1941 agreement, or as a solely Canadian undertaking.

On June 30, 1952, the governments of Canada and the United States filed complimentary but separate applications with the International Joint Commission for an order of approval of the construction, maintenance and operation of the power facilities referred to in the report dated January 3, 1941, of the Canadian Temporary Great Lakes-St. Lawrence Basin Committee and the United States St. Lawrence Advisory Committee.

In each of the applications last referred to approval was sought for the construction of works jointly by the Authority and Ontario-Hydro consisting of channel enlargements, control facilities, powerhouses, dikes, canals, revision of locks and the Long Sault dam. It was proposed as an essential part of the project that all main features including the Long Sault dam and Barnhart Island Powerhouse be so planned and built as to be *adaptable* to the *future* improvement of this reach of the river for *navigational* purposes as recommended in the joint report of January 3, 1941, of the United States-Canadian committees including the construction of the necessary works to permit continuance during and after completion of the project of 14-foot navigation on the Canadian side from the pool which would result from the Long Sault dam to the Cornwall canal.

The order issued by the International Joint Commission on November 19, 1952, authorizing the construction of the power works for which authorization had been sought stated that:

> Whereas the Government of Canada and the Government of the United States of America under date of June 30, 1952, have submitted applications to the International Joint Commission (hereinafter referred to as the "Commission") for its approval of the construction jointly by entities to be designated by the respective governments, *of certain works for the development of power* in the International Rapids section of the St. Lawrence River. . . . [Emphasis supplied.]
>
> * * * * * * *
>
> *Ordered*, That the construction, maintenance, and operation jointly by the Hydroelectric Power Commission of Ontario and an entity to be designated by the Government of the United States of America of certain works (hereinafter called "the works") in accordance with the "controlled single stage project (238–242)," which was part of the joint report dated January 3, 1941, of the Canadian Temporary Great Lakes-St. Lawrence Basin Committee and the United States St. Lawrence Advisory Committee, containing

> the features described in appendix A to this order and shown in appendix B to this order, be and the same are hereby approved subject to the conditions enumerated below, namely—
>
> (b) The works shall be so planned, located, constructed, maintained, and operated as not *to conflict with or restrain uses of the waters of the St. Lawrence River for purposes given preference over uses of water for power purposes* by the treaty, namely, uses for domestic and sanitary purposes and uses for navigation, including the service of canals for the purposes of navigation, and shall be so planned, located, constructed, maintained and operated as to give effect to the provisions of this order. [Emphasis supplied.]
>
> * * * * * * *
>
> (e) The hydroelectric plants approved by this order shall not be subjected to operating rules and procedures more rigorous than are necessary to comply with the provisions of the foregoing paragraphs (b), (c), and (d).

All of the studies conducted by and the negotiations between the United States and Canada respecting the use and improvement of the St. Lawrence River from the date of execution of the Boundary Waters Treaty of 1909, which created the International Joint Commission, culminated, so far as the United States was concerned, in the passage of what is commonly called the Wiley-Dondero Act of May 13, 1954. This act created the Saint Lawrence Development Corporation (Corporation). The "St. Lawrence Seaway Manual—A Compilation of Documents on the Great Lakes Seaway Project and Correlated Power Development" reflects the legislative history of the Act. It also contains numerous documents relating to the subject including those last above referred to.

The Corporation created thereby was authorized and directed by the Act to "construct, in United States territory, deep-water navigation works substantially in accordance with the 'Controlled single stage project, 238–242' * * * designated as 'works solely for navigation' in the joint report dated January 3, 1941, of the Canadian-Temporary Great Lakes-Saint Lawrence Basin Committee and the United States St. Lawrence Advisory Committee * * *."

The Corporation was directed to make necessary arrangements "to assure the coordination of its activities with those of the Saint Lawrence Seaway Authority of Canada and the entity designated by the State of New York, or other licensee of the Federal Power Commission authorized to construct and operate the dams and power works authorized by the International Joint Commission in its order of October 29, 1952. . . ."

This legislation contemplated and presupposed the construction of particular but specific phases of the Seaway Development by the four entities, two of the United States and two Canadian, all of which works were to be constructed, operated and maintained in accordance with the "controlled single stage project, 238–242." In fact, the Act specifically provided that the Corporation should not proceed with the construction which it was directed to perform unless and until the Canadian Authority provided assurance that it would complete the navigation facilities which it proposed to construct and until the Corporation had received assurances that the State of New York or other licensee of the Federal Power Commission, in conjunction with an appropriate agency of Canada, construct and complete the dams and power works approved by the International Joint Commission in its order of October 29, 1952. The *power project* was to include the facilities designated in the earlier studies and reports as "primarily for power" and "common to navigation and power." As distinguished from the navigation phase the *power development* was to be accomplished at the State-Provincial level, and not at the Federal level, but jointly by the Authority and Ontario-Hydro; and the Act provided for the construction by the United States of those works south of the international boundary which had been previously classified as "solely for navigation."

Concurrently with the passage of the Wiley-Dondero Act the Authority filed the amendment to its application heretofore mentioned the purpose of which was to bring that application into conformance with the Act and the "controlled single stage project, 238–242." In the latter document the Applicant asserted that:

> The Power Authority of the State of New York submits this amendment to its previously filed application for License to construct, operate and maintain a hydro-electric power project * * * all in accordance with the plan for development of power described in Section 8 of the applications of the Governments of the United States and Canada dated June 30, 1952 to the International Joint Commission for an Order of Approval of certain works in connection with the St. Lawrence Seaway and Power Project.
>
> The power development works applied for by the applicant as revised and supplemented by this amendment are similar to those proposed in the March 19, 1941 Agreement between the United States and Canada with the exception of the navigation features which are excluded. However, as stated in Section 2 of the applications of the Governments of the United States and Canada to the International Joint Commission, it is the intention of Canada to undertake construction, on the Canadian side of the International Boundary, of certain navigation works to provide a 27-foot waterway in the section of the St. Lawrence River in which the power works applied for herein by this Applicant are to be constructed * * * . By an exchange of notes between the two national governments dated June 30, 1952, Canada has agreed that when all arrangements have been made to ensure the completion of the power phase applied for herein, the Canadian government will construct locks and canals on the Canadian side of the International Boundary to provide deep-water navigation to the standards specified in the aforesaid agreement between the United States and Canada dated March 19, 1941, and in accordance with the specifications of the joint Board of Engineers dated November 16, 1926, and that such deep-water navigation shall be provided as nearly as possible concurrently with the completion of the power phase of the St. Lawrence development.

The amendment further recited that it was submitted to bring its license application "into conformance with the plans for the development of the International Rapids Section of the St. Lawrence River as proposed by the Government of the United States" in the exchange of diplomatic notes referred to above.

As Exhibit H to the amendment there appeared the statement that:

> Applicant's proposed power development will be designed, constructed, operated and maintained according to the conditions specified in Section 10 of the application of the Governments of the United States for an Order of Approval filed with the International Joint Commission, June 30, 1952.

We come now to the document, Opinion No. 255, issued July 15, 1953, which constitutes the Authority's authorization to construct and maintain the project works described in its application as supplemented and amended, and which stated the conditions under which they were to be constructed and maintained.

There is set out in Opinion No. 255 the relevant history of the St. Lawrence Seaway Development, the relationship between the navigation and power phases thereof, the relationship between the features of the power phase to be constructed by the Canadian entity and that to be constructed by the United States. It recited that the maintenance and operation of the power facilities on each side of the International Boundary under the authorizations theretofore procured by the respective entities would be merely one of the several activities providing for the furtherance of the mutual interests recognized by the consummation and ratification of the Boundary Waters Treaty of 1909.

More specifically the Commission, among other things, found therein that:

> The Government of Canada has advised the Government of the United States that "it has concluded that it would no longer be practicable to revert to the terms of the 1941 Agreement or to place that Agreement before Parliament for approval." The demand for power in the area to be served by the International Rapids power development is so urgent in Canada that the Canadian Government does not wish to engage in any deliberations which may delay the progress of the plan now under way for the construction of a power project in this section of the river.

It recited also that:

> The Canadian Government has given assurance to the Government of the United States that when all arrangements have been made to insure the completion of the power phase of the St. Lawrence project, the Canadian Government will construct locks and canals on the Canadian side of the international boundary, and will make all necessary improvements in the wholly Canadian section of the river to provide for deepwater navigation to the standard specified in the proposed agreement between Canada and the United States for the development of navigation and power in the Great Lakes-St. Lawrence Basin, signed March 19, 1941, and in accordance with the specifications of the Joint Board of Engineers, dated November 16, 1926, and that such deepwater navigation shall be provided as nearly as possible concurrently with the completion of the power phase of the St. Lawrence project.

Article 19 of the license issued concurrently therewith provided that:

> In the design, construction, maintenance and operation of the project covered by this license, the licensee shall comply with all applicable provisions and requirements of the order of approval (International Joint Commission, docket 68) issued October 29, 1952, by the International Joint Commission to the Governments of the United States and Canada for the construction of certain works for the development of power in the International Rapids section of the Saint Lawrence River.

The license was issued on July 15, 1953, and it was accepted by the Authority on November 3, 1953. On the day following the President issued an Executive Order declaring the Power Authority as the designee of the Government of the United States for the construction of the works for which the license was issued. That order recited that:

> Whereas the Federal Power Commission on July 15, 1953, issued a license (hereinafter referred to as the license) to the Power Authority of the State of New York for the construction, maintenance, and operation of Project No. 2000 which project represents that portion of the works for the development of power in the International Rapids section of the Saint Lawrence River located within the United States; ....

There are many other documents in this record relating to the evolution of the plan for the development of the International Rapids Section of the St. Lawrence all of which are entirely consistent with each other and with those referred to above. It is perfectly clear therefrom that the four entities named by the Authority in its brief as "involved" in the construction of the "project" each had particular functions to perform under the plan devised and prescribed by the Joint Commission. Obviously, there were two major phases of the plan, (1) the improvements to navigation and (2) the development, as an economic factor, of the power potential. And those two phases were in turn, because of international considerations, segregated between those to be performed by the Canadian entities on the one hand and those to be performed by the United States entities on the other. Thus, although it is clear that each phase of the overall Seaway development was closely related to each other phase thereof, and that the power phase as contributed to by the Authority on the American side and Ontario Hydro on the Canadian were complementary and mutually dependent there is no occasion here to cause to be "involved" any portions thereof except the Authority's. To do so merely results in confusion.

Clearly, the "project" with which we are here concerned is made up of, and confined to, the project works constituting that portion of the *power phase* of the Seaway Development which lies within the United States, and although the project works, authorization for which was sought by the Authority and granted by the Commission, were to constitute only the United States' portion of that power phase (and thus alone incapable of accomplishing the production of power) they were found to constitute a complete unit of development within the definition of "project" as it is defined in the Act. The operation of the project works in substantially confined to the production of electric power. Such of the navigation facilities as were included in the authorization are purely incidental and they were so included in order that the power phase of the project might be coordinated and compatible with the subsequent development of the Seaway. That the project facilities so licensed constitute a separate and distinct phase of the Seaway Development and even of the power phase of the development and yet are a complete unit of development was confirmed by the United States Court of Appeals, District of Columbia Circuit in *Lake Ontario Land Development & Beach Protection Association, Inc.* v. *Federal Power Commission*, 212 F. 2d 227 in which case the Commission's order of July 15, 1953, issuing the license for Project No. 2000 was reviewed.

It should be clear beyond cavil that the requirement contained in Section 10(e) of the Power Act with respect to the payment of annual charges relates such charges to costs of administration of Part I of the Act in its application to the project works for which the license was issued and not to all projects or parts of projects which may presently or in the future fit into a plan for the development of a much more extensive reach of a stream. Article 27 of the Authority's license must be construed against the background of that interpretation of the Statute.

Based upon the record in this proceeding it is concluded that the project works for which the license was issued is a complete and separate unit of development and, therefore, that the issue here presented, namely, whether that unit of development was designed primarily to improve or provide navigation can be decided without regard to the facilities, functions and objectives of the other three entities.

It is of no consequence then that all of the phases of the St. Lawrence Seaway Development were constructed in accordance, or at any rate consistently, with the 1909 Boundary Waters Treaty between the United States and Great Britain and the international agreements entered into between the two countries in accordance therewith. Nor is there occasion to question the Authority's statement that the Authority and Ontario-Hydro cooperated closely in construction of their respective parts of the power projects constructed and operated by them or that all costs incurred by both of them except the cost of electrical equipment were shared equally. It is probably also true, as the Authority asserts, that: "The United States and Canadian parts of the Seaway are interrelated in that locks and canals on each side of the boundary are in different stretches of the river so that there is no duplication."

There is no occasion either to here question the assertion of the Authority that the power entities, in compliance with the requirements of the authorization needed and sought for the construction and operation of the power projects, performed millions of dollars worth of dredging which was needed to provide a channel acceptable to the International Joint Commission as reflected in its order of approval of power works dated November 19, 1952.

The order of the Joint Commission clearly reveals that the several plans for the St. Lawrence Seaway Development contemplated the construction of power dams as well as canals and locks in connection therewith. Thus, to this extent, it may properly be said, as the Authority does, that the Seaway could not operate without the power phases and that, therefore, the construction of the power dams is essential to the Seaway. This is not to say, of course, that such dams, canals and locks could not have been constructed to the exclusion of power production.

Nor is it of consequence, even if we assume it to be the case, that the navigation and power phases of the St. Lawrence are physically and legally related; that no part of the St. Lawrence project was authorized without consideration of the fact that each part was to be coordinated with and supplemented by the other; that navigation was to have priority in the use of the water and that whenever there is a conflict, if there is, between the use of the water for navigation and the use of water for power the latter must yield to the former.

Nor does "The dependence of the Seaway on work done by the power entities" which might be inferred from the requirement in the Wiley-Dondero Act "that the State of New York, or an entity designated by it, or other licensee of the Federal Power Commission—will construct and complete the dams and power works approved by the International Joint Commission" deserve weight in the determination of the question whether Project No. 2000 was primarily designed to provide or improve navigation.

Neither is the fact that Article VIII of the 1909 treaty provided an order of preference to be preserved as to the uses of water helpful in determining this issue. Obviously, if "priority of useage" were adopted as the determinant it would follow that the Seaway would have been primarily designed to provide and improve the river for domestic and sanitary purposes rather than for navigation or power. Obviously, such a conclusion would be unwelcome to the Authority.

It is beyond controversy that the St. Lawrence Seaway Development was primarily designed to provide or improve navigation and that either directly as navigation facilities solely or indirectly through separate entities seeking authority to construct power facilities, the facilities needed for the Corporation's planned deep-water navigation would have had to be constructed. But, it simply does not follow because the power facilities were needed to and did contribute to the deep-water navigation phase of the Seaway Development by the construction of facilities and the performance of dredging not necessarily used and useful in the production of power that the power entities' facilities were primarily designed to provide or improve navigation.[1] On the contrary, the Authority has failed to adduce a single item of evidence which establishes the fact, historically or from actual conditions, that Project No. 2000 was primarily designed, was constructed or was operated at any time prior to the hearing to provide or improve navigation.

---

[1] Nor does the fact that the St. Lawrence Seaway Development Corporation, an entity separate and distinct, had a deficit from operations for the period April 25 to December 21, 1959, and for the calendar years 1960 and 1961 has any relevance here.

Perhaps, however, before leaving this subject one other aspect should be commented upon.

Section 10(e) provides, as we have seen "* * * that as to projects constructed by states or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; * * *." The purpose for which such a project was primarily designed should have been known to the Applicant at the time of the designing thereof. It would seem that an applicant for a license for a project primarily designed to provide or improve navigation, aware of the foregoing provision of the statute as the Authority undoubtedly was, would have made that fact known immediately and would have demanded the exemption from annual charges contemplated thereby. There is no evidence here that any such purpose was asserted or claimed. No such statement was made in the application, initially or as supplemented and amended, and there is no evidence that a claim of this nature was made during the course of the proceedings which resulted in the orders of July 15, 1953, January 14, 1957, and September 9, 1960. And, of course, as we have seen Article 27 was in the license as issued and as accepted by the Authority on November 3, 1953. As far as the evidence here discloses, this "reason" for exemption from payment of annual charges was advanced for the first time in the application for total exemption from payment of annual charges filed on April 4, 1959, more than nine years after the project was designed.

Since the "greater part" of Project No. 2000 has never been concerned with navigation and since from the beginning the primary purpose of Project No. 2000 was, and has been, the production of power and not navigation *South Carolina Public Service Authority* v. *Federal Power Commission*, 200 F. 2d 78 (4th Circuit 1952) has no analogy here.

The licensee has failed to adduce any evidence which would support the contention that Project No. 2000 was primarily designed to provide or improve navigation. Thus, it has failed to make the showing required by the Commission's Regulations.

To What Extent, if any, was Project Power sold to Public Without Profit

Section 11.24(a) of the Commission's Regulations under the Federal Power Act provides further that "A state or municipal licensee may claim total or partial exemption [from payment of annual charges] upon one or more of the following grounds:

* * * * * * *

> (a)(2) To the extent that power generated, transmitted, or distributed by the project was sold directly or indirectly to the public (ultimate consumer) without profit;
>
> * * * * * *
>
> (d) Sales to public. No State or municipal licensee shall be entitled to exemption from the payment of annual charges on the ground that power generated, transmitted, or distributed by the project is sold to the public without profit, unless such licensee shall show:
>
> (1) That it maintains an accounting system which segregates the operations of the licensed project and reflects with reasonable accuracy the revenues and expenses of the project:
>
> (2) That an income statement, prepared in accordance with the Commission's Uniform System of Accounts, shows that the revenues from the

sale of project power do not exceed the total amount of operating expenses, maintenance, depreciation, amortization, taxes, and interest on indebtedness, applicable to the project property. Periodic accruals or payments for redemption of the principal of bonds or other indebtedness may not be deducted in determining the net profit of the project.

There is in this record an absence of proof that the Authority maintains "an accounting system which segregates the operations of the licensed project and reflects with reasonable accuracy the revenues and expenses of the project." Nor was there presented by the Authority an income statement prepared in accordance with the Commission's Uniform System of Accounts, showing that the revenues from the sale of project power do not exceed the total amount of operating expenses, maintenance, depreciation, amortization, taxes and interest on indebtedness, applicable to the project property. However, Staff counsel agreed that the statements of receipts and expenditures in the Authority's annual reports were clear and understandable and, therefore, he did not insist on separate and other such statements. It is understood then that compliance with Sections 11.24(d)(1) and (d)(2) in this respect is not in issue.

On the issue whether project power was sold to the public without profit the Authority argues that:

(1) The Power Authority Act prescribes the method by which project power shall be sold and provides for regulation of resale rates by the licensee through contractual provisions,

(2) Section 1005(6) of the Power Authority Act requires that the Authority's power contracts shall provide for:

(a) Payment of all operating and maintenance expenses of the project,

(b) Interest on and amortization and reserve charges sufficient within fifty years of the date of issuance to retire the bonds of the Power Authority issued for the project,

(3) The Authority is required by Section 1005(5) to sell power to municipalities and political subdivisions "at prices representing cost of generating plus capital and operating charges and the cost of transmission and to sell power to industrial customers in such a manner to secure a sufficiently high load factor and revenue returns to permit domestic and rural use at the lowest possible rates,

(4) Provisions of the Power Authority General Bond Resolution, which was adopted by the Authority on December 21, 1954, [and thus subsequent to the issuance of the license and the acceptance thereof by the Authority] require that the revenues received during the construction period be paid into the construction fund to meet the cost of construction and revenues received after date of completion of the project in excess of operating expenses, working capital and necessary reserves be first applied to the payment of interest and principal on outstanding bonds.

It is clear from the foregoing that the Authority relies in respect to this issue not upon the provisions of the Power Act or the Commission's regulations thereunder but rather upon a statute of the State of New York and a contract between the Authority and its bond purchasers entered into voluntarily and with full knowledge of the conditions attached to the license.

Consistently with those contentions, aside from such financial data as appeared in its annual reports for the periods beginning June 1954 and extending through the calendar year 1961, the Authority offered no evidence which might be construed as evidence of the "cost of service" and thus the basis for the determination of whether there resulted in the several periods a profit within the contemplation of the Power Act and the regulations thereunder.

The Authority sells power to the Aluminum Company of America, the Public Service Commission of the State of Vermont, the City of Plattsburgh, New York, the United States Air Force (for the Plattsburgh Air Force Base), Reynolds Metals Company, Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation and General Motors Corporation. The evidence which Authority did adduce shows that it charges the same rates under all of its power contracts. They were devised by a consulting engineer who formerly was Chief Engineer of the U.S. Bureau of Reclamation. Those rates, this witness testified, "were intended to produce revenues sufficient to meet the bond service requirements together with the cost of operation and maintenance of the project plus the Authority's administrative costs." The basic data employed in formulating the rate schedule were the engineer's estimates of the cost of construction and of the annual costs involved. It does not appear that any change has subsequently been made in the rate schedule then devised.

When the bonds were sold, the bond circular contained a rate covenant which obligated the Authority to procure net revenues sufficient to meet a 1.4 to 1 ratio between net revenues and the "bond service requirements." Thus, the rates were expected to produce revenues at least that much in excess of those requirements. Actually, the witness testified, they were expected to provide annual revenues sufficient to meet not only the estimated annual charges for bond service but an additional small margin for contingencies.

It should be noted, however, that this analysis was made and the rates thus determined, in the witness' words, "before the bonds had been sold and the bond service requirement had not been determined at that time." Actually, the basic data used in the formulation of the rate schedules consisted of neither known bond service requirements nor operating and maintenance costs actually experienced. They were based instead on estimated costs of construction and an engineering report estimating annual costs. To the amounts thus taken as "costs" the trustees added 20 percent for contingencies to provide against possible increases in cost. The revenues derived therefrom were, as we have seen, expected to afford a small margin above costs.

Section 11.24(d)(2) of the Commission's Regulations under the Power Act (*supra*, p. 112) allows as costs to be offset against revenues in the determination of whether the power sold is sold without profit both "depreciation" and "amortization" but it provides that periodic accruals or payments for redemption of the principal of bonds or other indebtedness *may not be deducted in determining the net profit of the project.*

The Authority contends that "amortization" is the periodic accruals of payments for the redemption of the principal of bonds or other debt and that Section 11.24(d)(2) is, therefore, self-contradictory and, therefore, unreasonable and invalid. Authority contends further that "amortization" must be construed to include amounts accrued or paid in the redemption of the principal of outstanding bonds and that if Paragraph 11.24(d)(2) were construed otherwise the provisions would be arbitrary, unreasonable, self-contradictory and invalid, would be contrary to the plain language of Section 10(e) and to the clear intent of the Congress demonstrated when Section 10(e) was enacted, and would unreasonably and contrary to the express prohibition of Section 10(e) increase the cost of power to consumers through the imposition of improper charges.

It should be pointed out in this connection that consistently with the Authority's contention that the bond service requirement including an allowance for the retirement of its bonds should be considered a cost in determining the net profit of the project, the Authority did not include any amount in its "cost" of service for depreciation expense.

The Authority's position here seems to be that the amounts which it sets aside during each accounting period to be applied to the retirement of its bond, thus constituting a return of capital rather than a cost of operation, should be considered part of Authority's cost of producing power in the determination of whether such power is sold without profit. A similar contention was made in *The Central Nebraska Public Power and Irrigation District*, 5 FPC 165. There the Commission said:

> While the Federal Power Act authorizes exemption to the extent that power generated by a municipal licensee is sold to the public without profit, the Act does not define what is meant by the sale of power "without profit." According to universal understanding of the meaning of the words, there is a profit if, for a given period, the revenues exceed the properly allocated costs. *Rubber Company* v. *Goodyear*, 76 U.S. 788, 804 (1869). Nothing in the legislative history of the exemption clause of section 10(e) shows that Congress intended a concept of municipal profit differing in any respect from that generally accepted.[8] The fact that Congress allowed the exemption on sales to the public only "to the extent" that power is sold without profit shows that on sales "with profit" the exemption cannot be granted. [Footnote omitted.]

Here, as there, the licensee would have us consider the repayment of its power investment as an expense in producing the power which it sells. In that connection the Commission there said:

> * * * It is true that a municipality is put to expense in building a power plant and that ordinarily it must raise the construction money by issuing revenue or tax bonds. But the construction of any power plant calls for an expenditure of capital, whether the owner be a public agency, an individual, or a private corporation. Neither this Commission nor any other regulatory agency would allow, as part of the expense in producing the power sold, a double return to investors of the cost of a private power plant through both a depreciation allowance and through amortization of principal. Having permitted this public agency to deduct a depreciation charge as an expense, there is no reason why we should also allow it to treat the repayment of its capital investment as a further and duplicate expense. As a matter of fundamental principal, such a repayment of capital investment can only be made from profit.
>
> The reduction of the indebtedness against the property by payment of the principal of the bonds outstanding out of earnings can only be regarded as profit. *City of Newport News* v. *Warwick*, 166 S.E. 570, 578 (Va. 1932).
>
> See decisions of other courts to like effect: *Village of Boonville* v. *Maltbie*, 4 N.E. 2d 209, 212 (N.Y. 1936); *Carta v. City of Norwalk*, 145 A. 158, 160 (Conn. 1929); *Zangerle* v. *City of Cleveland*, 145 Ohio State, 347 (1945).

A Commission explanation of the purposes and the application of Section 11.24 of the Regulations appears in a footnote on page 169 of Volume 5 of the Commission's Reports as follows:

> Under paragraph A of section 11.24 of our regulations pertaining to exemption of municipalities from the payment of annual charges, such a licensee may show that the revenues from the sale of power do not exceed the project operating expenses plus payment of interest on indebtedness. Among the items listed as *expense deductions* appears "amortization." That is, there may be included among the expense deductions the amortization of those amounts which for one reason or another have been deferred to be carried forward to a future period. For example, operating expenses would include amortization of debt discount and expense, amortization of premium on debt,

amortization of prepaid rent, amortization of improvements to leased premises where such improvements are to remain upon the expiration of the lease, or amortization of limited term interests in lands. However, under no circumstances should this be interpreted to include the amortization of principal, especially as an added expense on top of the allowance already made for depreciation.

It is apparent, therefore, that the Commission is and has been for a number of years aware that public projects are financed by revenue bonds. They have, however, disregarded, and it is believed that they will continue to disregard, the distinction proposed by the Authority in connection with the determination of whether the Authority's power is sold without profit.

Subsequent to the filing of its reply brief, namely on May 17, 1963, the Authority lodged with the Presiding Examiner what, although in letter form, was in effect a supplemental reply brief. In consequence, the Staff was permitted to reply thereto and such reply was filed on June 28, 1963.

In this supplemental brief Authority cited the decision of the United States Court of Appeals for the Second Circuit in *Merritt-Chapman & Scott Corporation* v. *Public Utility District No. 2 of Grant County, Washington*[2] (No. 164—October Term 1962, decided April 22, 1963). This decision, the Authority contends, shows clearly the distinction between "earnings" or "revenue" from a bookkeeping standpoint and "profit" as contemplated by the language of Section 10(e) of the Federal Power Act which grants exemption from annual charges when power is sold without profit.

The language of the court on which Authority appears to rely is as follows:

> While the District may have "earnings" or "revenue" from the operation of the Priest Rapids Production System, this is solely in the accounting sense that income exceeds expenses, and all such revenues must be applied either to retire indebtedness, to establish working capital and reserves for expansion and contingencies, or to reduce or stabilize rates.[3]

But the relevance of the statement to its context is far from clear. Treating "earnings" and "revenue" as synonymous is confusing and what the alternative "sense" may be is not discernable. It should be noted, however, that this was an action brought in the State of New York to enforce a New York contract between a Delaware contractor and a municipal corporation formed under the laws of the State of Washington.

The court below had held that the central point on the motion to vacate the attachment and levy and set aside the service of summons was whether the activities of Public Utility District No. 2 constituted local governmental duties or whether such a venture is private and proprietary in nature. On that theory he had found that the District was not engaged in a private and proprietary venture and that, therefore, the monies attached were not subject to attachment. It is not understood to be the Authority's contention here that because it is engaged in a governmental rather than a proprietary activity it is exempt from payment of annual charges.

The Court of Appeals, however, found the issue of the validity of the warrant of attachment and of the levy in the case a constitutionally procedural matter for New York conflict of law purposes and that, therefore, the question for consideration was the existence and nature of the limitation the New York courts would read into the attachment provisions of the New York Civil Practice Act, Sections 902, 903 and 912 based upon the District's claim of governmental immunity.

---

[2] A licensee of this Commission under license issued November 4, 1955, for Project No. 2114, 14 FPC 1067.

[3] Two other passages are quoted but both of them pertain to the question whether the District was performing a private or public function, a question not in any way in issue here.

The Court of Appeals, concluding that "* * * due to the way in which the critical issue has been submerged and disregarded by all concerned, we have no way of coming to a rational conclusion with respect to the practical consequences that may or will follow a decision that the attachment levy is valid", remanded the case for further consideration by that court. Obviously, neither of the questions there involved are in issue here and, therefore, that case has not the slightest analogy to the one at bar. Consequently, it can hardly be argued that the opinion has any precedential value in this proceeding.

It is concluded that for the purpose of determining whether the power produced at the project is with or without profit, amounts which are accrued against or which are used for the retirement of the principal of outstanding bonds cannot be included in the Authority's costs of production of power.

However, the Commission has consistently allowed as part of a proper cost of service the loss in service value not restored by current maintenance incurred in connection with the consumption or prospective retirement of electric plant from causes which are known to be in current operation and against which the utility is not protected by insurance. This is, of course, depreciation. The Staff, therefore, presented evidence on the reasonable service life of the depreciable project works and found as reasonable an annual depreciation rate of 1.25 percent. That rate the Staff applied to the Authority's depreciable plant to arrive at depreciation expense for the periods involved. The substitution of "depreciation" as so determined for "amortization" of bond payments as proposed by Authority results in greater excess of costs over revenue than would otherwise ensue.

As showing that despite the provisions of the Power Authority Act, licensee's sales were not without profit the Staff points to the fact that the Authority's annual report for the year 1960 reflects what the Authority characterized as "net income" in the total amount of $13,184,174. This amount is made up, according to the report, of $1,719,763 in the "Construction Fund," $10,490,616 in the "General Fund" and $973,795 in the "Operating Fund." The Authority contends that "net income" as used in the report "refers to 'adjusted' income for accounting purposes only before deducting for bond service and principal payments on bonds, working capital and other necessary reserves," and as has been pointed out the Authority had not included depreciation expense in its operating statement.

The Staff points also to other evidence that the rates charged by the Authority result in an excess of revenues over the costs of production, excluding the amortization of bonded indebtedness but including reasonable depreciation expense. More specifically, there is evidence that during 1961 each of the three funds which the bond resolution required to be set up showed increases, thus indicating that revenues exceeded costs. As we have seen, the General Revenue Bond Resolution required a coverage ratio of 1.4 to 1. We have seen too that the rates devised were fixed so as to bring in at least 20 percent more revenues than costs including debt service.

The Authority, in answer to the arguments advanced in his brief by Staff counsel, contends that this evidence does not prove that the power produced at the project was sold at a profit. While the writer does not agree with that contention, it must be remembered that to be entitled to the exemption from the payment of annual charges on the ground that the power generated is sold to the public without profit, the matter of whether or not a profit was made *is a* *question of fact to be established by the* Licensee, and the Licensee has wholly failed to make the showing this requires. Actually, in fact, the Authority made no effort to show what its "costs," within the contemplation of the Federal Power Act and the Commission's Regulations pursuant thereto, were or are.

Thus, the basic question appears to be whether in the discharge of the responsibility placed upon it by the Congress of the United States for the licensing and regulation of hydroelectric projects on navigable streams of the United States this Commission's authority is to be subordinated to the laws of a state inconsistent and incompatible therewith. It would seem unnecessary at this late date to say that the answer is No.

There is even less justification for the contention, if that is intended, that a licensee by entering into a bond indenture the provisions of which are inconsistent with the provisions of the license and the Commission's Regulations under the Act may render ineffective the latter provisions.

The matter of whether or not a profit was made on power sold for resale is a question of fact to be established by the licensee. The Authority has failed to make the required showing.

The Construction Period

Section 11.24(g) of the Regulations under the Federal Power Act provides:

> *Construction period.* During the period when the licensed project is under construction and is not generating power, it will be considered as operating without profit within the meaning of this section, and licensee will be entitled to total exemption from the payment of annual charges * * *."

As has been noted, the Licensee contends that during 1958, 1959 and 1960, the project was still "under construction." In this connection, too, the Licensee relies upon the General Bond Resolution. Under its provisions the Authority is required to pay into what is called the "proceeds account," a separate account within the construction fund, among other things, all revenues from the St. Lawrence project received prior to the date of completion thereof, that date to be determined by the Authority's engineer and evidenced by his certificate to that effect. The Authority's engineer certified completion on May 24, 1960. Until that date all proceeds of the Authority went into the construction fund. The Authority contends that until that date it put nothing in its revenue account and in that context asserts that, "It is impossible to have a profit without revenues."

The Authority thus contends that within the meaning of Section 11.24(g) of the Regulations the project was under construction and, therefore, entitled to total exemption from payment of annual charges. But the Authority gives effect to only a portion of the language of Section 11.24(g). That which the Authority ignores is of controlling significance.

The Authority's own evidence shows that Generator Nos. 1 and 2 "went into commercial operation" on July 23, 1958. Generator Nos. 4, 5 and 6 were in operation during the month of August 1958 and Generator Nos. 7 to 16 inclusive went into operation at intervals of about one month therafter, Generator No. 16 going on the line on July 29, 1959. No reason has been advanced, and none appears, why the criteria for the determination of the construction period heretofore established by the Commission should not be applicable here. There is a line of Commission opinions beginning as far back as September 22, 1939, *In the Matter of Kanawha Valley Power Company*, License Project No. 1175, 2 FPC 11, where the Commission held that the construction period to be considered in making an allowance for interest and taxes during construction, "is that which with the exercise of the due diligence and prudence is reasonably necessary for the completion of all processes required for the achievement of the project in commercial operation. Commercial operation as thus used necessarily contemplates the end of the period required to complete the project whether or not power was then actually generated and revenue derived therefrom. But, the beginning of the period of operation does not necessarily mean the completion of all construction activities but a degree of operation capable of making the facilities available for the services for which the were intended."

In *Puget Sound Power and Light Company*, License Project No. 943, 3 FPC 231, the Commission then pointed out that the construction period does not extend beyond the date when the Licensee by due diligence and prudence could have completed the project. The Licensee does not contend in this proceeding that the project had not been completed to the point that it was available for the purpose for which it was intended.

It is concluded that Project No. 2000 was under construction until, but not after, August 1, 1959. Thus, that date fixes the end of the period for the purpose of the allowance for interest during construction and the beginning of the period for which annual charges are to be computed. It is not proper, therefore, in determining whether the Authority has sold and is selling power without profit to treat revenues received prior to the latter date as credits to the construction fund and thereby delay the beginning of payment of annual charges.

But here again the basic question appears to be whether the bond indenture entered into by the Authority should take precedence over the regulations of this Commission. The answer, of course, must again be No.

State or Municipal Use Determination of Exemptions

Section 11.24 of the Regulations also provides that a state or municipal licensee may claim total or partial exemption from the payment of annual charges to the extent that the power is used by the licensee itself for state or municipal purposes. With respect, however, to sales for resale it provides that:

> Notwithstanding compliance by a State or municipal licensee with the requirements of paragraph (d) of this section, it shall be subject to the payment of annual charges to the extent that electric power generated, transmitted or distributed by the project is sold to another State, municipality, person, or corporation for resale, unless the licensee shall show that the power was sold to the ultimate consumer without profit. The matter of whether or not a profit was made is a question of fact to be established by the licensee.

At the outset of the hearing the Authority conceded that it sold some power to villages and other municipalities but that it had no data to show that such power was resold without profit. Beyond that related to the design of the project, the Authority claimed no exemption therefor.

Sales of Power for Resale

The Authority sells power for resale regularly to the Vermont Public Service Commission and has on occasion sold power for that purpose to Reynolds Metals Co. An Authority witness testified that even the most casual inspection of Reynolds resale rate "will show they are taking a loss on it." Sales of power to the Public Service Commission of the State of Vermont are made under a contract which provides that resales by the purchasers will be on a non-profit basis. The only evidence adduced by the Authority in support for its claim for exemption in connection with this sale was an excerpt from the Biennial Report of the Vermont Commission for the period July 1, 1958, to June 30, 1960, and an excerpt from the Public Service Commission's Accounting Manual for St. Lawrence power which extract accompanied that report. This excerpt states that:

> The sale of power and the operations shall be on a non-profit basis to electric distribution companies, cooperatives, municipalities and privately-owned utilities, as provided in agreement of the Power Transmission contract between the State of Vermont and the Vermont Electric Power Company, Inc. (Section 0.3) and the agreement of the Sale, Transmission and Distribution of Power between the Power Authority of the State of New York and State of Vermont (Article IX).[4]

The excerpts above described were offered for the record by an electrical engineer in the Power Utilization Department of the Authority. This witness did not know the occasion for the issuance of the instructions; he did not know exactly what the Vermont people were talking about. He certainly was not capable of testifying as to the meaning of the words "non-profit basis" as used therein. Since there is, obviously, more than one way in which "profit" and "non-profit" may be determined, the mere existence of the instructions is no evidence that the sale to Vermont is "without profit" within the meaning of Paragraphs 11.24 (d) and (e). The Authority thus has failed to make the showing required by those provisions.

In the contract between the Authority and Niagara Mohawk Power Corporation (Niagara Mohawk) for the sale by the former to the latter of power generated by Project No. 2000 the purchaser agreed to pass on to domestic and rural consumers within the buyer's St. Lawrence Market area "savings" derived from the purchase of such power. Those savings were to be computed by determining the difference per kilowatt-hour between the purchaser's average system cost of 60-cycle power and energy from whatever source derived (except from Authority) and the average delivered cost to purchaser of such power and energy purchased from Authority.

In support of its contention that the power produced by the project was sold without profit, Authority put in evidence a copy of the contract and copies of a series of statements issued from time to time for filing on behalf of Niagara Mohawk with the New York State Public Service Commission and for inclusion in copies of purchaser's rates and tariffs available for public inspection.

The System Rates Manager for Niagara Mohawk explained the statements. They were prepared each month by Niagara Mohawk "for the purpose of making a determination of the rate of St. Lawrence credit per kilowatt-hour to be used by our accounting and billing department in connection with the preparation of bills rendered by Niagara Mohawk to customers who take service on our service classification No. 1 of Schedule PSC No. 204."

They reflected three factors, (1) the estimated kilowatt-hours to be billed on the latter rate schedule for the month, (2) the "savings" related to reduction in power costs applicable to the current monthly billing cycle, and (3) the credit adjustment per kilowatt-hour which is the second factor divided by the first. The billing currently is upon "regular" rates and to them for the succeeding billing period the "credit" is applied.

---

[4] Article IX reads as follows:

> Contractor agrees that in reselling power purchased from Authority it will do so pursuant to the appropriate laws of the State of Vermont, that it will do so on a nonprofit basis and that it will require transmitting or distributing companies or public agencies to whom it sells the power for resale also to sell such power without profit other than reasonable compensation for use of facilities and for services furnished in the transmission and/or distribution of such power, and that it will follow the principles enunciated in the Power Authority Act particularly that which requires that power be made available at the lowest possible cost to rural and domestic consumers.

Niagara Mohawk's assistant comptroller explained the second factor. In arriving at this saving the following steps were taken:

> First we obtain the net investment in 60-cycle utility plant which is taken from our record at the end of each year. This net investment is used to obtain a six percent return on an average monthly basis and for a 12 months' ending period.
>
> The second step is to obtain the cost of operation and maintenance of all the 60-cycle production plant units from our monthly records, and also accumulated for a 12-months' ending period.

In the cost figures so determined there is included the New York State water charge for one of Niagara Mohawk's plants depreciation, insurance and taxes. This evidence bears a resemblance to that which would seem to be required for the determination of cost and ultimate profit, but it is inadequate for the purposes of a reasonably accurate determination. In addition, it is relevant only to production costs after receipt by Niagara Mohawk, does not reflect the costs of transmission and, of course, does not reveal the cost of producing the power by the Authority.

The contract under which project power is sold to New York State Electric & Gas Corporation (Electric & Gas) contains similar provisions respecting the treatment of "savings" and the application thereof. In this connection also the Authority offered in evidence the contract and a series of statements similar to those prepared by Niagara Mohawk. Here, however, no one was presented on behalf of the Authority nor of Electric & Gas who had participated in the preparation of such statements or who could assume responsibility in connection with the preparation thereof. They were, therefore, considered as having no probative value and were excluded.

Conclusions

There is no controversy here with respect to the costs of the administration of the Act for which the United States is to be reimbursed, a portion of which, in the absence of exemption, would be payable by the Authority.

A statement showing the generation (in kilowatt-hours) of energy at Project No. 2000 and its disposition during each of the years 1958 through 1961 appears opposite Page 28 of the Staff's brief. No exception thereto having been taken by the Authority it is adopted for the purposes of this decision and is set out in Appendix A hereto.

If consideration were here confined to the evidence presented by the Licensee it might reasonably be found that the Authority has failed to adduce evidence to sustain any of the exemptions from the payment of annual charges permitted under Section 10(e) of the Power Act and the Commission's Regulations thereunder and that the amounts billed are payable in full. Staff counsel, however, offered in evidence by reference certain documents which are in the files of the Commission. Those the Staff employed in the computation of exemptions to which the Licensee is reasonably entitled. They reveal that, exclusive of power used for station purposes, lost in transmission, etc.:

(a) For the period July 17 through December 31, 1958, power was sold without profit to general consumers and construction contractors in the percentages of 20.9394 and 0.5239 respectively, or a total of 21.4633 percent. Power used for State purposes amounted to 0.0665 percent. The remainder, 78.4702 percent, was sold for resale. Applying these percentages to the total charges billed results in an exemption of charges in the amount of $2,623.66 and charges not exempt in the amount of $9,562.54.

(b) For the period January 1 through July 31, 1959, 29.0616 percent of the power was sold to general consumers and .0647 percent to construction contractors, all without profit. Also, .0834 percent was used for state purposes. The remainder, 70.7903 percent, was sold for resale. The application of those percentages to the total charges billed of $23,667.33 results in an exemption of $6,913.16 and an unexempt balance of $16,754.17.

(c) During the period August 1 through December 31, 1959, the project was in commercial operation. Of the total sales 38.2247 percent were to general consumers, 0.0147 percent to construction contractors and 61.6430 were sales for resale. As explained above, the Licensee has failed to show that any part of these sales were without profit. Only 0.1176 percent represented power used for state purposes. Again, applying the above percentages to the total amount billed, there results an exemption of $20.09 and unexempt charges of $17,060.58.

(d) The project was in commercial operation throughout the calendar year 1960. In that period 53.1780 percent of the sales of available power were to general consumers and 46.7285 percent were for resale. Only 0.0935 was used for state purposes. In the absence of the required showing that any or all of the sales were without profit, the Licensee is entitled to exemption only with respect to the latter. The application of the percentages establishes an exemption in annual charges of $34.00 and a balance due of $36,330.00.

(e) Similarly, during the year 1961 the project was in commercial operation. General consumers purchased 50.5855 percent of the available power and 49.3254 percent was sold for resale. The required showing not having been made, the Licensee is not entitled to exemption for the 99.9109 percent so determined. Use for State purposes represented 0.0891 percent of the total available. The Licensee under the showing made here is entitled to exemptions of only $30.79 and the balance remaining is $34,525.21.

The Licensee in its reply brief raises no question as to the accuracy of these calculations, relying instead upon the contentions relating to total or partial exemption as shown above. In the absence of objection the Staff's calculations are adopted for the purpose of the determinations appropriate here.

FINDINGS AND CONCLUSIONS

Based upon all of the evidence of record and the briefs filed herein, the Presiding Examiner finds and concludes, in addition to the findings and conclusions above set out, that:

(1) The Power Authority of the State of New York (Authority or Licensee) is a "municipality" as defined in Section 3(7) of the Federal Power Act and within the meaning of Section 10(e) thereof.

(2) The Licensee is the holder of a license issued by this Commission on July 15, 1953, for a water-power development, Project No. 2000, since erected on the United States' side of the United States-Canadian Border in the International Rapids Section of the St. Lawrence River.

(3) As a Licensee pursuant to the Federal Power Act the provisions of the license above described and the Commission's Regulations thereunder, the Authority is subject to, unless otherwise exempt from, the payment of annual charges for the purpose of reimbursing the United States for the costs of administration of the Act.

(4) Licensee has failed to show that Project No. 2000 was primarily designed to provide or improve navigation.

(5) The evidence shows that Project No. 2000 was, in fact, primarily designed for the development of power on the United States' side of the St. Lawrence River.

(6) Project No. 2000 went into commercial operation on August 1, 1959.

(7) The evidence shows that for the period July 17, 1958, through December 31, 1958, 0.0665 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(8) The evidence shows that 21.4633 percent of the power available from Project No. 2000 was sold to general consumers and construction contractors without profit for the period July 17, 1958, through December 31, 1958.

(9) The evidence shows that for the period July 17, 1958, through December 31, 1958, the Licensee sold for resale 78.4702 percent of the power available from Project No. 2000 but the Licensee has wholly failed to show that this power was resold by its wholesale customers without profit.

(10) The evidence shows that for the period January 1, 1959, through July 31, 1959, 0.0834 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(11) The evidence shows that for the period January 1, 1959, through July 31, 1959, 29.1263 percent of the power available from Project No. 2000 was sold to general consumers and construction contractors without profit.

(12) The evidence shows that for the period January 1, 1959, through July 31, 1959, the Licensee sold for resale 70.7903 percent of the power available from Project No. 2000 but the Licensee has not shown that this power was resold by its wholesale customers without profit.

(13) The evidence shows that for the period August 1, 1959, through December 31, 1959, 0.1176 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(14) The evidence shows that for the period August 1, 1959, through December 31, 1959, the Licensee sold 99.8824 percent of the power available from Project No. 2000 but the Licensee has failed to show that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

(15) The evidence shows that for the year 1960 0.0935 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(16) The evidence shows that for the year 1960 the Licensee sold 99.9065 percent of the power available from Project No. 2000 but Licensee has not shown that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

(17) The evidence shows that for the year 1961 0.891 percent of the power available from Project No. 2000 was used for State or municipal purposes.

(18) The evidence shows that for the year 1961 the Licensee sold 99.9100 percent of the power available from Project No. 2000 but the Licensee has not shown that this power was sold by it without profit, or that the power sold for resale was resold by its wholesale customers without profit.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) The Licensee is exempted from the payment of annual charges for which it was billed for the period from July 17, 1958, through December 31, 1958, to the extent of 21.5298 percent, or $2,623.66 leaving a balance now due of $9,562.54 for that period.

(B) The Licensee is exempted from the payment of annual charges for which it was billed for the period from January 1, 1959, through July 31, 1959, to the extent of 29.2097 percent, or $6,913.16, leaving a balance now owing of $16,754.17 for the period.

(C) The Licensee is exempted from the payments of annual charges for which it was billed for the period from August 1, 1959, through December 31, 1959, to the extent of 0.1176 percent, or $20.09, leaving a balance of $17,060.58 for the period.

(D) The Licensee is exempted from the payment of annual charges for which it was billed for the year 1960 to the extent of 0.0935 percent, or $34.00, leaving a balance of $36,330.00 for the period.

(E) The Licensee is exempted from the payment of annual charges for which it was billed for the year 1961 to the extent of 0.0891 percent, or $30.79, leaving a balance of $34,525.21 for the period.

(F) Except to the extent exempted as set out in paragraphs A through E Licensee's applications for exemption from the payment of annual charges for the several periods from July 17, 1959, through December 31, 1961, are denied.

(G) Payment of the unexempted portions of annual charges as set out in paragraphs A through E inclusive, shall be made within 60 days from the issuance of this order.

EDWARD B. MARSH,
Presiding Examiner.

APPENDIX A

GENERATION AT PROJECT NO. 2000 IN KWH AND ITS DISPOSITION [1]

	1958	1959	1960	1961
1. Sales to general consumers	269,244,809	[3] 1,826,448,219	3,297,223,000	3,090,408,000
2. Other sales	6,737,000			
Sold for resale	1,008,994,365	3,720,894,698	2,897,328,000	3,013,426,000
3. Subtotal of KWH sold [2]	1,284,976,174	[3] 5,547,342,917	6,194,551,000	6,103,834,000
4. St. Lawrence Seaway	840,875	3,224,400	4,282,800	4,746,000
5. New York Department of Parks and Public Lighting	(4)	137,786	213,200	211,000
6. Project use	[5] 13,828	2,076,946	1,306,000	489,000
7. Station use and transmission line loss	12,353,123	[5] 84,360,951	108,679,000	107,387,000
8. Total disposed of in KWH	1,298,184,000	5,637,143,000	6,309,026,000	6,216,667,000
9. Power purchased	109,000		95,000	485,000
10. Power generated at project	1,298,075,000	5,637,143,000	6,308,931,000	6,216,182,000

[1] This table is derived from items by reference E, H, J, M, and Q and exhibits 19, 20, 21, 22, 25 and 27.

[2] Total sales in KWH for same periods reported in other sources are as follows:

Exhibit 25	(1,284,970,000)	(5,547,343,000)	(6,194,551,000)	(6,103,834,000)
Exhibit 19	(1,284,976,174)			
Exhibit 20		(5,647,342,917)		
Exhibit 21			(6,194,551,517)	
Exhibit 22				(6,103,834,000)

[3] The figures as supplied in items by reference H and J were charged to those shown by an affidavit of Witness Helwith supplying information for the record in accordance with a request made at Tr. 100–104.

[4] According to exhibit 27 no amount was separated from the amount used for Long Sault and construction.

[5] Estimated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DUKE POWER COMPANY, PROJECT NO. 2232

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued January 15, 1964)

On August 7, 1963, Duke Power Company, licensee for Project No. 2232, filed for Commission approval revised project exhibits.

Revised Exhibit L, sheet 8A (FPC No. 2232–88) shows the Hicks Crossroads dike, constructed as part of the Cowans Ford development. The Exhibit J and Exhibit L drawings show the "as constructed" project structures of all developments of Project No. 2232, except the Cowans Ford development and show certain minor changes, particularly with respect to the referral of elevations to United States Geological Survey datum.

The Chief of Engineers, Department of the Army, has advised that the project plans affecting navigation have been approved in accordance with the provisions of Section 4 (e) of the Federal Power Act.

The Commission finds:

The following described revised project exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project and the exhibits described in this finding as being superseded and which are now part of the license, should be eliminated from the license:

Exhibit J, sheet 1 (FPC No. 2232–80) (revised) entitled "General Map & Profile," superseding Exhibit J, sheet 1 (FPC No. 2232–62) and sheet 2 (FPC No. 2232–81) entitled "Transmission System Map," superseding Exhibit J, sheet 2 (FPC No. 2232–63).

Exhibit L: Plans of Structures (revised).

Title: Catawba-Wateree project	FPC No.	Superseded exhibits-FPC No.
Bridgewater development:		
Plan and profiles	2232–82	2232–19
Sections and details	2232–83	2232–20
Rhodhiss development:		
Plan and elevation	2232–84	2232–21
Sections and details	2232–85	2232–22
Oxford development: Plan, elevation, and sections	2232–86	2232–23
Lookout Shoals development:		
Plan and profile	2232–87	2232–24
Sections and details	2232–65	2232–25
Cowans Ford development:		
Hicks Crossroads dike	----------	----------
Final design—Plan and sections	2232–88	----------
Mountain Island development:		
Plan and elevation	2232–66	2232–28
Sections and details	2232–67	2232–29
Wylie development:		
Plan and elevations	2232–68	2232–30
Sections and details	2232–69	2232–31
Fishing Creek development:		
Plan and profile	2232–70	2232–32
Sections and details	2232–71	2232–33
Great Falls-Dearborn development:		
Plan and sections	2232–72	2232–34
Sections and details	2232–73	2232–35
Rocky Creek-Cedar Creek development:		
Plan and elevations	2232–74	2232–36
Sections and details	2232–75	2232–37
Wateree development:		
Plan and profile	2232–76	2232–38
Sections and details	2232–77	2232–39

The Commission orders:

The revised exhibits described in the above finding are hereby approved as part of the license for Project No. 2232 and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G-13202

ORDER APPROVING RATE SETTLEMENT AND TERMINATING PROCEEDING

(Issued January 15, 1964)

The above docket relates to a rate proceeding arising from a proposed increase in rates and charges tendered for filing on August 6, 1957 by El Paso Natural Gas Company[1] pursuant to Section 4 of the Natural Gas Act. The increased rates and charges became effective and were collected by El Paso, subject to refund commencing on February 5, 1958.

From time to time conferences were held between El Paso and the Commission staff and between El Paso and its customers seeking to arrive at settlement of this matter. As a result of such conferences, a Stipulation and Agreement was filed by El Paso on December 27, 1963, requesting that the Commission enter an order disposing of the rate case in the manner contemplated by the Stipulation and Agreement.

El Paso's transmittal letter states that the Stipulation and Agreement was mailed to all jurisdictional customers in the Northwest Division, the regulatory commissions of those states served from the Division, and all other interveners by letter dated December 18, 1963. The letter of December 18, 1963 advised that the Stipulation and Agreement would be presented to the Commission on December 27, 1963 and that any comments should be submitted to the Commission before that date.

El Paso further attached to its filing a list of its jurisdictional customers in the Northwest Division who have executed the Stipulation and Agreement and the state commissions who have either indicated their approval of the proposed action or indicated that they have no objection.[2] El Paso also states that it has not received any objections to the disposition of the rate case in the manner provided by the Stipulation and Agreement and is not aware of any adverse comments addressed to the Federal Power Commission.

Briefly stated, the Stipulation and Agreement (attached hereto as an exhibit) provides as follows:

(1) The suspension proceeding shall be terminated and the tariff sheets presently on file applicable to sales being made by El Paso to customers in the Northwest Division shall be the unconditional lawful rates and El Paso's undertaking relating to refunds shall be ordered terminated by the Commission.

(2) El Paso agrees that no application for rate increases will be filed by it for its Northwest Division applicable to Rate Schedules PL-2, PL-3, PL-4, DL-1, DI-1, DI-2, DI-3, DI-4, DI-5, DS-1, DS-4, I-1, I-2, I-2, I-4, I-5, C-1, S-1 and MDS-1, under circumstances where such increases will become effective, after full suspension by the Federal Power Commission, prior to November 1, 1965,

---

[1] The original filing was made under the name of Pacific Northwest Pipeline Corporation, which was merged into El Paso effective December 31, 1959.

[2] The Commission has received comments from the state regulatory commissions of Colorado, Idaho, Oregon, Washington and Wyoming. Colorado, Oregon and Washington have indicated that they have no objection to the Stipulation and Agreement; Idaho supports the Stipulation and Agreement and Wyoming has approved the Stipulation and Agreement.

provided, however, El Paso may offset its natural gas supplier rate increases, by filing to become effective after full suspension by the Commission, no sooner than January 1, 1965.

(3) El Paso further agrees that if it should receive from its gas suppliers, refunds covering gas purchased for El Paso's jurisdictional customers on the Northwest Division which exceeds $1 million as to any calendar year from the inception of service through the year 1963, El Paso shall refund the amount of such excess. The Commission and each of the parties reserves all authority, rights and obligations as to gas supply refunds received by El Paso subsequent to December 31, 1963.

The Stipulation and Agreement also contains reservations that no party to the proceeding shall be bound or prejudiced by any part of the Stipulation and Agreement unless it is approved without modification; that none of the parties nor any affected person shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle or any method of cost-of-service determination, or any allocation method underlying or supposed to underlie any of the rates which by the Stipulation and Agreement are to continue in effect, and that the provisions of the Stipulation and Agreement shall apply to all customers of El Paso's Northwest Division except those who expressly object to the disposition of the aforesaid rate case as herein contemplated.

The Commission finds:

(1) The proposed settlement of this proceeding upon the basis of the Stipulation and Agreement is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter provided and ordered.

(2) The rate proceeding herein should be terminated and the rates presently effective in El Paso's Northwest Division should be allowed to remain in effect without refund obligation, subject to the conditions in the Stipulation and Agreement.

The Commission orders:

(A) The settlement of these proceedings upon the basis set forth in the Stipulation and Agreement (hereto attached and made a part hereof), is approved and made effective as proposed therein.

(B) El Paso shall comply with each of the provisions of the Stipulation and Agreement.

(C) The rates presently effective in El Paso's Northwest Division are hereby allowed to remain in effect without refund obligation, and this proceeding is hereby terminated, subject to the terms of the Stipulation and Agreement.

(D) This order is without prejudice to any findings or orders which may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, El Paso, the Commission staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against El Paso Natural Gas Company or any other person or parties affected by this order.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2177

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL COST, ACCRUED DEPRECIATION, NET INVESTMENT, AND CHANGES THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 15, 1964)

Georgia Power Company, Licensee for Project No. 2177,[1] filed statements of claimed cost pursuant to Sections 4.1 and 4.20 of the Commission's Regulations under the Federal Power Act on December 22, 1960, showing a claimed cost of $3,288,728.88, accrued depreciation of $1,240,572.11, and net investment of $2,048,156.77 in the project[2] as of January 1, 1955, the effective date of the license. This report also showed net cost changes in project plant accounts of $15,386,402.32 for the period from January 1, 1955 through December 31, 1959, consisting of gross additions of $15,450,608.87, which included the Oliver development and two additional units at Goat Rock development, and gross retirements of $64,206.55, resulting in a total claimed actual legitimate original cost of the project of $18,675,131.20, as of December 31, 1959.

Licensees claimed net changes in project accrued depreciation amount to an increase of $513,889.46 for the period from January 1, 1955 through December 31, 1959, and result in a total claimed project accrued depreciation of $1,754,461.57, as of December 31, 1959.

Commission's staff conducted a field examination of the licensee's books and records for the purpose of determining the accuracy of licensee's claims. As a result of that examination staff has proposed, subject to Commission approval, certain adjustments, agreed to by the licensee as follows: (1) a reduction of $13,741.87 in the claimed actual legitimate original project cost as of January 1, 1955 including a reclassification within project plant accounts of $719.86; (2) a reduction of $41,661.02 in the claimed initial accrued depreciation as of January 1, 1955, resulting from the disposition of plant account adjustments and a direct adjustment to the claimed accrued depreciation; and (3) a reduction of $31,698.75 in the claimed cost changes in project plant accounts for the period from January 1, 1955 through December 31, 1959, including a reclassification within project plant accounts of $258.16.

The reclassifications, eliminations, and other adjustments are enumerated below:

---

[1] The project consists of three developments, the existing Goat Rock and North Highlands developments and the newly constructed Oliver development, located on the Chattahoochee River between the States of Alabama and Georgia. The Goat Rock development is located approximately 8.5 miles north of Columbus, Georgia, and was placed in operation in 1913 by the Columbus Power Company, a predecessor of the Licensee. The North Highlands development is located at Columbus, Georgia, and was placed in operation in 1901 also by Columbus Power Company. The Oliver development is located in the northern section of the City of Columbus, Georgia, and was placed in operation in 1959 by Georgia Power Company, Licensee. The license was issued pursuant to Sec. 4 (e) of the Federal Power Act for a 50-year period, effective as of January 1, 1955.

[2] Articles 21 and 22 of the license provide for Commission determination of the actual legitimate original cost, accrued depreciation and resulting net investment of Licensee in the parts of the project completed prior to the effective date of the license; the actual legitimate original cost of parts of the project completed after the effective date of the license and of any additions thereto or betterments thereof, and applicable accrued depreciation.

Adjustment No.	Description	Amount
	TO PLANT ACCOUNTS	
1	Reclassifications $719.86	0
2	Training station operators	($5,553.90)
3	Repairs to transformers	(2,627.17)
4	Repairs to railroad	(5,440.38)
5	Interest during construction	120.42)
6	Clearing debris at tailrace after date of commercial operation	(3,338.90)
7	Interest during construction re adjustment No. 6	(82.80)
8	Reclassification within project accounts $258.16	0
9	Correction of duplicated transfer	2,213,98
10	Elimination of profits-to-affiliates	(26,253,05)
11	Elimination of out of period interest and engineering costs	(4,137.98)
12	Legal expense applicable to hydro land option not exercises	(100.00)
	Total plant adjustments	(45,440.62)
	TO ACCRUED DEPRECIATION	
13	Correct recording of net retirement	($31,010.91)
14	Transfer in functional, classifications $246.86	0

( ) Denotes reduction.

The foregoing adjustments are to be accomplished by the following composite journal entry:

Account No.	Particulars	Debit	Credit
101	Electric Plant in service-project No. 2177		$45,440.62
107	Construction work in progress		2,213.98
108	Accumulated provision for depreciation of electric plant in service-project 2177	$41,661.02	
108	Accumulated provision for depreciation electric plant in service-non-project		31,010.91
121	Nonutility property		12,690.47
216	Unappropriated earned surplus	49,694.96	
	Total	91,355.98	91,355.98

By letter dated April 19, 1962, Licensee confirmed its agreement with the proposed staff adjustments and resulting project costs and depreciation as set forth above.

The Georgia Public Service Commission was advised by letter of this Commission as to the proposed staff adjustments and resulting project costs and accrued depreciation. By letter dated December 27, 1962, the Georgia Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments including the accounting dispositions and resulting project costs and project accrued depreciation, and the Georgia Public Service Commission by its lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22, and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments including the accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, January 1, 1955 the actual legitimate original cost of Project No. 2177 is $3,274,987.01, classified by developments as shown in attached Schedule I; the project accrued depreciation of the constructed plants is $1,198,911.09, as shown in attached Schedule II; and the net investment of Licensee in the constructed plants of Project No. 2177 is $2,076,075.92.

(4) The net increase or change in the actual legitimate original cost of the project for the period from January 1, 1955 through December 31, 1959, is $15,354,703.57, consisting of the initial cost of the newly constructed Oliver development in the amount of $14,293,269.85, net additions to the constructed plant (Goat Rock) in the amount of $1,061,433.72 and the resulting actual legitimate original cost of Project No. 2177 as of December 31, 1959 is $18,629,690.58, classified by developments and by primary plant accounts as shown in attached Schedule I.

(5) The net increase or change in project accrued depreciation for the period from January 1, 1955 to December 31, 1959 is $513,889.46 and the resulting project accumulated provision for depreciation as of December 31, 1959 is $1,712,800.55, as classified by plants or developments and by functional groups as shown in attached Schedule II.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments including accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, showing the debit balance of $3,274,987.01 as the actual legitimate original cost of Project No. 2177 as of January 1, 1955, the debit amount of $15,354,703.57 as the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1955 through December 31, 1959, and the debit balance of $18,629,690.58 as the actual legitimate original cost of the project as of December 31, 1959, all as more specifically shown in the attached Schedule I, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed For Public Utilities and Licensees.

(D) Licensee, to the extent that it has not already done so, shall establish and maintain a reserve account for accrued depreciation applicable to in-service project properties of Project No. 2177 showing the credit balance of $1,198,911.09 as of January 1, 1955, the credit amount of $513,889.46 as the net increase or change in project accrued depreciation for the period from January 1, 1955 through December 31, 1959 and the credit balance of $1,712,800.55, all as more specifically shown in the attached Schedule II, classified by plants or developments and functional groups and in accordance with the Commission's Uniform System of Accounts Prescribed For Public Utilities and Licensees.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and certified copies of its adjusting journal entries showing compliance therewith, in triplicate.

SCHEDULE I

Georgia Power Co., Licensee, Project No. 2177 (Middle Chattahoochee Development)

SUMMARY OF COST, BY DEVELOPMENTS, AS OF JAN. 1, 1955, RECORDED CHANGES FOR THE PERIOD JAN. 1, 1955 THROUGH DEC. 31, 1959, WITH ADJUSTMENTS THERETO AND ALLOWED BALANCES AS OF DEC. 31, 1959

Particulars	Initial cost as of Jan. 1, 1955			Net additions for period Jan. 1, 1955–Dec. 31, 1959			Total allowed cost as of Dec. 31, 1959
	As claimed	Adjustments	As adjusted	As claimed	Adjustments	As adjusted	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Constructed projects:							
Goat Rock:							
Units 1, 2, 3 and 4	$257, 873, 231	($1, 374, 187)	$256, 499, 044				$256, 499, 044
Units 5 and 6				$108, 151, 481	($342, 170)	$107, 809, 311	107, 809, 311
Net additions, other				(1, 665, 939)		(1, 665, 939)	(1, 665, 939)
Total Goat Rock	257, 873, 231	(1, 374, 187)	256, 499, 044	106, 485, 542	(342, 170)	106, 143, 372	362, 642, 416
North Highlands	70, 999, 657		70. 999, 657				70, 999, 657
Total constructed projects	328, 872, 888	(1, 374, 187)	327, 498, 701	106, 485, 542	(342, 170)	106, 143, 372	433, 642, 073
Newly constructed project:							
Oliver Dam				1, 432, 154, 690	(2, 827, 705)	1, 429, 326, 985	1, 429, 326, 985
Total project	328, 872, 888	(1, 374, 187)	327, 498, 701	1, 538, 640, 232	(3, 169, 875)	1, 535, 470, 357	1, 862, 969, 058

( ) Denotes reduction.

SCHEDULE II

GEORGIA POWER CO. LICENSEE, PROJECT NO. 2177 (MIDDLE CHATTAHOOCHEE DEVELOPMENT)

SUMMARY OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE, BY DEVELOPMENTS, AS OF JAN. 1, 1955, RECORDED CHANGES FOR THE PERIOD JAN. 1, 1955 THROUGH DEC. 31, 1959, WITH ADJUSTMENTS THERETO AND ALLOWED BALANCES AS OF DEC. 31, 1959

Developments	Initial accrued depreciation at Jan. 1, 1955			Changes in accrued depreciation Jan. 1, 1955–Dec. 31, 1959			Accrued depreciation as of Dec. 31, 1959		
	As recorded	Adjustments	As adjusted	As recorded	Adjustments	As adjusted	As recorded	Adjustments	Allowed
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Constructed plants:									
Goat Rock:									
Hydraulic	$854, 573. 03	($35, 769. 72)	$818, 803. 31	$235, 511. 52	$119. 85	$235, 631. 37	$1, 090, 084. 55	($35, 649. 87)	$1, 054, 434. 68
Transmission	111, 228. 32	(5, 440. 38)	105, 787. 94	465. 84		465. 84	111, 694. 16	(5, 440. 38)	106, 253. 78
General	450. 92	(450. 92)		119. 85	(119. 85)		570. 77	(570. 77)	
Total Goat Rock	966, 252. 27	(41, 661. 02)	924, 591. 45	236, 097. 21		236, 097. 21	1, 202, 349. 48	(41, 661. 02)	1, 160, 688. 46
North Highlands:									
Hydraulic	273, 990. 33		273, 990. 33	186, 418. 54		186, 418. 54	460, 408. 87		460, 408. 87
Transmission									
General—Retired in May 1960	329. 51		329. 51				329. 51		329. 51
Total North Highlands	274, 319. 84		274, 319. 84	186, 418. 54		186, 418. 54	460, 738. 38		460, 738. 38
Newly constructed plant:									
Oliver:									
Hydraulic				85, 904. 65	3. 58	85, 908. 23	85, 904. 65	3. 58	85, 908. 23
Transmission				5, 465. 48		5, 465. 48	5, 465. 48		5, 465. 48
General				3. 58	(3. 58)		3. 58	(3. 58)	
Total Oliver				91, 373. 71		91, 373. 71	91, 373. 71		91, 373. 71
Total project No. 2177:									
Hydraulic	1, 128, 563. 36	(35, 769. 72)	1, 092, 793. 64	507, 834. 71	123. 43	507, 958. 14	1, 636, 398. 07	(35, 646. 29)	1, 600, 751. 78
Transmission	111, 228. 32	(5, 440. 38)	105, 787. 94	5, 931. 32		5, 931. 23	117, 159. 64	(5, 440. 38)	111, 719. 26
General	780. 43	(450. 92)	329. 51	123. 43	(123. 43)		903. 86	(574. 35)	329. 51
Total project No. 2177	1, 240, 572. 11	(41, 661. 02)	1, 198, 911. 09	513, 889. 46		513, 889. 46	1, 754, 461. 57	(41, 661. 02)	1, 712, 800. 55

( ) Denotes debit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, PROJECT NO. 2114

ORDER ACCEPTING AGREEMENT MADE PURSUANT TO LICENSE CONDITION

(Issued January 15, 1964)

On August 2, 1963, Public Utility District No. 2 of Grant County, Washington, licensee for Project No. 2114, filed an agreement dated July 29, 1963, between the licensee and the State of Washington, Department of Game, concerning the conveyance to the State of Washington, Department of Game, of land owned by the licensee along the Columbia River and tributaries outside the project boundary, for development by the Department of Game for the preservation of wildlife and waterfowl as substitute areas for areas lost by inundation of the Wanapum and Priest Rapids Reservoirs of Project No. 2114.

The agreement was made pursuant to the provisions of Article 40 of the license which reads as follows:

Article 40. The Licensee shall negotiate with the Department of Game of the State of Washington, with respect to the acquisition by the Licensee for the State of island and marsh areas along the Columbia River and tributaries for development as substitutes for waterfowl nesting areas to be lost by reservoir inundation. Should the Licensee and the State Department of Game fail to agree on the acquisition of such lands, the Commission reserves the right to make a final determination in this matter after notice and opportunity for hearing.

The aforementioned agreement was made subject to its approval by U.S. Fish and Wildlife Service which has approved the agreement in accordance with Section XI thereof.

The Commission finds:

The aforementioned agreement is in compliance with Article 40 of the license for Project No. 2114.

The Commission orders:

The aforementioned July 29, 1963 agreement between the licensee for Project No. 2114 and the State of Washington Department of Game is hereby accepted for filing pursuant to the provisions of Article 40 of the license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 621

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 15, 1964)

The Washington Water Power Company, Licensee for Project No. 621,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's

---

[1] The project is located on the Clearwater River in the vicinity of the City of Lewiston in Nez Perce County, Idaho, and may be described as the Lewiston Project. The Licensee, issued pursuant to Section 4(d) of The Federal Water Power Act to Inland Power & Light Company, authorizing the construction, operation, and maintenance of the project, is by its terms effective for a period of 50 years, commencing June 8, 1926. The Commission approved the transfer of the license (1) from Inland Power & Light Company to Chelan Electric Company on June 20, 1930 (Eleventh Annual Report of FPC (1931), pp. 53–54); and (2) from Chelan Electric Company to The Washington Water Power Company on July 20, 1937 (1 FPC 693).

Regulations under the Federal Power Act, claiming a net increase in the original cost of the project of $454,591.86 for the period from January 1, 1937, through December 31, 1960.[2]

The claimed net increase, of $454,591.86, consisting of claimed and recorded project gross additions of $560,265.94, gross retirements of $307,175.56, and debit adjustments of $201,501.48, results in a total claimed project cost as of December 31, 1960 of $3,828,576.49.

The Commission staff conducted a field examination of Licensee's books and records and other data for the purpose of ascertaining the correctness of the above claimed and recorded project cost changes for the period from January 1, 1937, through December 31, 1960.

Following that examination, the staff proposed certain adjustments for the period from January 1, 1937 through December 31, 1960 consisting of: (1) reclassification within project plant accounts of $43,585.34 affecting the previously approved classified project cost as of December 31, 1936; (2) reclassification within project plant accounts of $55,482.82 during the period from January 1, 1937 through December 31, 1960; and (3) other adjustments effecting a net elimination of $247,523.57 in the claimed and recorded project cost changes for that period; and (4) the accounting disposition of the foregoing amounts, all as agreed to by representatives of Licensee, subject to Commission approval. The net effect of staff adjustments is a reduction in the claimed and recorded cost of additions in the period from $454,591.86 to $207,068.29.

The proposed net elimination of $247,523.57 in claimed and recorded changes in project cost is comprised of the following items:

	Amount—Debit or () credit
Nonproject facilities	($56, 578. 51)
Erroneous adjustment of overhead costs	639. 26
Maintenance costs erroneously capitalized	(3, 716. 64)
Duplicate retirement	778. 15
Unrecorded retirements	(14, 996. 41)
Contributions in aid of construction	(173, 649, 42)
	(247, 523. 57)

The proposed accounting disposition of the amounts involved in the proposed adjustments is shown in the following composite journal entry:

Account No.		Title	Debit	Credit
New	Old[1]			
101	100. 1	Electric plant in service—nonproject	$55, 939. 25	
		Project No. 621		$73, 874. 15
271	265. 2	Contributions in aid of construction—Federal		173, 649. 42
108	250. 1	Accumulated provision for depreciation of electric plant in service—project No. 621	14, 218. 26	
271	265	Contributions in aid of construction—General	173, 649. 42	
216	271	Unappropriated earned surplus	3, 716. 64	
			247, 523. 57	247, 523. 57

[1] Account numbers prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees, effective prior to Jan. 1, 1961.

---

[2] The Commission, by its order issued December 28, 1949 (8 FPC 1407), determined the total actual legitimate original cost of the project as of December 31, 1936, to be $3,373,984.63. No determination was made in the Commission's order of the project accrued depreciation.

Based upon the proposed adjustments, the staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in project cost for the period from January 1, 1937 through December 31, 1960 to be $207,068.29, comprised of gross additions of $502,534.68, gross retirements of $287,798.14, debit adjustments of $165,981.17 to the project plant accounts, and contributions in aid of construction in the credit amount of $173,649.42; and (2) the actual legitimate original cost of the project as of December 31, 1960 to be $3,581,052.92, classified by primary plant accounts as shown in the attached schedule.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties as of December 31, 1960.

By letter dated January 17, 1962, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions, and resulting project costs.

The Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission were advised by this Commission of the proposed adjustments, accounting dispositions, and resulting project costs, all as recommended by this Commission's staff and agreed to by Licensee as set forth above. Each of those Commissions indicated no objection to the foregoing.

The Commission finds:

(1) The acceptance of the staff recommendations by the Licensee, and the lack of objection thereto by the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission, obviate the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 621 for the period from January 1, 1937, through December 31, 1960, is $207,068.29, consisting of gross additions of $502,534.68, gross retirements of $287,798.14, debit adjustments of $165,981.17 to the project plant accounts, and contributions in aid of construction in the credit amount of $173,649.42, and the resulting actual legitimate original cost of the project as of December 31, 1960, is $3,581,052.92, classified by primary plant accounts as shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Propect No. 621 as of December 31, 1960, be reserved for future Commission consideration.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, for Project No. 621 showing the debit amount of $207,068.29 as the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1937, through December 31, 1960, and the total debit balance of $3,581,052.92 as the actual legitimate original cost of the project as of December 31, 1960, classified by primary plant accounts as shown in the attached schedule.

(D) The matter of Commission determination of the accrued depreciation applicable to in-service project properties of Project No. 621 as of December 31, 1960, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission certified copies of Licensee's adjusting journal entries showing compliance therewith; three copies of those journal entries to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

THE WASHINGTON WATER POWER CO., LICENSEE, PROJECT NO. 621 (LEWISTON)

ACTUAL LEGITIMATE ORIGINAL COST

Account[1]		Original cost as of Dec. 31, 1936			Changes from Jan. 1, 1937 through Dec. 31, 1960			Allowed original cost as of Dec. 31, 1960
No.	Title	Allowed[2]	Reclassifications	As reclassified	As claimed	Adjustments	As adjusted	
	Intangible plant:							
302	Franchises and consents				$370.00		$370.00	$370.00
303	Miscellaneous intangible plant	$370.00		$370.00	(370.00)		(370.00)	
	Total intangible plant	370.00		370.00				370.00
	Hydraulic production plant:							
320	Land and land rights	651,683.59		651,683.59	(19,492.93)	$44.16	(19,448.77)	632,234.82
321	Structures and improvements	217,207.92		217,207.92	(19,021.79)	819.40	(18,202.39)	199,005.53
322	Reservoirs, dams, and waterways	2,240,925.87		2,240,925.87	170,324.10	(3,837.63)	166,486.47	2,407,412.34
323	Water wheels, turbines, and generators	261,164.86		261,164.86	78,613.40	(1,077.81)	77,535.59	338,700.45
324	Accessory electric equipment	73,869.72		73,869.72	80,419.05	15,569.01	95,988.06	169,857.78
325	Miscellaneous powerplant equipment	127.87		127.87	2,090.75	475.74	2,566.49	2,694.36
326	Roads, railroads, and bridges	15,035.51		15,035.51	(14,240.27)	2.17	(14,238.10)	797.41
	Total hydraulic production plant	3,460,015.34		3,460,015.34	278,692.31	11,995.04	290,687.35	3,750,702.69
	Transmission plant:							
342	Structures and improvements	990.35	$407.21	1,397.56	(990.35)	(407.21)	(1,397.56)	
343	Station equipment	33,469.02	43,178.13	76,647.15	(33,469.02)	(43,178.13)	(76,647.15)	
	Total transmission plant	34,459.37	43,585.34	78,044.71	(34,459.37)	(43,585.34)	(78,044.71)	
	Distribution plant:							
351	Structures and improvements	407.21	(407.21)		1,654.45	(1,654.45)		
352	Station equipment	43,178.13	(43,178.13)		40,629.63	(40,629.63)		
	Total distribution plant	43,585.34	(43,585.34)		42,284.08	(42,284.08)		
	General plant:							
378	Communication equipment	1,704.00		1,704.00	1,925.42	.23	1,925.65	3,629.65
393	Donations in aid of construction—Credit	(166,149.42)		(166,149.42)	166,149.42		166,149.42	
	Total general plant	(164,445.42)		(164,445.42)	168,074.84	.23	168,075.07	3,629.65
100.1	Total electric plant in service	3,373,984.63		3,373,984.63	454,591.86	(73,874.15)	380,717.71	3,754,702.34
265.2	Contributions in aid of construction—Federal					(173,649.42)	(173,649.42)	(173,649.42)
	Actual legitimate original cost	3,373,984.63		3,373,984.63	454,591.86	(247,523.57)	207,068.29	3,581,052.92

---

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

[2] See Commission order issued Dec. 28, 1949 (8 FPC 1407).

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2058

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued January 15, 1964)

The Washington Water Power Company, Licensee for Project No. 2058,[1] filed with the Commission its Form No. 8 statement, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from August 1, 1954 through December 31, 1960, a net increase in the original cost of the project in the amount of $371,704.86 [2] consisting of claimed and recorded gross additions of $642,369.36, gross retirements of $343,244.82 and debit adjustments of $72,580.32, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1960, of $46,954,613.92.

The Commission's staff conducted a field examination of licensee's books and records and other data for the purpose of ascertaining the correctness of above claimed and recorded project cost changes for the period from August 1, 1954, through December 31, 1960. Following that examination the staff proposed, subject to Commission approval, the reclassification of $13,813.79 within the project plant accounts and a net reduction of $250,811.01 in the claimed and recorded project cost changes as shown in the attached Schedule. Those adjustments, agreed to by representatives of Licensee, and subject to Commission approval, are summarized as follows:

	Amounts
Nonproject facilities	($224, 342. 34)
Transfer to project No. 2075	(21, 040. 69)
Operating and miscellaneous costs capitalized in error	(4, 565. 37)
Unrecorded retirements	(862. 61)
Total proposed net reduction	(250, 811. 01)

The accounting disposition of the proposed adjustments is shown in the following composite journal entry:

Account		Title	Debit	Credit
New	Old[1]			
101	100.1	Electric plant in service:		
		Nonproject	$224, 342. 34	
		Project No. 2058		$250, 811. 01
		Project No. 2075	21, 040. 69	
108	250.1	Accumulated provision for depreciation of electric plant in service-project No. 2058	862. 61	
216	271	Unappropriated earned surplus	4, 565. 37	
		Total	250, 811. 01	250, 811. 01

[1] Account references are to account numbers prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees, prior to Jan. 1, 1961.

---

[1] The project is located on the Clark Fork River about 9 miles upstream from Pend Oreille Lake in Bonner County, Idaho, and Sanders County, Montana, and affects public land and lands of the United States within the Cabinet National Forest. Its transmission lines are located in Bonner and Kootenai Counties, Idaho, and Spokane County, Washington. It may be described, generally as the Cabinet Gorge project. The license authorizing the construction, operation, and maintenance of the project, was issued pursuant to Section 4(e) of the Federal Power Act for a period of 50 years, commencing March 1, 1951. The project began commercial operation on March 1, 1953.

[2] The Commission, by order issued February 7, 1961 (25 FPC 263) determined the initial actual legitimate cost of the project as of July 31, 1954, to be $46,582,909.06.

Licensee by letter of March 26, 1962, confirmed its acceptance of the staff's proposed adjustments as set forth above. The Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission and the Board of Railroad Commissioners of the State of Montana were advised of the proposed adjustments, accounting dispositions, and resulting project costs, and each of those Commissions indicated no objections thereto.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments including the accounting dispositions and resulting project cost and the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, and the Board of Railroad Commissioners of the State of Montana by their lack of objection thereto have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments including the accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of the project for the period from August 1, 1954, through December 31, 1960 is $120,893.85, consisting of gross additions of $403,913.80, gross retirements of $333,907.43 and debit adjustments of $50,887.48 and the resulting actual legitimate original cost of the project as of December 31, 1960, is $46,703,802.91.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the project depreciation reserve applicable to in-service project properties of Project No. 2058 be deferred for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, showing the debit amount of $120,893.85 as the net increase or change in the actual legitimate original cost of Project No. 2058 for the period from August 1, 1954 through December 31, 1960, and the amount of $46,703,802.91, as the actual legitimate original project cost as of December 31, 1960, all as more specifically shown in the attached schedule, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed For Public Utilities and Licensees.

(D) The matter of Commission determination of the project accrued depreciation for Project No. 2058 is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of its adjusting entries showing compliance therewith and shall submit two further copies thereof to the Regional Accountant, Federal Power Commission, in San Francisco.

SCHEDULE

THE WASHINGTON WATER POWER CO., LICENSEE, PROJECT NO. 2058 (CABINET GORGE)

ACTUAL LEGITIMATE ORIGINAL COST

Account [1]		Allowed cost as of July 31, 1954 [2]	Changes from Aug. 1, 1954 through Dec. 31, 1960			Allowed cost as of Dec. 31, 1960
No.	Title		As claimed	Adjustments	As adjusted	
	Hydraulic Production Plant:					
320	Land and land rights	$7,016,869.51	$356,970.81	----------	$356,970.81	$7,373,840.32
321	Structures and improvements	7,511,897.15	11,065.58	($2,498.83)	8,566.75	7,520,463.90
322	Reservoirs, dams, and waterways	16,174,737.77	12,461.99	----------	12,461.99	16,187,199.76
323	Water wheels, turbines, and generators	8,934,080.16	12,112.14	(4,500.15)	7,611.99	8,941,692.15
324	Accessory electric equipment	1,046,807.09	77,500.55	(61,065.59)	16,434.96	1,063,242.05
325	Miscellaneous powerplant equipment	933,647.44	8,726.86	84.53	8,811.39	942,458.83
326	Roads, railroads, and bridges	812,116.79	----------	10,987.46	10,987.46	823,104.25
	Total hydraulic production plant	42,430,155.91	478,837.93	(56,992.58)	421,845.35	42,852,001.26
	Transmission Plant:					
340	Land and land rights	117,584.94	2,593.85	(3,524.23)	(930.38)	116,654.56
341	Clearing land and rights-of-way	502,831.27	----------	(4,105.64)	(4,105.64)	498,725.63
342	Structures and improvements	92,460.61	----------	----------	----------	92,460.61
343	Station equipment	1,752,658.96	(101,307.29)	(171,915.13)	(273,222.42)	1,479,436.54
344	Towers and fixtures	26,122.53	----------	----------	----------	26,122.53
345	Poles and fixtures	774,264.62	(11,541.07)	(5,087.76)	(16,628.83)	757,635.79
346	Overhead conductors and devices	882,033.00	(9,114.00)	(9,185.67)	(18,299.67)	863,733.33
	Total transmission plant	4,147,955.93	(119,368.51)	(193,818.43)	(313,186.94)	3,834,768.99
	General Plant:					
378	Communication equipment	4,797.22	12,235.44	----------	12,235.44	17,032.66
	Actual legitimate original cost	46,582,909.06	371,704.86	(250,811.01)	120,893.85	46,703,802.91

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

[2] See Commission order issued February 7, 1961 (25 FPC 263).

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FOREST OIL CORPORATION

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 16, 1964)

On December 20, 1963, Forest Oil Corporation (Forest) filed an application for rehearing of the Commission's letter-order issued November 21, 1963, rejecting the Notice of Producer Rate Change filed by Forest on October 30, 1963, for a proposed rate increase under its FPC Gas Rate Schedule No. 17 from 19.5¢ per Mcf to 21.4¢ per Mcf for gas presently being sold by Forest, pursuant to conditioned temporary authorization issued in Docket No. CI62-898 to Transcontinental Gas Pipe Line Corporation.

The basis for the rejection was that the proposed increase was not in conformity with the express condition in the temporary authorization that the 19.5¢ rate shall remain in effect until changed by further Commission order in the certificate proceedings in Docket No. CI62–898.

Forest relies principally upon the fact that a similar condition has been held to be invalid by the Fifth Circuit Court of Appeals, *Hunt* v. *F.P.C.*, 306 F. 2d 334.* However, the Supreme Court has granted certiorari on appeal by the Commission from this decision (No. 273, October Term 1963) and, pending such review, the decision of the circuit court is not controlling as a precedent, even with respect to new applications. *A fortiori* we cannot give effect to it here where (unlike *Hunt* which in accepting the temporary expressly reserved the right to seek review and did so after denial of a petition for rehearing) Forest accepted the temporary authorization as tendered and allowed the Commission's letter-order granting the temporary to become final.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application of Forest present no new facts or principles of law which were not considered by the Commission when it issued its letter-order of November 21, 1963, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The application for rehearing filed by Forest on December 20, 1963, is hereby denied.

---

*CA5 reversed, 376 U.S. 515.

OPINION NO. 416

KENTUCKY WEST VIRGINIA GAS COMPANY, DOCKET NO. RP63-12

OPINION AND ORDER APPROVING INCREASED RATES

(Issued January 16, 1964)*

Syllabus

1. Proposed increased rates under single schedule embodying same charges for Respondent's jurisdictional customers *found* just, reasonable and nonpreferential. P. 142.
2. Commission *approves* increased rates in proceeding arising under Section 4(e) of the Natural Gas Act. P. 144.

Donald I. Moritz for Kentucky West Virginia Gas Company

H. E. Robinson, Jr. and *J. T. Brown* for Equitable Gas Company

Herbert W. Ryan, *Giles D. H. Snyder* and *W. C. Hart* for Kentucky Gas Transmission Corporation

Frederick D. Cornellius, *Herbert E. Squires* and *Alan R. Squires* for Pennsylvania Public Utility Commission

Cyril S. Wofsy for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WOODWARD, *Commissioner:*

This case involves a proposed increase in the jurisdictional rates of Kentucky West Virginia Gas Company (KWV) for gas sold to its two jurisdictional customers, Equitable Gas Company (Equitable) and Kentucky Gas Transmission Corporation (KGT). By order issued May 28, 1963, the Commission suspended the proposed increase for one day, and ordered a hearing on the lawfulness of the increase under the Natural Gas Act. Upon motion duly filed by KWV together with an undertaking to make refund if required, the increased rates became effective subject to refund as of June 2, 1963. Interveners in this proceeding are Equitable, KGT, and the Pennsylvania Public Utilities Commission (PUC).

---

*Initial decision appears on p. 144.

At the hearing, no issue was raised with respect to the over-all amount of the increase proposed. The parties stipulated that KWV's jurisdictional cost of service in this proceeding is $6,589,816, which is the cost reflected in the $479,028 annual increase filed by KWV. The only issue in controversy was the allocation of KWV's cost for the purpose of designing its rates for Equitable and KGT. KWV proposed rates which are the same for both customers, following the company's consistent practice of changing a single rate to all of its jurisdictional customers. PUC, however, contended that the rates to Equitable should be reduced and the rates to KGT should be increased so as to reflect differing costs of service to the two customers.

On October 15, 1963, the presiding examiner issued an initial decision finding that KWV renders identical service to both Equitable and KGT, and that a single rate for both, as in the past, is appropriate in the present circumstances. He concluded that the single demand and commodity rate as proposed is just, reasonable, non-discriminatory and non-preferential under the Natural Gas Act.

Exceptions to the examiner's decision were filed by PUC and by the Commission's staff. PUC objects to the examiner's approval of the single rate to both customers. PUC also objects to a finding by the examiner that KWV is essentially a producer of natural gas. Staff also takes exception to the examiner's finding that KWV is a producer. The case is now before us on these exceptions to the examiner's decision.

In our judgment the proposed rates under a single schedule for Equitable and KGT are neither discriminatory nor preferential, but are just and reasonable as found by the examiner. There is no necessity, however, to determine KWV's status as a pipeline company or a producer in order to reach this result. The company's status was not an issue in this case, and we do not find any justification for making a finding on this question at this time.

KWV sells purchased and produced gas to its two jurisdictional customers under an exchange arrangement whereby the gas is delivered to United Fuel Gas Company (United Fuel) for their account at United Fuel's Beaver Creek compressor station and at a connection with United Fuel's system near KWV's Dwale compressor station. Equitable and KGT in turn, under separate agreements with United Fuel, receive exchange gas from the latter at points downstream on United Fuel's system convenient to their service areas. KVW also delivers a small part of KGT's requirements directly to KGT at KWV's Tomahawk compressor station. Under its service agreements with Equitable and KGT, KWV allocates the gas delivered into United Fuel's system at Beaver Creek and at Dwale between that delivered for the account of Equitable and that dealivered for the account of KGT. Normally, KWV allocates deliveries at Dwale to KGT to the extent necessary to meet the latter's daily requirement of 15,000 Mcf.[1] The balance of the deliveries at Dwale and all of the deliveries at Beaver Creek are then, normally, allocated to Equitable. KWV makes this allocation for the purpose of its billings to Equitable and KGT. The assignment of deliveries at Dwale and Beaver Creek does not represent a physical delivery of gas to either Equitable or KGT, and the gas received by these customers under their exchange agreements with United Fuel is physically unaffected by the gas delivered to United Fuel by KWV. Moreover, neither KWV's costs nor United Fuel's costs are affected by the allocation made by KWV.[2]

---

[1] KWV first delivers 2,000 to 3,000 Mcf per day directly into KGT's line at Tomahawk. The amounts allocated to KGT at Dwale on any day represent the difference between KGT's daily demand of 15,000 Mcf and the deliveries at Tomahawk.

PUC claims that KWV renders both production and transmission services, and that its sales to KGT, unlike the sales to Equitable, are all made through its transmission system facilities and should reflect the higher costs associated therewith. The transmission facilities referred to are the compressor stations at Tomahawk and Dwale and about two miles of pipeline connecting these stations to the points of delivery. The deliveries at United Fuel's Beaver Creek Station, on the other hand, are made through KWV's production and gathering system, and the gas is compressed to pipeline pressure by United Fuel and not by KWV. In support of its argument that KWV's rates to Equitable and KGT should reflect the varying costs of the facilities used to effect deliveries at each of the three delivery points PUC would rely on the provisions in the exchange agreements between these customers and United Fuel. For example, PUC contends that Equitable's exchange agreement with United Fuel reserves the capacity of the Beaver Creek compressor station for Equitable, for which Equitable pays United Fuel a demand charge. KGT, under its contract with United Fuel, pays no demand charge for the exchange service, only a flat one-cent commodity charge; and the contract recites the prior right of Equitable to make deliveries to United Fuel at the Beaver Creek station.

The contracts which Equitable and KGT have entered into with United Fuel for redelivery of the gas delivered by KWV to United Fuel for their account are not relevant to the question to be decided here. The sales to Equitable and KGT are made under the service agreements between KWV and these customers, and these contracts are controlling for the purpose of this case. Under these contracts, and the realities of KWV's operations, it is clear that the allocation made by KWV is for the latter's convenience in billing its customers. It makes no difference of any substance insofar as KWV's or United Fuel's operations are concerned; and it makes no difference insofar as the physical deliveries of gas to Equitable and KGT by United Fuel are concerned. The cost allocation in this case should not be based on KWV's bookkeeping procedures, but on the actual facts of its operations.

KWV, Equitable, KGT and staff have all taken the position that KWV's so-called transmission facilities serve both a transmission and a production function which is beneficial to Equitable and KGT alike; that these facilities are in reality a part of an over-all operation which insures the maximum delivery of gas for assignment to Equitable and KGT; and that all of KWV's jurisdictional costs should be rolled together for the purpose of its rate design. The record supports this position and a finding that KWV is rendering the same service to both Equitable and KGT. Accordingly, we conclude that the single rate proposed by KWV for the sale of gas to these two customers is just, reasonable, non-discriminatory, and non-preferential, and is a lawful rate within the meaning of the Natural Gas Act.

The Commission finds:

The proposed rates filed by Kentucky West Virginia Gas Company in this proceeding under a single rate schedule embodying the same charges for both of its jurisdictional customers are just, reasonable, non-discriminatory, and non-preferential under the Natural Gas Act.

---

[2] KWV is a wholly owned subsidiary of Equitable. KGT is affiliated with United Fuel, both being subsidiaries of the Columbia Gas System.

The Commission orders:

Kentucky West Virginia Gas Company is hereby relieved of its undertaking to make refunds in this proceeding; and the rates herein proposed by Kentucky West Virginia Gas Company and heretofore made effective subject to refund are hereby continued in effect without obligation for refund from the time said rates first became effective.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON PROCEEDINGS PURSUANT TO SECTION 4(e) OF THE NATURAL GAS ACT

(Issued October 15, 1963)

WILLIAMS, *Presiding Examiner:* On April 30, 1963, Kentucky West Virginia Gas Company, the Applicant in this proceeding and hereinafter referred to as KWV, tendered for filing with the Commission its Tenth Revised Sheet No. 4 of its F.P.C. Gas Tariff, Original Volume No. 1 to become effective June 1, 1963, and which provides for a monthly demand charge of $1.90 per Mcf of billing demand and a commodity charge of 21.28¢ per Mcf of gas delivered, and proposes an annual increase in its rates and charges of $479,028 or 7.8% over the rates in effect for the calendar year 1962, as adjusted.

By order issued May 28, 1963, the Commission suspended, for one day, the proposed increase and ordered that a hearing be held with respect to the lawfulness thereof. A prehearing conference was set in the same order for the purpose of defining the issues, reaching an agreement and stipulation thereon and on any other facts relevant to this matter, and, if necessary to prescribe procedure for the hearing, observing the Commission's over-all desire that the matter be expedited.

A subsequent Commission order on May 31, 1963, permitted the interventions of Kentucky Gas Transmission Corporation (KGT) and Equitable Gas Company (Equitable). A notice of intervention had been previously filed by the Pennsylvania Public Utility Commission (Pennsylvania Commission) on May 16, 1963.

A prehearing conference was held on June 18, 1963, wherein the parties stipulated that the total jurisdictional cost of service in this proceeding is $6,589,816, the amount requested by the Applicant (KWV) in the rate increase filing.

It was developed in the course of the ensuing hearing that KWV is a wholly owned subsidiary of Equitable, and is primarily engaged in the production of natural gas in Eastern Kentucky for sale to two jurisdictional customers (Equitable and KGT) at identical rates under Rate Schedule S-1 to KWV's F.P.C. Gas Tariff, Original Volume No. 1. Pursuant to separate service agreements with each customer, KWV is obligated to deliver up to 65,000 Mcf per day to Equitable when such amount of gas is available; the obligation to KGT is a maximum of 15,000 Mcf per day.

With the exception of deliveries made to KGT at Tomahawk Compressor Station (Tomahawk) a producing segment independent and unconnected with the balance of KWV's system, gas is delivered to the United Fuel Gas Company (United Fuel) for the accounts of both Equitable and KGT at the inlet side of United Fuel's Beaver Creek Compressor Station (Beaver Creek) and a short distance from the outlet side of KWV's Dwale Compressor Station (Dwale). The gas delivered at Beaver Creek, limited to 54,000 Mcf per day at a minimum pressure of 60 pounds, is obtained from KWV's fields south of Beaver Creek and by purchase from adjoining areas.

The gas produced by KWV,[1] and infrequently the purchased gas, is processed by Kentucky Hydrocarbon Company, a wholly owned subsidiary of KWV, and the Btu content is reduced to 1005. Because the processed gas is, however, usually mixed with unprocessed purchased gas before movement to Beaver Creek, the Btu content is raised to an average of 1063 per cubic foot. The gas delivered from Dwale is produced by KWV and is untreated except for the removal of gasoline. The Btu content averages 1173 per cubic foot and the pressure of the gas entering the United Fuel pipeline is 325 pounds. The gas sold to KGT at Tomahawk is delivered untreated with a Btu content averaging 1140 per cubic foot and at a pressure of 280 pounds.

The gas received for exchange by United Fuel from KWV at Beaver Creek and Dwale becomes a part of the commingled and fungible supply moving through the United Fuel system and it cannot be segregated for delivery to Equitable or KGT, both of whom have individual exchange agreements with United Fuel which reserve capacity, specify Btu content, delivery pressure, etc. Equitable takes its exchange gas from United Fuel at Cedarville, West Virginia and KGT receives its exchange consignments at three points, namely: Leach, Means and Richmond, Kentucky.

In billing its jurisdictional customers, KWV subtracts the amount of gas delivered to KGT at Tomahawk from the obligated 15,000 Mcf daily and makes up the difference with deliveries at Dwale or Beaver Creek to United Fuel for the account of KGT.[2] The deliveries at Beaver Creek are normally all assigned to Equitable together with the daily balance at Dwale.

Prior to November 1, 1962, KWV's two jurisdictional customers were Equitable and Louisville Gas & Electric Company (Louisville Gas), a former affiliate of KWV. The rates charged each customer were the same and KWV was obligated to supply Louisville Gas with a maximum of 22,000 Mcf daily. Deliveries were made into Louisville's system at Tomahawk and Sitka. The operations at Tomahawk were identical with the present arrangement except that KGT has replaced Louisville. The Sitka deliveries were made at the terminal of a ten-inch line which runs northward from Dwale for approximately twenty-five miles. Since sales to Louisville were abandoned,[3] this line has been operated at a reduced pressure and only to serve non-jurisdictional customers, including the Municipalities of Paintsville and Prestonburg.

Louisville's replacement by KGT has made an additional 7,000 Mcf per day available to Equitable since the KGT's contract demand was reduced to 15,000 Mcf. The agreement with the later terminates on November 30, 1967 and Equitable will become the sole jurisdictional customer as of that date.

The single demand and commodity rate proposed by the Applicant follows its historical design and contemplates an increase in revenue of 7.8% from both jurisdictional customers based upon the test year ending December 31, 1962, as adjusted and restated. The increase in dollars with respect to Equitable amounts to $369,513 and for KGT $109,515.

The parties are apparently satisfied that the proposed increase in rates is warranted since they stipulated to an over-all jurisdictional cost of service which would produce the revenue sought by KWV's proposed increase.

The Pennsylvania Commission while a party to the stipulation, disagrees with the Applicant as to the manner in which the cost of service should be recovered and alleges that the proposed rate structure discriminates against Equitable, a Pennsylvania distributor. It is the position of the Pennsylvania Commission that the stipulated cost of service should be met by separate rates for each jurisdictional customer, based upon the type of service (transmission or production) furnished by KWV. Equitable, it feels, receives services that are derived essentially from the Applicant's production activities while KGT is the recipient of more costly transmission services.[4]

---

[1] Except gas produced in the Tomahawk segment.

[2] KGT is the only outlet for gas from the Tomahawk segment and receives the entire daily production. There is only one meter at Dwale and Beaver Creek; therefore the billings shown as deliveries to Equitable or KGT are book rather than operating transactions.

[3] Approved by Commission on October 10, 1962, Docket No. CP62–239.

The testimony establishes that prior to 1948, the Applicant was the production arm of a self-contained production and distribution system composed of its parent corporation, Equitable, and an affiliate, Louisville Gas, and while KGT has been substituted in the triumvirate for Louisville Gas, KWV is still primarily engaged in the production of natural gas in Eastern Kentucky for resale to its two jurisdictional customers.[5] A single jurisdictional rate schedule has been maintained by the Applicant for at least twenty-five years and the propriety of the practice has not been challenged until this proceeding.

The Applicant lends verisimilitude to the position of the Pennsylvania Commission through what appears to be an arbitrary breakdown of jurisdictional costs as between deliveries of gas from its "production" and "transmission" systems.

The Applicant's compressor stations at Tomahawk and Dwale while denominated transmission installations, not only serve to inject gas into the 20" and 12" pipelines, respectively, of United Fuel and KGT, but to facilitate the movement of gas through the multitude of production and gathering lines.

The so-called transmission costs associated with the twenty-five mile Dwale-Sitka line which formerly served Louisville Gas and now supplies only a few non-jurisdictional customers, are charged against Equitable and KGT although neither jurisdictional customer receives any transmission services therefrom. Exhibit 1, a map of the Applicant's system, indicates that this line in addition to supplying non-jurisdictional customers also performs the dual function of a gathering line for some production below Paintsville and east of Prestonburg.

The short segments of actual transmission line owned and operated by the Applicant—less than one-half mile connecting Tomahawk with the KGT pipeline and approximately one and one-eighth miles linking Dwale with United Fuel—are, in fact, nothing more than service connections between a producer and its distributors. Also, the allocations made by the Applicant for its deliveries of gas at Dwale and Beaver Creek are a billing convenience and do not represent an actual physical delivery or transmission of gas to the jurisdictional customers at such points.

Considerable testimony and argument has been devoted to the purported inequities of the varying pressures and Btu content of gas delivered at Tomahawk to KGT, at Dwale and Beaver Creek to United Fuel and, in turn, by United Fuel at Cedarville, West Virginia, and Leach, Means and Richmond, Kentucky, to Equitable and KGT, respectively. The deliveries and exchanges of gas are, however, being made pursuant to arm's-length contracts and service agreements between the respective parties, and in the opinion of the examiner, the agreements between United Fuel, Equitable and KGT concerning the deliveries by United Fuel are not relevant to the issue involved in this proceeding.[6]

---

[4] The Pennsylvania Commission has placed the Dwale and Tomahawk Compressor Stations and the facilities downstream from such installations in the latter category.

[5] Some gas is purchased from other producers in the KWV operating area.

[6] Contractual agreements notwithstanding, it would seem that any disparity in the Btu content between the gas received by KGT at Tomahawk and that delivered to Equitable by United Fuel, is compensated for by the previous stripping of the gas delivered to United Fuel by Kentucky Hydrocarbon Company, a wholly owned subsidiary of the Applicant.

Despite obviously inaccurate cost classifications and allocations by the Applicant, it is abundantly clear that KWV is essentially a producer rendering identical services to both Equitable and KGT. A single rate for both jurisdictional customers, as in the past, is appropriate in the present circumstances.

If the Pennsylvania Commission's design was adopted, the charges to KGT would be increased $483,135 or more than 35%, and Equitable would benefit by a reduction of $4,161. Since KWV's increased rates are required to support a long range gas supply (eventually for Equitable's sole benefit) and to maintain a rate of return that was adversely affected by Equitable's cut backs in the test year,[7] the Pennsylvania Commission's proposal would bestow unwarranted advantages upon affiliates and, in the opinion of the examiner, impose undue hardship upon the non-affiliate customer.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record, the testimony and the briefs of counsel, the examiner finds and concludes, in addition to findings and conclusions previously stated, that:

(1) Kentucky West Virginia is essentially a producer of natural gas and that any transmission services performed by it are incidental to its function as a producer.

(2) Kentucky West Virginia is performing identical services for its two jurisdictional customers and a single demand and commodity rate for both is just, reasonable, non-discriminatory and non-preferential under the Natural Gas Act.

AMES W. WILLIAMS
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE PRESTON OIL COMPANY

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 16, 1964)

On December 20, 1963, The Preston Oil Company (Preston) filed an application for rehearing of the Commission's letter-order issued November 21, 1963, rejecting the Notice of Producer Rate Change filed by Preston on October 22, 1963, for a proposed rate increase under its FPC Gas Rate Schedule No. 29 from 20.7¢ per Mcf to 21.1¢ per Mcf for gas presently being sold by Preston, pursuant to conditioned temporary authorization issued in Docket No. CI63–977, to United Fuel Gas Company from the Ellis Field, Acadia Parish, Louisiana.

The basis for the rejection was that the proposed increase was not in conformity with the express condition in the temporary authorization that the 20.7¢ rate shall remain in effect until changed by further Commission order in the certificate proceedings in Docket No. CI63–977.

Preston relies upon the fact that a similar condition has been held to be invalid by the Fifth Circuit Court of Appeals, *Hunt* v. *F.P.C.* 306 F. 2d 334.[8] However, the Supreme Court has granted certiorari on appeal by the Commission from this decision (*F.P.C.* v. *Hunt*, No. 273, October Term 1963) and, pending such review, the decision of the circuit court is not controlling as a precedent, even with respect to new applications. *A fortiori* we cannot give effect to it here where (unlike *Hunt* which in accepting the temporary expressly reserved the right to seek review and did so after denial of a petition for rehearing) Preston accepted the temporary authorization as tendered and allowed the Commission's letter-order granting the temporary to become final.

---

[7] Equitable is committed to alternative sources of supply and subject to take-or-pay provisions in its contracts with such sources.

[8] CA5 reversed, 376 U.S. 515.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application of Preston present no new facts or principles of law which were not considered by the Commission when it issued its letter-order of November 21, 1963, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The application for rehearing filed by Preston on December 20, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP64-110

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 16, 1964)

On November 12, 1963, South Georgia Natural Gas Company (Applicant) filed in Docket No. CP64-110 pursuant to Section 7(b) of the Natural Gas Act an application for authority to abandon a segment of its high pressure pipeline system consisting of approximately 1,910 feet of 3½-inch O.D. transmission line designated as Applicant's Line No. 7, now utilized to serve the City of Dawson, Georgia.

Applicant states that the purpose of disposing of the said stretch of pipeline is to enable the City of Dawson, the purchaser thereof, to pave over the line in the new section of the city where the line lies, and to convert the said stretch so acquired into a part of the City's distribution system to benefit the residents of that area.

The purchase price for the pipeline facilities to be sold and transferred by Applicant is $3,656.62 which has been agreed to by the City of Dawson, Georgia.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, South Georgia Natural Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission, and the facilities hereinabove described were authorized by the Commission on September 2, 1954, in Docket No. G-1915.

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such adandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by South Georgia Natural Gas Company of the facilities hereinbefore described be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–109

ORDER DENYING APPLICATION FOR SUBPENAS AND PERMITTING INTERVENTION

(Issued January 17, 1964)

On January 7, 1964, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed in this proceeding an application requesting that the Commission issue subpenas to Fuels Research Council, Inc., National Coal Association, and Mid-West Coal Producers Institute, Inc. (Coal Interveners)[1] who were permitted to intervene in this proceeding by the Commission's order issued herein on December 18, 1963. Michigan Wisconsin gives six classifications of information which it contends the Coal Interveners must present in order to show: (1) that they are appearing in truly representative capacities; (2) that they are the real parties in interest; (3) that Michigan Wisconsin's sale of natural gas to Wisconsin Public Service Corporation (Public Service) for use by the latter in its Weston generating plant will cause serious and permanent unemployment of personnel among their members, accompanied by loss of revenues and wages, despite the fact that coal is readily available for use as fuel at the Weston plant at reasonable cost; and (4) that the Fuels Research Council, Inc., is a "non-profit" organization.

Michigan Wisconsin correctly points out in its application for subpenas that the Coal Interveners were permitted to intervene in this proceeding "* * * in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined * * *." However, Michigan Wisconsin contends that (application, p. 4):

> Despite the foregoing [finding by the Commission], there is no assurance that the Coal Petitioners will disclose the identity of the coal and railroad companies which are the real parties in interest or that they will present evidence with respect to their operations, profits, price policies, and other factors bearing upon the competition between natural gas and coal involved in this proceeding. * * *

In addition to its application for subpenas, Michigan Wisconsin filed an answer to the Coal Interveners' petition to intervene, objecting to the Coal Interveners' being allowed to participate in this proceeding because the Coal Interveners had not shown that they were the real parties in interest and had failed to demonstrate that they qualify as representatives of the real parties in interest. Michigan Wisconsin's objections to the granting of the Coal Interveners' petition to intervene and Michigan Wisconsin's application for subpenas have placed in issue the right of the Coal Interveners to participate in this proceeding.

---

[1] Although the Coal Interveners' joint petition to intervene was filed on behalf of the three organizations named above as well as the United Mine Workers of America, Michigan Wisconsin gave no reason for omitting United Mine Workers of America from its application requesting issuance of subpenas to the other three organizations which purport to represent competing fuel and transportation interests.

In *National Coal Association* v. *F.P.C.*, 191 F. 2d 462, 466 (CADC), the court referred to the legislative history pertaining to the Natural Gas Act and indicated that Congress appears to have wanted the Commission to consider the effect that authorization of gas service would have upon competing fuel and transportation interests, but the court added the condition that such competing interests should be heard "* * * upon a showing of injury to them." The court also made it clear that once a hearing has been concluded, in which organizations purporting to represent the competing coal and transportation interests have been allowed to participate, the Commission cannot raise the argument on review that the competing fuel interests were not actually "aggrieved" parties to the proceeding because of their failure to present evidence proving that the sale of gas would have an immediate adverse effect upon such competing interests. The court further observed that anyone who would be "aggrieved" by a Commission order would also be one who would have a right to intervene. Otherwise, the Commission could prevent judicial review of its orders simply by refusing to allow intervention in its proceedings because judicial review is limited solely to the parties to Commission proceedings who have been "aggrieved" by Commission orders issued in such proceedings.[2]

In *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (CADC), the court referred to its decision in the *National Coal* case, *supra*, and explained that (237 F. 2d at 746):

> * * * We did not imply that the Federal Power Commission was authorized to deny a certificate of public convenience and necessity for a natural gas pipeline merely because of the adverse effect upon producers and carriers of a competing fuel and their employees. We held merely that parties so affected were authorized to seek review of the substantive issues involved in determining whether or not the public convenience and necessity would be served. * * *

The court also held in the *City of Pittsburgh* case that the Commission erred in sustaining the Presiding Examiner's exclusion of competing transportation interests' proffer of proof in that proceeding and specifically stated that "* * * Having precluded the barge operators from proving injury, the Commission cannot now be heard to complain that the record contains no proof." (237 F. 2d at 749.) Thus, the court decisions make it quite clear that competing fuel and transportation interests have a right to intervene in Commission proceedings provided they sustain their burden of establishing that they will be adversely affected if the gas service which they oppose is ultimately authorized by the Commission.

If we were to grant Michigan Wisconsin application for subpenas, we would be passing upon the exact classifications and extent of the evidence which the Coal Interveners will have to present in order to prove their allegations as to economic injury. We do not believe that we should specify the kinds or extent of the testimony and exhibits which would appear to be necessary to prove the allegations contained in the Coal Interveners' petition to intervene. The issuance of subpenas directing the Coal Interveners to submit specific details regarding six different types of information would seem to be a resort to measures as extreme in requiring proof in this proceeding as were the rulings used in the *City of Pittsburgh* case for precluding proof. The court held in its *Pittsburgh* decision that it was error for the Commission to deny proffers of proof simply because they were made in general rather than in specific terms. Therefore, we are denying Michigan Wisconsin's application for subpenas.

---

[2] Of course, the denial of intervention would not leave a competing fuel company without remedy because it was held in *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (CADC), that if the competing fuel association had a right to intervene, it also had a right to judicial review of the order denying intervention.

We note that the Commission's Rules of Practice and Procedure do not prohibit the filing by the Coal Interveners of an answer to Michigan Wisconsin's application for subpenas. Since we are denying Michigan Wisconsin's application for subpenas, it does not appear that the Coal Interveners will be prejudiced by our acting upon the application for subpenas prior to the receipt from the Coal Interveners of an answer thereto. We believe it is in the public interest that the parties have this procedural question answered prior to the commencement of the hearing so as to avoid further postponement of the date fixed for the commencement of the hearing. Early action on the procedural questions should also be helpful to Michigan Wisconsin and other parties who may be preparing evidence for presentation at the hearing. As we have indicated in prior orders, the Presiding Examiners have the power to issue subpenas. *El Paso Natural Gas Company*, 27 FPC 321–322 and order issued October 4, 1963, in *Indiana & Michigan Electric Company*, Docket No. E–7089, 30 FPC 967. Therefore, after counsel for the Coal Interveners have presented such evidence as they deem necessary to prove the essential allegations contained in their joint petition to intervene, Michigan Wisconsin is free to renew before the Examiner its request for subpenas accompanied by a showing of relevance and materiality.

Subsequent to the issuance on December 18, 1963, of our order granting, *inter alia*, the petitions to intervene which had theretofore been filed in this proceeding, the following petitions seeking leave to intervene were filed by a number of distributors:

Petitioners:	*Date petitions were filed*
Iowa Southern Utilities Company	January 6, 1964
Madison Gas and Electric Company	January 10, 1964
North Central Public Service Co	January 8, 1964
Wisconsin Fuel and Light Company	January 10, 1964
Wisconsin Natural Gas Company and Wisconsin Michigan Power Company (Joint Petition)	January 8, 1964
Wisconsin Power and Light Company	January 10, 1964

The Commission finds:

(1) Michigan Wisconsin's application for subpenas should be denied because it is unnecessary for the Commission to specify at this stage of the proceeding the types of evidence which the Coal Interveners should be required to present in support of the allegations contained in their joint petition to intervene, particularly since the Coal Interveners, whose interest has been challenged, have the burden of coming forward with evidence showing that they have authority to represent members of the coal-producing and transportation industries who would suffer the alleged economic injuries and other adverse effects, to which the Coal Interveners refer in their joint petition to intervene, in the event Michigan Wisconsin's application in Docket No. CP64–109 should be granted.

(2) Although the petitions for leave to intervene filed by Madison Gas and Electric Company, Wisconsin Fuel and Light Company, and Wisconsin Power and Light Company, respectively, were not filed within the time required by

Section 1.8 (d) of the Commission's Rules of Practice and Procedure, such date in this proceeding having been January 9, 1964, good cause exists to permit the late filings.

(3) It is desirable to allow the distributor petitioners to intervene in this proceeding, in which a hearing is scheduled to commence on January 21, 1964, in order that the petitioners may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) Michigan Wisconsin's application for subpenas filed January 7, 1964, in this proceeding is hereby denied for the reasons given in paragraph (1) of this order.

(B) The distributor petitioners be and they are hereby permitted to become interveners in the above-entitled proceeding subject to the rules and regulations of the Commission: *Provided, however*, that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *provided, further*, that the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NOS. CI61-1570, CI61-1571 AND CI62-313

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 20, 1964)

On September 20, 1963, North Central Oil Corporation (Operator), *et al.* (North Central) filed a motion for severance of Docket No. CI62-313 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* (hereinafter referred to as the Union Texas proceeding), for approval of settlement proposal and for the issuance of a certificate of public convenience and necessity. On September 23, North Central filed a similar motion relating to Docket Nos. CI61-1570 and CI61-1571.

Consolidated Edison Company of New York, Inc. (Con-Edison), on September 27, 1963, filed a response in opposition to the motion filed on September 23, on the grounds that North Central had failed to provide for refunds in accordance with the temporary authorizations heretofore issued in Docket Nos. CI61-1570 and CI61-1571.[1]

This failure to provide refunds was a departure from the other Union Texas settlements. North Central also proposed that it be allowed to file rate increases for ¾ of additional taxes, if reimbursable. Union Texas settlements have provided for rate increase filings for a maximum of ½ of such tax increases.[2]

---

[1] On October 4, 1963, Public Service Electric and Gas Company filed a letter with the Secretary agreeing with the response of Con-Edison.

North Central, on October 1, filed an amendment to its offer of settlement in Docket Nos. CI61–1570 (RS–9) and CI61–1571 (RS–8). By this amendment North Central offered to make refunds of excesses collected under the rate schedules related to these certificate applications since January 1, 1962, the date on which North Central became the operator of the properties. Pioneer Oil and Gas Company had been the operator of the properties prior to that time and had been making sales since June, 1961, under refund conditioned temporary authorizations. As operator during the period June 1961 to January 1, 1962, Pioneer's filings covered the interests of North Central; since January 1, 1962, North Central's filings have covered the interests of Pioneer. The rate under both rate schedules is 23.25¢ per Mcf[3] and the proposed settlement rate is 20.625¢ per Mcf.

Brooklyn Union Gas Company (Brooklyn Union), on October 11, 1963, filed a statement in opposition to the offer of settlement of North Central in Docket Nos. CI61–1570 and CI61–1571 noting the failure to provide for refunds as required by the temporary authorizations. Brooklyn Union stated that it would not oppose the settlement if the producer would accept modification to provide for full refunds.

In view of the objections of the intervenors and the departures from the Union Texas settlement pattern, we denied North Central's motions by order issued in these proceedings on December 9, 1963.

On December 23, 1963, North Central filed an amended offer of settlement and motion for severance.[4] This amendment removes the reasons for the Commission's rejection of the original offer. In substance, the offers now conform to the recent Union Texas settlements and provide for the issuance of certificates of public convenience and necessity at initial rates of 20.625¢ per Mcf for three sales from south Louisiana; a five year moratorium on rate increase filings, effective April 1, 1963 (subject to the usual exceptions); extension of take-or-pay make-up periods to 4 years in all rate schedules which provide less; refunds of all amounts collected above that which would have been collected at the settlement rate since the date of initial deliveries in Docket Nos. CI61–1570 and CI61–1571, and for all deliveries made subsequent to March 31, 1963, in Docket No. CI62–313; interest on all amounts to be refunded computed at a rate of 7 percent per annum.[5]

We find these proposals, generally, to be in the public interest and shall approve them subject to the following reservations and conditions.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the amended motion and offer were filed, December 31, 1963. This has been a requirement in all of our orders approving settlements arising out of the Union Texas proceeding.[6]

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the proposals to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium period at rates no higher than the rates in effect for gas physically delivered.

---

[2] See, *e.g.*, orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company) in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979 respectively.

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[4] North Central's filing was entitled "Application for Rehearing" but since the order of December 9, 1963, was not a final order and since the "Application for Rehearing" substantially changed the original offer of settlement, the "Application for Rehearing" is considered an amended offer of settlement and motion for severance.

[5] See Appendix for further details.

[6] See order issued October 25, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, regarding the settlement of Texaco Inc., 30 FPC 1089.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The pipeline purchaser in Docket Nos. CI61-1570, CI61-1571, CI62-313 is Transcontinental Gas Pipe Line Corporation (Transco). In order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest which it receives as a result of North Central's settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these North Central dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals, as amended, and conditions of this order.[7]

The Commission finds:

(1) North Central Oil Corporation is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) North Central is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

---

[7] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963, and the Presiding Examiner's Decision was issued January 14, 1964.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

The Commission orders:

(A) The matters in Docket Nos. CI61-1570, CI61-1571, and CI62-313 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*

(B) Certificates of public convenience and necessity are hereby issued to North Central Oil Corporation upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals, as amended, and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals, as amended, herein.

(C) The certificates granted by paragraph (B) above, are granted upon the express condition that North Central comply fully with the terms of this order and the settlement proposals, as amended, which settlement is expressly approved, under the conditions of this order.

(D) The interest required to be paid under the terms of these proposals shall accrue through December 31, 1963, the last day of the month in which the amended settlement proposal was filed.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals as amended, North Central shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of North Central with all the terms of this order and of the settlement proposals, as amended, North Central shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as North Central continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposals, as amended.

(I) The grant of certificates herein and approval of the settlement proposals are without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against North Central, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, North Central, the Commission staff, or any affected party herein in any other proceeding.

(J) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions of states wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to North Central's rate reductions, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account.

Commissioner Ross *not participating.*

APPENDIX

Docket No.	Rate schedule No.	Applicant	Purchaser	Current rate (cents per Mcf)	Proposed settlement rate
CI62-313	7	North Central Oil Corp. (operator), *et al.*	Transcontinental Gas P/L Corp.	[1] 21.25	20.625
CI61-1571	8	do	do	[2] 23.25	20.625
CI61-1570	9	do	do	[2] 23.25	20.625

[1] The proposed initial rate of 22.75 cents per Mcf was conditioned to 21.25 cents per Mcf by temporary authorization.

[2] The proposed initial rate of 23.55 cents per Mcf was conditioned to 23.25 cents per Mcf by temporary authorization.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

KENTUCKY WEST VIRGINIA GAS COMPANY, DOCKET NO. CP64–105

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 21, 1964)

On November 4, 1963, Kentucky West Virginia Gas Company (Applicant) filed in Docket No. CP64–105 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove one 800 horsepower compressor unit from its Dwale Compressor Station in Floyd County, Kentucky.

Applicant states that gas deliveries through the Dwale Compressor Station have declined to a point where all volumes of gas required to be pumped by the station can be handled more than adequately by the remaining six compressor units. The abandonment of the compressor will not alter or affect Applicant's operations.

The estimated net salvage value of the unit to be removed is $37,700.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kentucky West Virginia Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by

the Commission in its order of January 4, 1944, Docket No. G–272 (4 FPC 476).

(2) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Kentucky West Virginia Gas Company, of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP64–14; THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64–15; UNITED FUEL GAS COMPANY AND KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–16

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 21, 1964)

On July 17, 1963, as supplemented on August 30, 1963, The Ohio Fuel Gas Company (Ohio Fuel) in Docket No. CP64–14, on July 17, 1963, as supplemented on August 29, 1963, The Manufacturers Light & Heat Company (Manufacturers) in Docket No. CP64–15 and on July 17, 1963, United Fuel Gas Company (United) and Kentucky Gas Transmission Corporation (Kentucky Gas), jointly, in Docket No. CP64–16, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain facilities in order to receive increased deliveries of natural gas* and to meet the increased 1964–65 winter requirements of existing customers, all as more fully set forth in the respective applications.

Specifically, Applicants request the following authorizations:

Docket No. CP64–14—Ohio Fuel

To construct and operate approximately 15.4 miles of 24-inch pipeline in Lawrence County, Ohio, partially looping Ohio Fuel's existing "R" system north from United's delivery point at Burlington, Ohio, and a 1500 horsepower compressor unit at the existing Crawford Compressor Station, Fairfield County,

---

***These applications are related to the applications of Columbia Gulf Transmission Company (Columbia), Humble Oil & Refining Company (Humble) and Isaac Arnold, *et al.* (Arnold), filed in Docket Nos. CP64–1, CI64–5 and CI64–6, respectively, requesting authorization for the sale and delivery of natural gas in southern Louisiana by Humble and Arnold to United and transportation of such gas by Columbia to United at delivery points near the Kentucky-West Virginia border. By Commission order of November 15, 1963, Columbia Humble and Arnold were issued certificates in said dockets.**

Ohio. The proposed facilities will provide increased capacity for Ohio Fuel to receive and transport approximately 45,000 Mcf per day of increased firm deliveries from United. The estimated cost of the proposed facilities is $2,222,000.

Docket No. CP64-15—Manufacturers

To construct and operate approximately 13.85 miles of 16 and 24-inch pipeline looping Manufacturers' existing composite 16 and 20-inch line No. 1740 from a connection with the system of United in Glenville District to a point in Troy District, all in Gilmer County, West Virginia. The application indicates that the proposed facilities will increase the capacity of line No. 1740 by approximately 24,000 Mcf per day. The increased capacity will be needed during the 1964–65 winter season and the 1965 summer storage operations. The estimated cost of the proposed facilities is $1,400,000.

Docket No. CP64-16—Kentucky Gas and United

Kentucky Gas proposes to construct and operate approximately 16 miles of 30-inch pipeline, partially looping one 13 mile section of its system extending north from its Means Compressor Station, Montgomery County, Kentucky, and one 3 mile section extending south from the Means Station. Kentucky Gas states that the proposed facilities will increase the capacity of its system by 19,400 Mcf per day which increase will be utilized primarily to meet the increased 1964–65 winter requirements of The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company. The application shows that Columbia delivers the majority of Kentucky Gas' requirements directly to Kentucky Gas near the Means Station for the account of United. The estimated cost of the proposed facilities is $2,149,000.

United proposes to construct and operate (1) approximately 4.7 miles of 30-inch pipeline loop between its Ceredo Compressor Station, Wayne County, West Virginia, and a point of interconnection with Columbia near the Kentucky-West Virginia border; (2) an additional 2700 horsepower compressor unit each at its Ceredo Station and its Lanham Station, Kanawha County, West Virginia, and an additional 1100 horsepower unit at its Glenville Station, Gilmer County, West Virginia; (3) 23.3 miles of 24-inch loop extending in a southwesterly direction from its Glenville Station, and (4) 7.9 miles of 26-inch partial loop extending in an easterly direction from its Lanham Station.

The application indicates that United's proposed facilities are required primarily for summer storage operations. United states that the period of maximum usage of its eastern high pressure system is during the average summer day. This results because the average daily requirements of United's major wholesale customers are at a relatively high level and because of United's summer storage injection program. The estimated cost of United's proposed facilities is $6,882,300.

The estimated cost of the proposed facilities in each docket will be financed by the issuance of installment promissory notes and common stock to Applicants' parent corporation, The Columbia Gas System, Inc.

Several petitions to intervene have been filed in Docket No. CP64-16 by interested companies. In each case, the burden of such filings has been that the petitioners did not request formal hearing in these proceedings and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the shortened procedure is being used herein, no further action on the various intervention petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 16, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, supplements and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593, *et al.* (4 FPC 821).

(3) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 1, 1944, in Docket No. G–341 (4 FPC 543).

(4) Applicant, Kentucky Gas Transmission Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 6, 1958, in Docket No. G–15288 (20 FPC 463).

(5) The facilities hereinbefore described, as more fully described in the applications in these proceedings, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation thereof by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The construction and operation of the proposed facilities by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(8) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicants, The Ohio Fuel Gas Company, in Docket No. CP64–14, The Manufacturers Light & Heat Company, in Docket No. CP64–15, and joint Applicants, United Fuel Gas Company and Kentucky Gas Transmission Corporation, in Docket No. CP64–16, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the respective applications herein, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within nine months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; J. C. TRAHAN DRILLING CONTRACTOR, INC. (OPERATOR), ET AL., DOCKET NOS. G–18287, CI60–481, CI60–698, CI61–452 AND CI62–771; SHORELINE EXPLORATION, INC., DOCKET NOS. CI60–356, CI61–1015, CI62–73, AND CI62–102

ORDER GRANTING ALTERNATIVE MOTION FOR SEVERANCE, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 21, 1964)

On September 16, 1963, J. C. Trahan Drilling Contractor, Inc. (Operator), *et al.* (Trahan) and Shoreline Exploration, Inc. (Shoreline) filed a joint offer of settlement relating to the above nine Trahan and Shoreline dockets.

But for one aspect, the settlement proposal is similar to settlements heretofore conditionally approved by the Commission in the Union Texas proceeding.[1] The applications in Docket Nos. CI61–452, CI62–73 and CI62–102 concern assignments of acreage previously covered by the assignors' certificates and rate schedules.[2] The rates in effect at the time of the assignments were 20.25¢ per Mcf[3] (Docket No. CI61–452) and 23.3¢ per Mcf (Docket Nos. CI62–73 and CI62–102). However, such rates were in effect subject to refund under Section 4(e) of the Natural Gas Act. In each case the initial rate of the predecessor as well as the last rate of the predecessor not subject to refund were substantially less than the rates in effect at the time of the assignments. Trahan proposes that a certificate be issued in Docket No. CI61–452 at a rate of 20.25¢ per Mcf[4] and Trahan proposes that certificates be issued in Docket Nos. CI62–73 and CI62–102 at a rate of 20.625¢ per Mcf.

The issuance of certificates at the rates proposed by Trahan and Shoreline would be a violation of the principles expressed in our recent Opinion No. 408, *Graridge Corporation (Operator), et al.*, Docket No. G–19246, *et al.*, issued

---

[1] See e.g., orders issued August 7, 1963, 30 FPC 456 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, 30 FPC 979.

[2] The predecessors rate schedules and certificate Docket Nos. are: Sun Oil Company Rate Schedule No. 63, Docket No. G–6834; Shell Oil Company, Rate Schedule No. 202, Docket No. G–5037 and Sunray Mid-Continent Oil Company, Rate Schedule No. 186, Docket No. G–6053.

[3] All rates expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.

[4] Subsequent to the assignment this rate was again increased and is now in effect subject to refund in Docket No. RI61–550.

October 31, 1963, 30 FPC 1156. We there held that a certificate issued to a successor in interest should put the successor in the same position that the predecessor would be in, had the latter retained the property transferred. To grant the certificates in these three dockets as proposed by Trahan and Shoreline would be to put them in a more favorable position than their assignors.

Because of doubts as to the acceptability to us of the provisions relating to these three dockets, Trahan and Shoreline, on December 10, 1963, filed an alternative motion for severance urging that we accept the settlement proposal as originally submitted but in the alternative, if we were to find the proposal unacceptable because of the provisions relating to these three dockets, urging that we accept it as to the other six dockets.

For the reasons discussed above, we shall grant the alternative motion for severance and leave Docket Nos. CI61-452, CI62-73 and CI62-102 consolidated for decision in the Union Texas proceeding. The Presiding Examiner's decision in the Union Texas proceeding was issued on January 14, 1964. Our determination herein to leave these three dockets consolidated in the Union Texas proceeding is not to be construed as either approving or disapproving the Examiner's decision regarding these three dockets. That decision is not properly before us at this time.

Insofar as it relates to the remaining six dockets, the Trahan and Shoreline proposal provides for maximum initial rates of 20.625¢ per Mcf; a five-year moratorium on rate increase filings effective April 1, 1963 (subject to the usual exceptions); extensions of the make-up periods to four years in all rate schedules which provide lesser make-up periods.[5]

The rates in effect subject to refund in Docket Nos. RI61-315, RI62-103 and RI61-557 will remain in effect subject to ultimate disposition in those rate proceedings; the certificate issued to Trahan in Docket No. CI60-481 and to Shoreline in Docket Nos. CI60-356 and CI61-1015 will be at the proposed initial rates of 20.25¢ per Mcf. The initial rates proposed in the other three dockets are 20.625¢ per Mcf.

Trahan will refund to the pipeline purchasers the difference between the amounts collected under Rate Schedules Nos. 7, 14 and 21 for deliveries made subsequent to March 31, 1963, and the amounts that would have been collected at the settlement rates of 20.625¢ per Mcf. Interest on amounts to be refunded will accrue at a rate of 7 percent per annum through September 30, 1963, the last day of the month in which the settlement proposal was filed.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 to include gas required to be taken during the moratorium period but paid for and not taken. Our approval of this settlement is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium periods at rates no higher than the rates in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

---

[5] See appendix for further details.

In accordance with the above we shall sever Docket Nos. G–18287, CI60–481, CI60–698, CI62–771, CI60–356 and CI61–1015 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and issue certificates of public convenience and necessity in accordance with the applications, alternative settlement proposal and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

The Commission orders:

(A) The matters in Docket Nos. G–18287, CI60–481, CI60–698, CI62–771, CI60–356 and CI61–1015 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(B) Certificates of public convenience and necessity are hereby issued in Docket Nos. G–18287, CI60–481, CI60–698, CI62–771, CI60–356 and CI61–1015 upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the alternative settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposal herein.

(C) The certificates issued by paragraph (B) above, are granted upon the express condition that the applicants comply fully with the terms of this order and the alternative settlement proposal which settlement proposal is expressly approved, as modified by this order.

(D) The refunds required by the alternative settlement proposal and this order shall be made within 90 days from the date of issuance of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the alternative settlement proposal Trahan shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the alternative settlement proposal and the conditions of this order.

(F) Upon full compliance of the applicants with all the terms of this order and of the alternative settlement proposal the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the alternative settlement proposal.

(I) The grant of certificates herein and approval of the alternative settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(J) The motion for severance, for approval of settlement proposal, and for the issuance of certificates of public convenience and necessity in Docket Nos. CI61–452, CI62–73 and CI62–102 is hereby denied.

Commissioner Ross *not participating.*

APPENDIX

Rate Schedule	Docket No.	Purchaser	Present Rate (¢/Mcf)	Certificate Settlement Rate (¢/Mcf)
J. C. Trahan:				
7	G–18287	United Gas P/L Co	23.55	20.625
12	CI60–481	United Gas P/L Co	22.25	[1] 20.25
14	CI60–698	Transco Gas P/L Corp	21.65	20.625
21	CI62–771	Texas Gas Trans. Corp	21.25	20.625
Shoreline:				
1	CI60–356	United Gas P/L Co	22.25	[2] 20.25
2	CI61–1015	United Gas P/L Co	23.30	[3] 20.25

[1] Present rate will remain in effect subject to refund in Docket No. RI61–315.
[2] Present rate will remain in effect subject to refund in Docket No. RI62–103.
[3] Present rate will remain in effect subject to refund in Docket No. RI61–557.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ACCO OIL & GAS COMPANY (OPERATOR), ET AL., DOCKET NO. G–17270

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, TERMINATING AND SEVERING PROCEEDING

(Issued January 22, 1964)

On December 23, 1963, Acco Oil & Gas Company (Acco) filed an Offer of Settlement in the above-designated rate suspension proceeding, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. This proceeding relates to the jurisdictional sale of natural gas by Acco under its FPC Gas Rate Schedule No. 2 to Tennessee Gas Transmission Company (Tennessee) from Harris and Montgomery Counties, Texas (Railroad Commission District No. 3).

The following table sets forth the data pertinent to the proceeding involved herein:

Docket No.	Rate schedule No.	Supplement No.	Effective rate	Date effective subjec to refund
G-17270	2	2	[1] 16.16047	June 1, 1959

[1] At 14.65 p.s.i.a.

In its Offer of Settlement, Acco proposes to eliminate the favored-nation, price redetermination, and periodic escalation clauses from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement,[2] for the remaining term of the contract. Acco also proposes to refund to Tennessee all amounts collected in excess of the settlement rate, plus interest at the rate of 6% per annum to the date of refund. The estimated amount of the refund is approximately $6,700, exclusive of interest, and the estimated decrease in annual revenues is approximately $1,370.

In support of its offer, Acco cites the deletion of the price redetermination, favored-nation and periodic escalation clauses from its gas purchase contract with Tennessee, and states that such provisions were important elements of consideration required by Acco under the contract for the long-term commitment of its gas reserves to the performance of the contract. Tennessee has stated that it has no objection to the proposed settlement.

Since the proposed settlement rate of 15.0¢ per Mcf at 14.65 psia is acceptable under the provisions of the Second Amendment[3] to the Commission's Statement of General Policy No. 61-1,[4] for jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, it is believed that the public interest will best be served by accepting Acco's proposed settlement as hereinafter set forth.

Our approval of the settlement proposal should not be construed as constituting approval of any future rate increases filed in accordance with its reservation of the right to file increases to cover future tax increases.

The proceeding in Docket No. G-17270 was consolidated with the proceeding in Area Rate Proceeding, Docket No. AR64-2; consequently, it should be severed from such area rate proceeding, and terminated as hereinafter ordered.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Acco with the Commission on December 23, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Acco with the Commission on December 23, 1963 is hereby approved in accordance with the provisions of this order.

---

[2] Under its offer, Acco further proposes to amend its contract to provide for tax reimbursement of three-fourths of any tax increases levied subsequent to December 1, 1963, rather than January 1, 1954.

[3] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R-234, issued March 27, 1963, 29 FPC 589.

[4] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

(B) Acco shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement, and a contractual amendment to its FPC Gas Rate Schedule No. 2, which Acco shall execute with Tennessee in conformity with Acco's Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Acco shall refund to Tennessee all amounts collected under its FPC Gas Rate Schedule No. 2, in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 6% per annum, from the date of receipt of such excess amounts by Acco to the date of refund. Acco shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Acco shall report to the Commission, in writing, the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Tennessee with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Acco has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf, including present tax reimbursement specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the proceeding in Docket No. G-17270 shall be deemed terminated and severed from Area Rate Proceeding, Docket No. AR64-2, and Acco's refund obligation with respect to the proceeding in Docket No. G-17270 shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Acco.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, PROJECT NO. 2100

ORDER AMENDING LICENSE (MAJOR)

(Issued January 22, 1964)

Application was filed on April 17, 1962, under Section 6 of the Federal Power Act, by Department of Water Resources of the State of California, licensee for Project No. 2100, designated in the application as "Oroville Division, State Water Facilities," for amendment of its license for the project, currently under construction on the Feather River and its tributaries near Oroville, California, and affecting lands of the United States within the Plumas and Lassen National Forests and lands held in trust by the United States for Indians in the County of Butte, California.[1]

The April 17, 1962 application, which was filed as a result of further studies and investigations by the licensee to obtain a more economical design of the project structures and their installation would change: the type of dam for the Oroville development from concrete gravity to a zoned fill-type with normal pool elevation remaining at elevation 900 feet and the conventional type powerhouse to an underground powerhouse with an installation of 440,000 kilowatts to 612,000 kilowatts of which 261,000 kilowatts are pump-turbine; for the Thermalito development from two reregulating reservoirs with no power installation to a forebay and regulating afterbay with an installation of 92,000 kilowatts of which 60,200 kilowatts are pump-turbine; the period of construction from seven years to twelve years; the authorized horsepower installation from 587,000 horsepower to 939,000 horsepower; the formula for assessing administrative annual charges from one (1) cent per horsepower plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy, to a reasonable annual charge based upon the 939,000 horsepower in accordance with the provisions of Part 11 of the Commission's regulations which contemplate application of Commission's Order No. 205 (Docket R-129); and other minor modifications of the license.

---

[1] The April 17, 1962 application supersedes in its entirety an application for amendment filed by the licensee on December 18, 1959.

The Secretary of the Army and the Chief of Engineers have reported: that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned; that the plans of the structures are in general satisfactory insofar as the interests of flood control are concerned, subject to the pertinent provisions in the contract (No. DA-04-167-CIVENG-62-56), dated March 8, 1962, between the United States and the State of California; and that the operation of the project in the interest of flood control as provided for in Article 32 of the license shall be in accordance with rules and regulations to be prescribed by the Secretary of the Army pursuant to Section 204 of the Flood Control Act of 1958.

The Department of Agriculture has reported that the proposed amendment to the license will not interfere or be inconsistent with the purpose for which the Plumas and Lassen National Forests were created or acquired.

The Department of the Interior, in reporting on the application, recommended certain conditions for inclusion in the license in the interests of the fishery resources of the area involved.

The Commission finds:

(1) The license amended as hereinafter provided is in the public interest.

(2) The license amended as hereinafter provided will not interfere or be inconsistent with any reservation or with the purposes for which the Plumas and Lassen National Forests were created or acquired.

(3) The authorized installed horsepower capacity of the project under this amendment is 939,000 horsepower, and the increased annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

(4) The amount of annual charges to be paid under the license as amended for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, is reasonable as hereinafter fixed and specified.

(5) The exhibits described and designated in PARAGRAPH I under paragraph (C) below, except for Exhibits FPC Nos. 2100-69 and 2100-79 which we have already approved as part of the license, conform to the Commission's rules and regulations and should be approved as part of the license as amended.

The Commission orders:

(A) The exhibits described and designated in PARAGRAPH I under paragraph (C) below, with the exceptions noted, are hereby approved as part of the license as amended for the project.

(B) Exhibits J (FPC No. 2100-20); K (FPC Nos. 2100-21; -23); L (FPC Nos. 2100-25, -26, -28, -30, and -36 through -38); and Exhibit M amended October 31, 1955 "General Description and Specifications for Equipment" in 14 sheets, filed November 10, 1955, now part of the license and which have been superseded, are hereby eliminated from the license.

(C) The license for Project No. 2100 is hereby amended, effective as of December 1, 1963, as follows:

PARAGRAPH I. The description of the project works as set forth in finding (2) of the license is revised to read as follows:

(a) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for amendment of license and which are designated and described as follows:

Exhibit	FPC No.	Title
J-1-b	2100-63	Vicinity and Location Map.
K-1-b	2100-65	Ownership of Land.
K-2-b	2100-66	Ownership of Land.
K-3-b	2100-67	Ownership of Land.
K-4-b	2100-68	Ownership of Land.

(b) All project works consisting principally of:

Oroville Dam and Reservoir—An earth-fill dam across the Feather River about 5.5 miles upstream from Oroville, about 735 feet high above stream-bed with crest length of 6,800 feet including gated spillway and flood control outlet section on the right abutment; three auxiliary earthfill dams at low points in the periphery of the reservoir; and a reservoir with storage capacity of 3,484,200 acre-feet and water surface of 15,485 acres at normal surface elevation 900.

Oroville Power Plant—An underground powerhouse located in the left abutment with installation of three 117,000-KW conventional generating units and three combined pump-turbine, motor-generator units each rated 87,000 kw as generator; two 22-foot penstocks from intake structure to the powerhouse and two 35-foot tailrace tunnels from powerhouse to the Feather River at the toe of the dam; step-up transformers; and an access tunnel from the surface adequate for railroad rolling stock. (Future development comtemplates doubling the capacity at Oroville with six units in a separate powerhouse).

Thermalito Diversion Dam—A concrete gravity overflow type dam across Feather River about 0.85 mile above the Oroville-Chico highway bridge at Oroville, about 151 feet high above streambed, with crest length of 1,280 feet including 630 feet of radial crest gates, impounding a reservoir with storage capacity of 13,400 acre-feet at normal water surface elevation 225.

Thermalito Power Canal—An earth-cut canal extending approximately two miles between Thermalito Diversion Dam and Thermalito Forebay, originally to have capacity of 16,400 cfs and to be enlarged to 32,800 cfs capacity ultimately.

Thermalito Forebay Dam—An earth-fill dam located in Section 10, Township 19 North, Range 3 East, MDB & M, about 70 feet high with crest length of 1,220 feet and forming, with approximately 2½ miles of earth levee, a reservoir with 11,750 acre-feet of storage capacity at normal water surface elevation 225; and Thermalito Power Plant at the right end of the dam with initial installation of one 31,800-KW conventional generating unit and two combined pump-turbine, motor-generator units each rated 30,100 KW as generator with step-up transformers, and with provision for future enlargement.

Thermalito Afterbay Dam—An earth-fill dam with maximum height of 30 feet and total length of 41,400 feet located in Sections 18, 19, 30, 31, 32, 33 and 34 Township 19 North, Range 3 East, MDB & M, impounding a reservoir with gross storage capacity of 57,500 acre-feet, of which 45,000 acre-feet will be active storage, such reservoir to be supplied by an earth-cut channel from the tailrace of Thermalito Power Plant.

Two 230-KV Switchyards—One located on the left bank of Feather River immediately downstream from Oroville Dam; the other downstream and to the right of Thermalito Forebay Dam.

Thermalito-Oroville Transmission Line—A 230-KV line between 230-KV switchyards at Thermalito and Oroville Power Plants.

Palermo Outlet Works—A tunnel through left abutment of Oroville Dam, to supply Palermo Irrigation Canal.

Feather River Hatchery—A concrete gravity overflow type Fish Barrier Dam across Feather River about ¼ mile above the Oroville-Chico highway bridge at Oroville, about 30 feet high above streambed and 600 feet long; a fish ladder from the river just below the dam to the hatchery facilities on the right bank; a gathering and spawning building; hatchery building; an artificial spawning channel and holding tanks, nursery tanks, and rearing ponds; and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for amendment of license and which are designated and described as follows:

Exhibit	FPC No.	Title
L-1-b	2100-69	Oroville Dam.
L-2-b	2100-70	Oroville Dam—Core Block.
L-3-b	2100-71	Oroville Dam—Diversion Tunnels.
L-4-b	2100-72	Oroville Power Plant—Penstocks and Intake.
L-5-b	2100-73	Oroville Powerhouse—Typical Transverse Sections.
L-6-b	2100-74	Do.
L-7-b	2100-75	Oroville Powerhouse—Longitudinal Sections.
L-8-b	2100-76	Oroville Powerhouse—Plan and Sections.
L-9-b	2100-77	Oroville & Thermalito Power Plants—Electrical.
L-10-b	2100-78	Oroville Spillway.
L-11-b	2100-79	Thermalito Diversion Dam.
L-12-b	2100-80	Thermalito Power Canal, Forebay Dam, and Sections.
L-13-b	2100-81	Thermalito Powerhouse and Intake.
L-14-b	2100-82	Thermalito Afterbay, Tail Channel and Sections.
L-15-b	2100-83	Auxiliary Dams and Sections.

Exhibit M-b: Comprised of twenty-two (22) pages entitled "General Description and Specifications for Equipment."

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

Paragraph II. Article 28 of the license is amended to read as follows:

Article 28. The Licensee shall commence construction of the Oroville Division, State Water Facilities Project within two years from the effective date of this license; shall thereafter in good faith and with due diligence prosecute such construction; and shall complete the project and place it in operation within twelve years from the date of commencement of construction.

Paragraph III. Article 29 of the license is amended to read as follows:

Article 29. The Licensee shall operate the project works in such a manner as to maintain the main Feather River downstream from the proposed Thermalito Diversion Dam such flows as are determined by study and experimentation with the project in operation and as are mutually agreed upon by and as are acceptable to Licensee, the California Department of Fish and Game; and the Secretary of the Interior: *Provided*, That the flow in this reach shall not be less than 400 cfs pending such determination and excepting any mutually agreeable modification for purposes of study and experimentation. In the event the parties named herein fail to reach an agreement as contemplated herein, the Commission reserves the right, after notice and opportunity for hearing, to make the determinations required under this article.

Paragraph IV. Article 38 of the license is amended to read as follows:

Article 38. The Licensee shall, prior to impounding water, clear all lands in the bottoms and margins of the reservoirs of Thermalito Diversion Dam, Thermalito Forebay Dam, and Thermalito Afterbay Dam and also clear all land in the bottom and margin of the reservoir of Oroville Dam between high water elevation 900.0 (U.S.C. & G.S. datum, 1929 adjustment), and a plane at elevation 640.0 (U.S.C. & G.S. datum, 1929 adjustment), and shall cut all trees and brush within the elevation 640.0 contour area so that no part thereof will protrude above said elevation; shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures; unused timber, slash, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the high-water line of the reservoirs which die during the operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Paragraph V. Article 42 of the license is amended to read as follows:

Article 42. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purposes is 939,000 horsepower;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $18,525.72; and

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission line right-of-way, an amount as may be determined hereinafter by the Commission.

Paragraph VI. Articles 33 and 34 of the license are hereby eliminated from the license for the project.

Paragraph VII. The following articles are hereby added to the license as amended.

Article 43. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any

State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 44. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 45. The licensee shall release into the Feather River from the Thermalito Afterbay discharge channel such minimum flows for the downstream fish populations as are determined necessary by study and experimentation with the project in operation and as are mutually agreed upon and acceptable to Licensee, California Department of Fish and Game, and U.S. Fish and Wildlife Service. In the event the parties named herein fail to reach an agreement as contemplated herein, the Commission reserves the right, after notice and opportunity for hearing, to make the determinations required under this article.

Article 46. The Licensee shall prevent damage to fish and wildlife resulting from construction or operation of the project. Special precautions shall be taken to: (a) prevent discharge of silt, petroleum products, and other harmful substances or debris into the Feather River, (b) prevent loss, removal, disturbance, and compaction or shifting of gravel of the Feather River channel downstream from Thermalito diversion dam except as may be appropriate for protection or the improvement of fish habitat, and (c) prevent the project borrow areas from becoming sources of silt or other fines during floods or serving to dissipate stream maintenance flows or serving to trap anadromous fish.

Article 47. The Licensee shall permit the United States or its designated agency to manage such of the project lands, water areas, and waterways as may be necessary to prevent and alleviate waterfowl crop-depredation damages on lands adjoining the project. The use of the project lands, water areas, and waterways, for such purposes, shall be free of cost to the United States or its designated agency. In addition, the Licensee shall cooperate with the designated agency of the United States and the California Department of Fish and Game in making such reasonable modification of the project operations for effectual management of waterfowl to prevent or alleviate crop-depredation purposes as are consistent with the primary project purposes.

Article 48. The Licensee shall submit, in accordance with the Commission's rules and regulations, final design Exhibit L drawings for the finally adopted intake structure which is capable of drawing water from multiple levels for water temperature control for the Oroville Dam Powerhouse and shall not begin construction of the intake until the Commission has approved the Exhibit L drawings.

Article 49. The Licensee shall base the final designs of the main Oroville dam spillway and discharge channel and the Thermalito spillway and ogee apron on the results of hydraulic model tests.

Article 50. The operation of the project in the interest of flood control as provided in Article 32 of the license shall be in accordance with the rules and regulations to be prescribed by the Secretary of the Army pursuant to Section 204 of the Flood Control Act of 1958.

Article 51. Approval by the Commission of any plans for Project No. 2100 shall not relieve the Licensee of its responsibility for compliance with Contract No. DA-04-167-CIVENG-62-56, which covers the contribution of funds pursuant to the Flood Control Act of 1958 (P.L. 85-500).

(D) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(E) The aforementioned application for amendment filed on December 18, 1959 and which has been superseded is hereby dismissed.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY AND WISCONSIN PUBLIC SERVICE CORPORATION, DOCKET NO. E-7142

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued January 22, 1964)

Wisconsin Michigan Power Company (Wisconsin-Michigan), a corporation organized under the laws of the State of Wisconsin and authorized to do business in the State of Michigan, with its principal business office located in Milwaukee, and Wisconsin Public Service Corporation (Public Service), a corporation organized under the laws of the State of Wisconsin and authorized to do business in the State of Michigan, with its principal place of business in Milwaukee filed an application on November 26, 1963 requesting authorization pursuant to Section 203 of the Federal Power Act, for the purchase and acquisition by Public Service of Wisconsin-Michigan's interests in certain substation facilities located at the Pulliam substation of Public Service at Green Bay, Wisconsin, and for Wisconsin-Michigan to dispose of its interests in said facilities.

Wisconsin-Michigan is engaged in, among other things, the business of generating, transmitting and distributing electric power. It serves customers in twelve counties in Northwestern Wisconsin and eleven counties in Northern Michigan. Wisconsin-Michigan's net plant was recorded at $56,264,000 as of June 30, 1963.

Public Service is engaged in, among other things, the business of generating, transmitting and distributing electric power. It serves customers in seventeen counties in Northern and Northwestern Wisconsin and one county in Northern Michigan. Public Service's net plant was recorded at $144,247,000 as of June 30, 1963. Wisconsin-Michigan and Public Service are not affiliated companies.

Wisconsin-Michigan and Public Service have for many years maintained a point of interconnection between the 138 kv system of Wisconsin-Michigan and the 69 kv system of Public Service at Green Bay, Wisconsin. Public Service is now engaged in establishing its own 138 kv system in the Green Bay area, and in the near future, the Green Bay interconnection between the two companies will be at 138 kv. Incident to this change, Public Service proposes to purchase Wisconsin-Michigan's share in certain facilities owned in common, to purchase other wholly owned facilities of Wisconsin-Michigan, and to purchase an undivided half interest in certain other electric facilities of Wisconsin-Michigan all located at the Pulliam substation of Public Service.

The application contains an inventory of Pulliam substation items of plant such as transformers, switches, lightning arresters, circuit breakers and protective equipment. As indicated in the inventory, Wisconsin-Michigan proposes to sell and Public Service proposes to acquire facilities which have recorded total amounts as follows:

	Original cost	Accumulated depreciation	Original cost less accumulated depreciation
(1) Facilities now owned in common (sale of such facilities by Wisconsin Michigan Power and purchase by Wisconsin Public Service will result in entire ownership of these facilities by Wisconsin Public Service)	$274, 927. 11	$102, 306. 61	$172, 620. 50
(2) Facilities now owned by Wisconsin Michigan Power (transfer of such facilities will result in entire ownership of these facilities by Wisconsin Public Service)	14, 293. 50	1, 263. 54	13, 029. 96
(3) Facilities now owned by Wisconsin Michigan Power (sale of undivided half interest by Wisconsin Michigan Power and purchase by Wisconsin Public Service will result in an undivided half interest being retained by Wisconsin Michigan Power and an undivided half interest being acquired by Wisconsin Public Service)	8, 090. 63	715. 20	7, 375. 43
Total	297, 311. 24	104, 285. 35	193, 025. 89

To acquire the facilities from Wisconsin Michigan, Public Service will make cash payment of $193,025.89, which amount is equal to the original cost of the facilities less accumulated provision for depreciation. The transfer of the facilities will not result in the creation of an acquisition adjustment on the books of Public Service.

Written notice of the application has been given to the Michigan Public Service Commission and the Wisconsin Public Service Commission and to the Governor of each of those states. Notice of the application has also been given by publication in the Federal Register on December 13, 1963 (28 F.R. 13523) stating that any person desiring to be heard or to make any protest with reference to the application should, on or before December 30, 1963, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protest. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Both Wisconsin-Michigan and Public Service are public utilities within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued September 17, 1958, *In the Matter of Wisconsin-Michigan Power Company, Wisconsin Public Service Corporation*, Docket No. E-6814 (20 FPC 358).

(2) By the proposed acquisition of facilities as described above Public Service will acquire and merge or consolidate with its facilities subject to the jurisdic-

tion of the Commission, certain electric facilities of Wisconsin-Michigan, another person, within the meaning and subject to the requirements of Section 203 of the Act.

(3) By the proposed sale of facilities Wisconsin-Michigan would dispose of a part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition and merger or consolidation of facilities and the proposed sale of facilities all as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 in the Federal Power Act for the reasons set forth above.

The Commission orders:

(A) The proposed sale by Wisconsin-Michigan of a part of its transmission facilities and the acquisition and merger or consolidation thereof by Public Service, all as referred to above and described in the application are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Public Service and Wisconsin-Michigan shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved are consummated within 180 days from the date of issuance of this order.

(D) The foregoing authorization and approval is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission and nothing in this order shall be construed as an acquiesence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CAROLINE HUNT SANDS AND LOYD B. SANDS, DOCKET NO. RI64–356

ORDER PERMITTING INTERVENTION

(Issued January 22, 1964)

Petitions seeking leave to intervene in the above-designated proceeding have been timely filed by Philadelphia Gas Works Division of the United Gas Improvement Company (PGW) on December 16, 1963, and by Hope Natural Gas Company (Hope) on December 17, 1963.

In support of its request to intervene, PGW states, among other things, that it purchases approximately two-thirds of the natural gas which it distributes and sells to consumers from Texas Eastern Transmission Corporation (Texas Eastern) and the remainder from Transcontinental Gas Pipe Line Corporation (Transco); that Texas Eastern and Transco purchase substantial quantities of gas in South Louisiana both directly from producers and indirectly from other pipelines who purchase from producers in that area; and that the price of gas sold by a producer in South Louisiana, regardless of the ultimate destination of the gas or the identity of the pipeline purchaser, can have a direct bearing on the cost of gas to Texas Eastern and Transco through price-redetermination provisions, by raising the general level of the well-head price for gas, and through so-called third-party escalation clauses, and which, in turn, could directly affect the rates charged PGW.

An answer and objection to PGW's petition to intervene was filed on December 20, 1963, by Caroline Hunt Sands and Loyd B. Sands (Respondents). Respondents state, in opposition to the petition to intervene, that PGW acknowledged it did not purchase gas from Respondents or from pipeline distributors which purchased gas from Respondents, and allege (1) that PGW has only a remote and conjectural interest in the proceeding; (2) that third-party, favored-nation clauses are customarily not included in purchase contracts for gas in South Louisiana; (3) that the existence of higher rates than the 24.55 cents per Mcf rate proposed by Respondents would have already given rise to increases under price-redetermination provisions, citing Southeastern Public Service Company's currently effective rate of 25.25 cents per Mcf, and the Commission's 1961 publication "Sales by Producers of Natural Gas to Natural Gas Pipe Line Companies" which indicates 32 sales are at higher prices; (4) that Transco is currently purchasing gas in South Louisiana under contracts having presently effective price escalations at 25.55 cents per Mcf, although only Hassie Hunt Trust and Placid Oil Company have filed to make effective price escalations to 25.55 cents per Mcf and that the matters relating to those escalations are now pending before the Circuit Court of Appeals for the Fifth Circuit, as the other producers have elected not to file for the higher rates; and (5) that PGW's interest in this proceeding is neither direct nor one which is not adequately represented by existing parties, citing: *Atlantic Seaboard Corporation*, Docket No. CP62-43, 27 FPC 370, 372.

In setting this case for an expeditious hearing, we stated in our order issued November 26, 1963, that the Respondents' increased rate proposal:

> * * * may serve as a basis for a price redetermination at higher rates under other gas purchase contracts in the area to increase the cost of purchased gas to approximately $12,768,000 annually * * *.

This increased rate proposal, with one exception, is higher than any presently effective rate for a jurisdictional sale of natural gas in South Louisiana. The higher rate of 25.25 cents per Mcf, filed by Southeastern Public Service Company, is itself the subject of an expedited hearing. The other higher prices as shown in our 1961 publication, to which the Respondents advert, relate to non-jurisdictional sales of natural gas.

While it may be contended that certain producers have not exercised their rights to file for increased rates in the 25 cents per Mcf range in South Louisiana and thus there is no reason for concern over the possibility of higher price redeterminations, we observe that such rights have not been waived by such producers. Other producers in South Louisiana have filed increased rate proposals in this range.[1] If we were to find this present filing to be just and reasonable, there is no reason to assume that others would not exercise their contractual right to seek higher rates. Consequently, we believe that the matters relating to a determination of a just and reasonable rate in this proceeding could very well have a real impact upon PGW.

---

[1] Increased rate proposals in the 25-cent range have been filed by other producers in South Louisiana, including, among others, Texaco Inc. in Docket No. RI62-481, Humble Oil & Refining Company in Docket No. RI62-471, and Sun Oil Company in Docket No. RI62-483, which were subsequently withdrawn. Similar filings by other producers in South Louisiana, including other Hunt interest, have either been withdrawn as a part of a general company rate settlement, were disallowed after hearing, or are pending judicial review.

Notices of intervention herein have been filed by Public Service Commission of the State of New York (PSC) on December 12, 1963, and by Pennsylvania Public Utility Commission on December 16, 1963.

Answers and Objections were belatedly filed by Respondents to the petition to intervene of Hope and to the notice of intervention of PSC. Hope is the pipeline purchaser of the Respondents under the rate schedule involved in this proceeding and the PSC's filing of a notice to intervene is under our Rules itself sufficient justification for intervention. *PSC of the State of New York* v. *F.P.C.*, 295 F. 2d 140, cert. denied 82 S. Ct. 388.

The Commission finds:

The participation of Petitioners in this proceeding as interveners may be in the public interest.

The Commission orders:

Petitioners are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however*, that the participation of such Petitioners as interveners shall be limited to matters affecting asserted rights and interest as specifically set forth in their respective petitions to intervene; and *Provided further*, that said permission shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INVESTMENT TAX CREDIT UNDER 1962 AMENDMENT TO INTERNAL REVENUE CODE; ACCOUNTING TREATMENT BY PUBLIC UTILITIES, LICENSEES, AND NATURAL GAS COMPANIES, DOCKET NO. R-232

INTERIM ORDER

(Issued January 23, 1964)

The Commission has under consideration in this docket[1] an order prescribing the accounting treatment to be accorded under the Commission's Uniform Systems of Accounts to the investment tax credit provided by the Revenue Act of 1962.[2]

The Commission has reached the conclusion that on the basis of existing law the accounting treatment to be prescribed should be to flow through the credit to income. We recognize, however, that legislation is pending in the Congress dealing with the investment credit and that it is not now possible to determine whether such legislation as might be adopted would require a different accounting treatment for the credit.

In order to enable affected companies to close their books of account for the year 1963, the Commission hereby notifies all public utilities, licensees, and natural gas companies that the interim accounting prescribed for the investment tax credit under Order No. 261, Docket No. R-231, issued January 9, 1963,[3] continues in effect for calendar year 1963 and in accounting for income taxes until further notice or order of the Commission.

---

[1] Notice issued January 15, 1963, published in 28 F.R. 528 of January 19, 1963.

[2] 76 Stat. 960, P.L. 87-834, section 2, adding new sections 38, 46-48, 181 to and amending certain existing sections of the Internal Revenue Code of 1954.

[3] 29 FPC 62, 28 F.R. 402.

Commissioners O'Connor and Woodward *dissent* as to the statement of the accounting treatment which is appropriate under existing law. Commissioner O'Connor believes decision should be deferred until Congress has acted on the pending legislation. Commissioner Woodward favors deferred tax accounting.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MONSANTO CHEMICAL COMPANY, DOCKET NO. RI64-16; CONTINENTAL OIL COMPANY, DOCKET NO. RI64-79; PAN AMERICAN PETROLEUM COMPANY, DOCKET NO. RI64-80; SUN OIL COMPANY, DOCKET NO. RI64-81; JACK L. BURRELL (OPERATOR), ET AL., DOCKET NO. RI64-82; TEXACO INC., DOCKET NO. RI64-98; SHELL OIL COMPANY, DOCKET NO. RI64-100; MALLARD PETROLEUM, INC. (OPERATOR), ET AL., DOCKET NO. RI64-101; THE BRITISH-AMERICAN OIL PRODUCING COMPANY, DOCKET NO. RI64-123; STANDARD OIL COMPANY OF TEXAS, DOCKET NO. RI64-158; GULF OIL CORPORATION, DOCKET NO. RI64-176; THE PURE OIL COMPANY, DOCKET NO. RI64-193

ORDER DENYING MOTION TO CONSOLIDATE RATE PROCEEDINGS FOR IMMEDIATE HEARING

(Issued January 23, 1964)

Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California (Petitioners)[1] on November 1, 1963, filed a joint motion requesting that the above-entitled proceedings be set for immediate hearing to determine the justness and reasonableness of the rate increases filed herein. A number of answers to the joint motion were filed by producers involved here.

The proposed periodic increased rates in these proceedings range with one exception[2] from 17.0¢ to 21.8¢ per Mcf for sales to Transwestern Pipeline Company (Transwestern) from the Permian Basin Area and are presently under suspension until February 1, 1964, or later in some instances. If all of the proposed rates are placed in effect subject to refund at the termination of the respective suspension periods, Transwestern's cost of purchased gas will be increased approximately $700,000. Petitioners state in this connection that other producers having similar periodic provisions in their sales contracts with Transwestern could file for at least an additional $235,000 annually.

In support of the joint motion Petitioners state, *inter alia*, that (1) the producer increases may cause Transwestern to file for a rate increase which even under the new procedures in Section 154.63 of the Regulations would probably be in effect under bond for at least a year, and (2) the proposed rates, if allowed to become effective subject to refund, would only have to be reduced again after the final order in Docket No. AR61-1 because of the wealth of evidence in that record showing that rates of 17¢ or higher in the Permian Basin are not justified.

---

[1] Petitioners are purchasers of natural gas from Transwestern who supply gas to retail and wholesale customers in Southern California.

[2] Supplement No. 8 to Gulf Oil Corporation's FPC Gas Rate Schedule No. 192, suspended in Docket No. RI64-176, provides for a 13.0¢ per Mcf increased rate. Petitioners, however, citing Opinion No. 328, claim that the proposed rate is equivalent to 18¢ per Mcf for pipeline quality gas because the gas sold by Gulf contains about 30% carbon dioxide and other inert ingredients.

As announced in *Phillips* (Opinion No. 338, 24 FPC 537), we are proceeding on an area approach in producer cases. Exceptional circumstances are not presented here which would warrant action similar to that we have taken in the few producer cases[3] set for individual hearing following the *Phillips* decision. Although the proposed rates are in excess of the initial rate ceiling, such rates will have no triggering effect[4] or present price redetermination impact[5] on other producer rates in the area.

We also note that the hearing in the Permian Basin area proceeding in Docket No. AR61–1 has concluded. The issues there are now being briefed by the parties prior to the examiner's decision and Commission review thereof. It would be most inappropriate in this landmark case—the first area proceeding to come before us since the *Phillips* decision—to prejudge our determination in that case as to the uppermost level of the just and reasonable area rate as requested by Petitioners,[6] particularly in light of the complex issues and voluminous testimony presented there. Although the instant proceedings are not consolidated in the Permian proceeding, we are confident that whatever action may be necessary upon completion of the area proceeding to dispose of the proceedings herein will be taken prior to the time that these periodic increases could affect the price redetermination provisions in Transwestern's contracts.

In view of the foregoing, we conclude that the joint motion filed by Petitioners should be denied.

The Commission orders:

For the reasons set forth above, the joint motion filed by Petitioners on November 1, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., DOCKET NO. CI64–502

ORDER RESCINDING IN PART TEMPORARY CERTIFICATE AND DENYING APPLICATION FOR REHEARING

(Issued January 23, 1964)

The Public Service Commission of the State of New York (PSC) on December 26, 1963, filed an application for rehearing and reconsideration of the Commission's letter-order issued November 26, 1963, granting a temporary certificate to Texaco Inc. authorizing the sale of natural gas from the Dog Lake and Jefferson Island fields in southern Louisiana to Texas Gas Transmission Corporation at an initial price of 21.25¢ per Mcf.

PSC in the application correctly points out that Texaco Inc. requested a temporary certificate to initiate service from Jefferson Island field only. It did not seek such certificate covering the sale of gas from the Dog Lake field because it did not contemplate commencing service from that field until July, 1965.

---

[3] See, for instance, *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, order issued June 14, 1962, and *Southeastern Public Service Company*, Docket No. RI63–361, order issued March 7, 1963.

[4] Transwestern's gas purchase contracts in these areas do not contain favored-nation clauses. Nor are there any third-party favored-nation provisions in other gas purchase contracts in these areas.

[5] Although a number of Transwestern's gas purchase contracts contain price redetermination provisions, the next redetermination period will not arise until September 1967.

[6] Petitioners request disallowance of the rate increases, but do not seek a determination of the just and reasonable rate for these sales in moving for an immediate hearing.

Obviously it was error to grant a temporary certificate to Texaco Inc. covering the sale of natural gas from the Dog Lake field in view of the fact that the sale from that field would not be commenced until approximately two years after the date of filing of the application. Section 157.28 of the Commission's Regulations under the Natural Gas Act contemplates the issuance of temporary certificates to independent producers only in emergency situations which include "drainage, threatened loss of lease, flaring, economic hardship resulting from payment of shutin royalties, or similar situations." Clearly, there exists no emergency within the contemplation of Section 157.28 of the Regulations with respect to Texaco's sale from the Dog Lake field. Accordingly we will correct an inadvertent error and will rescind the temporary certificate issued November 26, 1963, insofar as it authorizes Texaco Inc. to sell natural gas from the Dog Lake field.

PSC in its application for rehearing, relying principally upon the reasons set forth in its brief filed in *P.S.C. of New York* v. *F.P.C.*, D.C. Cir. No. 17673, wherein its contentions are substantially the same as its contentions in the instant case, alleges that the temporary certificate issued to Texaco herein for the Jefferson Island field is invalid in that:

1. No emergency within the meaning of Section 7(c) of the Natural Gas Act exists in law or in fact, nor is such emergency alleged to exist.
2. The certificate is not limited to the period of the emergency.
3. The price permitted to be collected is out of line.

P.S.C's contentions were rejected by the Court in *P.S.C. of New York* v. *F.P.C.*, D.C. Cir. No. 17673, decided January 2, 1964, and the Court's opinion is decisive of the questions presented in P.S.C's application for rehearing filed herein. There is no need to further labor or consider the substantially similar contentions. The application will be denied.

The Commission orders:

(A) The temporary certificate issued to Texaco Inc. by letter-order dated November 26, 1963, authorizing sales of natural gas to Texas Gas Transmission Corporation from Jefferson Island and Dog Lake fields located in southern Louisiana be modified so as to rescind that part of the authorization relating to the sale of natural gas from the Dog Lake field.

(B) The application for rehearing and reconsideration filed by the Public Service Commission of New York on December 26, 1963, be and hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; GENERAL CRUDE OIL COMPANY (OPERATOR), ET AL., DOCKET NO. CI61-1280

ORDER REJECTING OFFER OF SETTLEMENT AND DENYING PETITION FOR ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 23, 1964)

On October 28, 1963, General Crude Oil Company (Operator), *et al.*, (General Crude) filed an offer of settlement and petition for issuance of certificate of public convenience and necessity in the above-captioned proceedings. The matter in Docket No. CI61-1280 concerns an application for a certificate of public convenience and necessity authorizing a sale of natural gas for resale from South Louisiana under General Crude's Rate Schedule No. 9. The application is a part of the Union Texas proceeding.[1]

General Crude requests that the Commission issue a certificate at an initial rate of 20.4¢ per Mcf[2] and that the increased rate in effect subject to refund in Docket No. RI63–389 (21.6¢ per Mcf)[3] remain in effect subject to the ultimate determination in that rate proceeding. General Crude also proposes a moratorium on rate increase filings. Rate Schedule No. 9 does not have a limitation on the take-or-pay make-up period.

The acreage dedicated under General Crude's Rate Schedule No. 9 was formerly dedicated under Pan American Petroleum Corporation's (Pan American) Rate Schedule No. 173. A certificate was issued to Pan American authorizing sales from this acreage (and other acreage) at an initial rate of 17.5¢ per Mcf in Docket No. G–3216 on November 2, 1954. Pan American's effective rate at the time of assignment (subject to refund under Section 4(e) of the Natural Gas Act) was 20.4¢ per Mcf. The last rate of Pan American not subject to refund was 18.0¢ per Mcf.

The issuance of a certificate at the rate proposed by General Crude would be a violation of the principles expressed in our recent Opinion No. 408, *Graridge Corporation* (*Operator*), *et al.*, Docket No. G–13221, *et al.*, issued October 31, 1963, 30 FPC 1156. We there held that a certificate issued to a successor in interest should put the successor in the same position that the predecessor would be in had the latter retained the property transferred. To grant a certificate to General Crude on the terms proposed would be to put General Crude in a more favorable position than Pan American, its assignor. Accordingly, General Crude's offer will be rejected and its petition will be denied.

Our determination herein to reject General Crude's offer is not to be construed as either approving or disapproving the Examiner's Decision regarding this docket. That decision is not properly before us at this time.

The Commission orders:

The offer of settlement filed by General Crude Oil Company (Operator), *et al.*, on October 28, 1963, is hereby rejected and the petition for issuance of certificate of public convenience and necessity filed therewith is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CROWN CENTRAL PETROLEUM CORPORATION, DOCKET NOS. RI64–208 AND RI64–291

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued January 24, 1964)

On September 27 and October 14, 1963, Crown Central Petroleum Corporation (Crown) submitted an offer of settlement in Docket Nos. RI64–208 and RI64–

---

[1] *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* Examiner's Decision issued January 14, 1964.

[2] All prices expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] Other rate increases under Rate Schedule No. 9 suspended by the Commission are in Docket Nos. RI61–548 (20.8¢ per Mcf) and RI62–359 (21.2¢ per Mcf).

291, respectively, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Crown. The first, Docket No. RI64–208, relates to a sale made under Crown's FPC Gas Rate Schedule No. 3 in the Placedo Field, Victoria County, Texas (Texas R.R. Com. District #2) and the second, Docket No. RI64–291 relates to a sale made under Crown's FPC Gas Rate Schedule No. 2 in the East Bay City Field, Matagorda County, Texas (Texas R.R. Com. District #3). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, which in each instance has not yet elapsed.

Under the terms of the offer, Crown proposes to eliminate the favored-nation and price redetermination provisions from the rate schedules, and to amend the periodic escalation provisions contained therein, and to establish 14.6¢ per Mcf rates for the instant sales. Crown's annual revenues will be about $4,323 less under the settlement rates than it would be if the suspended rates were to become effective. Crown states that TGT has concurred in the proposed settlements. No protests or objections have been filed to either offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Crown's offers of settlement shall not be construed as approval of any future increased rate filed in accordance with any reservations made therein. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving each of Crown's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Crown on September 27 and October 14, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Crown on September 27 and October 14, 1963, are hereby approved in accordance with the provisions of this order.

(B) Crown shall file, within 30 days from the date of issuance of this order, notices of change in rate providing for the 14.6¢ per Mcf rate specified in its offers of settlement, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 2 and 3, eliminating the favored-nation and price redetermination provisions therefrom, and amending the periodic escalation provisions therein in accordance with its offers of settlement. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Crown has complied with the terms and conditions of the order, the rates and charges of 14.6¢ per Mcf at 14.65 psia, specified in its offers of settlement, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate pro-

ceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(D) The acceptance by the Commission of Crown's offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Crown, including area rate or other similar proceedings.

OPINION NO. 412-A

HASSIE HUNT TRUST, OPERATOR, ET AL., DOCKET NO. G-19115; H. L. HUNT, OPERATOR, ET AL., G-19116; HUNT OIL COMPANY, G-19117; WILLIAM HERBERT HUNT TRUST ESTATE, OPERATOR, G-19118; LAMAR HUNT TRUST ESTATE, G-19119; GEORGE W. GRAHAM, INC., OPERATOR, ET AL., G-19123; PLACID OIL COMPANY, OPERATOR, ET AL., G-19124 AND G-19125; H. L. HUNT, OPERATOR, ET AL., CI61-1221; H. L. HUNT, CI61-1282; HASSIE HUNT TRUST, OPERATOR, ET AL., CI61-1283; CAROLINE HUNT SANDS, CI61-1343; CAROLINE HUNT TRUST ESTATE, CI61-1344; LAMAR HUNT TRUST ESTATE, CI61-1345; NELSON BUNKER HUNT, CI61-1346; LAMAR HUNT, ET AL., CI61-1736

MEMORANDUM OPINION AND ORDER SEVERALLY DENYING APPLICATIONS FOR REHEARING, MOTION TO REOPEN FOR ADDITIONAL EVIDENCE, AND MOTION FOR ACCEPTANCE OF CONDITIONAL RATE FILING, AND GRANTING STAY

(Issued January 24, 1964)*

Syllabus

1. Commission *denies* applications for rehearing and motion to reopen; *grants* stay of conditioned price and refund requirements, pending judicial review; and in all other respects *confirms* prior opinion and order. P. 184.

Commissioners O'Connor and Woodward *dissenting* to denial of rehearing. Commissioners Ross and Black *dissenting in part.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

On December 9, 1963, we issued our Opinion No. 412 and Order in the above-entitled proceeding, 30 FPC 1438. Pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Rules of Practice and Procedure, the applicants have sought review of that decision as follows: (1) a joint application by the "G" docket applicants[1] alternatively requesting rehearing and reopening of the proceeding to permit the introduction of additional evidence, or the acceptance of conditional rate filings, or stay of the rate reduction and refund provisions of ordering paragraphs (E) and (F) pending judicial review; and (2) a joint application by the "CI" docket applicants[2] for rehearing and modification of the action

---

*Order issued February 24, 1964, granting reconsideration and modifying prior opinion and order, 31 FPC 447. Affirmed on all substantive rulings, remanded on refund question, *sub nom. Continental Oil Co., et al.* v. *F.P.C.*, — F. 2d —, (CA5-1967).

[1] Hassie Hunt Trust, Operator, *et al.*, Docket No. G-19115; H. L. Hunt, Operator, *et al.*, Docket No. G-19116; Hunt Oil Company, Docket No. G-19117; William Herbert Hunt Trust Estate, Operator, Docket No. G-19118; Lamar Hunt Trust Estate, Docket No. G-19119; George W. Graham, Inc., Operator, *et al.*, Docket No. G-19123; Placid Oil Company, Operator, *et al.*, Docket Nos. G-19124 and G-19125.

[2] H. L. Hunt, Operator, *et al.*, Docket No. CI61-1221; H. L. Hunt, Docket No. CI61-1282; Hassie Hunt Trust, Operator, *et al.*, Docket No. CI61-1283; Caroline Hunt Sands, Docket No. CI61-1343; Caroline Hunt Trust Estate, Docket No. CI61-1344; Lamar Hunt Trust Estate, Docket No. CI61-1345; Nelson Bunker Hunt, Docket No. CI61-1346; Lamar Hunt *et al.*, Docket No. CI61-1736.

taken in their regard. The Public Service Commission of the State of New York also has applied for rehearing and reconsideration of the decision. We consider the applications in the order given.

The "G" docket applicants allege that the Commission erred (1) in the exclusion of the system-wide cost studies and other economic and financial evidence offered in support of their initial contract prices; (2) in the utilization of the "in-line" concept of area pricing in the determination of the initial price question in this proceeding; (3) in the determination of an "in-line" price of 15 cents per Mcf for Districts No. 2 and 4 and 16 cents per Mcf for District No. 3; (4) in the exclusion of various sales from consideration; (5) in the designation of the time period within which sales were considered in fixing the line; (6) in refusing to accept the historical relationship between Districts 2 and 3 and the allowance of different prices therein; (7) in conditioning the certificates upon the ultimate disposition of the rule-making proceeding in Docket No. R-199; and (8) in ordering refunds and the imposition of interest thereon. The listing does not contain numerous other subsidiary matters upon which error is also claimed. In sum it may justifiably be said that the applicants' specifications of error comprehend each and every determination made by us which in any way serves to limit the certificates applied for.

Our examination of the application on the above matters indicates that these allegations are, almost without exception, restatements of arguments previously advanced by the applicants and adequately covered in the Opinion. We are convinced that each issue raised in the application for rehearing was correctly decided and that a rediscussion thereof would serve no useful purpose. We affirm the determinations made in regard thereto.

Applicants move that the proceeding be reopened for the introduction of new evidence which has become available to them since the initial decision. This evidence consists of individual, entity-wide cost of service studies of one or more of the applicants adjusted to meet the allocation standards laid down in Opinions No. 338, 365, and 369, and certain composite cost-of-service exhibits developed for use in the South Louisiana area rate proceeding. Evidently, the primary purpose to be served by the introduction of the latter material would be to attempt to show that companies of the size of applicants earn a less than reasonable rate of return on their total oil, gas and liquid operations on a continental United States basis. Applicants contend that the aforementioned exhibits are material to the issue of whether their proposed prices are required by the public convenience and necessity and should be considered in determining the price issue in this proceeding.

We do not agree that the above material would be relevant to the determination of the initial price issue. The Opinion issued in this proceeding expressly rejected applicants' exceptions to the exclusion of its cost-of-service evidence on the ground, as stated in *Placid*, that evidence of this type ". . . is irrelevant to the determination of the initial price question in independent producer certificate cases." Although the May 31, 1962 order of the examiner excluding the proffered studies was based in part on a finding that improper allocation methods were utilized, our own conclusion was not restricted to the deficiencies in the original presentation. The revamping of these studies does not make them any more relevant than they were initially. The composite cost-of-service exhibits fail for the same reason. Accordingly, the motion to reopen will be denied.

Applicants further request that we either allow conditional rate increase filings to the rates presently being collected under the temporary authorizations, such filings to be effective as of November 2, 1961, or that we grant a stay of ordering paragraphs (E) and (F) pending judicial review of the decision.

Paragraph (E) relates to the filing of rate schedule supplements to reflect the conditioned price as the initial price; paragraph (F) provides for the making of refunds by February 7, 1964. In our opinion it would not be feasible to allow the rate filings under the terms proposed in the motion. In accordance with the action taken in an earlier case where rate reductions and refunds were ordered,[3] the provisions of paragraphs (E) and (F) will be stayed pending judicial review of Opinion No. 412. Otherwise, the motion will be denied.

The foregoing covers the applications for review submitted in Dockets No. G–19115 through G–19119 and G–19123 through G–19125. The "CI" docket applicants, while agreeing generally to the severance of their dockets from the others consolidated in the proceeding, request that the second sentence of ordering paragraph (D) be deleted. This sentence provides, "Pending further determination, the temporary authorizations granted in these dockets are continued without change." Applicants seemingly are concerned that we intend by this language to reimpose in these dockets the condition declared illegal by the Fifth Circuit and now on review before the Supreme Court, and that they would again be forced to secure judicial review of the temporary authorizations if the Circuit Court's decision is affirmed.

It appears that the applicants seek some assurance regarding the status of their temporary authorizations. We intend, of course, to abide by the decision of the Supreme Court in regard to the validity or invalidity of the condition contained in the outstanding temporary authorizations there on review. The statement that the temporary authorizations are continued without change means precisely that. It added nothing which the authorizations did not contain before. The application for rehearing will, therefore, be denied.

The New York Commission takes issue in its application with our decision to sever the "CI" dockets from the proceeding and hold them over for a new hearing on their permanent certificates, such hearing to be conducted in conjunction with other holders of temporary authorizations similarly situated. The primary emphasis of the State Commission is directed to its contention that the "in-line" price level for the period after the Policy Statement went into effect remained unchanged from that previously determined. Our reasons for refusing to decide the initial price question for these dockets are clearly stated in the Opinion and no purpose would be served by an extended repetition herein. As we have indicated, it was because of the lack of adequate evidence in the record to properly evaluate the changes which may have taken place in such period that we concluded that the severance was necessary. The application for rehearing does not convince us that we were in error in our conclusion or that anything remains other than to effect its denial.

The Commission finds:

(1) The assignments of error and grounds for rehearing and reopening set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 412, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) The motion to reopen for the submission of additional evidence should be denied.

(3) Good cause exists for granting, in part, the motion for an amendment to the Order issued herein on December 9, 1963, so as to stay the actions required by paragraphs (E) and (F) pending judicial review of Opinion No. 412.

---

[3] *United Gas Pipe Line Company, et al.,* Docket No. CP60–36, *et al.,* Order issued November 5, 1963, 30 FPC 1209.

The Commission orders:

(A) The applications for rehearing filed in the above-entitled proceeding are hereby denied.

(B) The motion to reopen the proceeding is denied.

(C) The completion of the acts and compliance with the requirements set forth in ordering paragraph (E) of the Order accompanying Opinion No. 412 are stayed pending judicial review of said Opinion or until the Order otherwise becomes final, provided, however, that applicants shall deposit in a special account with a bank or trust company all sums received subsequent to December 9, 1963, in excess of the amounts prescribed by paragraphs (B) and (C) of the Commission's Order in Opinion No. 412, shall hold such monies intact, and shall maintain accurate records thereof and make reports with respect thereto to the Commission in compliance with such requests as may be made.

(D) The completion of the acts and compliance with the requirements set forth in ordering paragraph (F) of the Order accompanying Opinion No. 412 are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion, or until the time limitation for the filing of such review has expired. If after judicial review or otherwise the Order accompanying Opinion No. 412, as modified by this order, becomes final, applicant shall also promptly refund all excess amounts received after December 9, 1963, pursuant to paragraph (C) of this order, with interest at 7 percent per annum from the date of receipt to the date of payment.

(E) In all other respects said Opinion and Order is confirmed.

Commissioners O'Connor and Woodward *dissent* to that part of this opinion and order which denies the application for rehearing of Opinion No. 412 for the reasons set forth in their dissent thereto.

Commissioner Black *dissenting* in part.

Commissioner Ross *dissenting* to that part of the order granting severance.

BLACK, *Commissioner, dissenting in part:*

This statement is concerned only with the issue of severance of the "CI" dockets for further hearing to determine a separate in-line price for districts 2 and 3 sales under contracts executed after September 28, 1960. I voted with the majority in Opinion 412, but upon reconsideration am now persuaded that the Commission's decision to accord separate treatment to the so-called "post-policy statement sales" was improper. These parties who now seek to be severed out were afforded full opportunity to present relevant evidence concerning the propriety of their contract prices. The public interest dictates that such proceedings come to an end when the parties have been afforded a reasonable opportunity to present their cases. This is especially true here where during the remand period the producers in these severed dockets would continue to collect the unjustified price of 18¢ per Mcf while we examine into the "impact" of the Policy Statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64-124

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1964)

On December 2, 1963, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP64-124 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of facilities to be constructed by Michigan Consolidated Gas Company (Mich Con) as a new delivery point from Applicant to Mich Con, which facilities are to be leased to Applicant and operated by it to enable Mich Con to render natural gas service to several communities in the north central and northeastern sections of the Lower Peninsula of the State of Michigan. Mich Con has obtained municipal franchises to distribute natural gas in these communities.

The estimated cost of the proposed new delivery point is $8,200 and the estimated annual operating expense, including the rental, is $1,719.

Mich Con, an existing customer and affiliate, has advised Applicant that it can serve the requirements of the new communities without any addition to its existing gas supply.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 22, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business at Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) The facilities hereinbefore described, as more fully described in the application herein, are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the operation, under lease, thereof by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation, under lease, of the proposed facilities by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization granted hereinafter should be further conditioned upon Applicant's submitting a statement showing the date or dates on which Mich Con received authorization from the State of Michigan for the distribution of gas in the communities here involved, and also the date of initial operation of the subject new delivery point.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to operate, under lease, the subject facilities as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above is further conditioned upon Applicant's submitting a statement showing the date or dates on which Mich Con received authorization from the State of Michigan for the distribution of gas in the communities herein involved, and also the date of initial operation of the subject new delivery point.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP64–120

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1964)

On November 27, 1963, Trunkline Gas Company (Applicant), filed in Docket No. CP64–120 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation during the calendar year 1964 of miscellaneous field facilities, including field compressors, dehydration units, meter and regulator equipment, and gathering lines, to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $2,500,000, with no single project to exceed a cost of $500,000, and will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 22, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 4, 1950, in Docket No. G–882 (9 FPC 721).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulating of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. G-13732, ET AL.;[1] HUMBLE OIL & REFINING COMPANY (OPERATOR) ET AL., DOCKET NO. G-14927, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACTUAL AMENDMENTS, REJECTING NOTICES OF CHANGE REQUIRING REFUNDS, TERMINATING PROCEEDINGS IN PART, AND TERMINATING PROCEEDINGS

(Issued January 27, 1964)

On October 4, 1963, Humble Oil & Refining Company (Humble) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of

---

[1] The additional dockets involved herein are set forth in the Appendix hereto.

Practice and Procedure, in these proceedings, and therewith filed executed contract amendments and notices of change in rate under its Rate Schedule Nos. 12, 14 and 22. Humble filed an amendment to its offer on November 18, 1963. These proceedings relate to eight sales of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) in Texas Railroad Commission District Nos. 1, 2, 3 and 6.

Under the terms of the offer, Humble proposes to delete the favored-nation, price redetermination, and periodic escalation provisions from the rate schedules involved, and to waive its contractual right to file for any increases in rate, in excess of the settlement rates, until February 5, 1968, under Rate Schedule No. 14, and until November 1, 1968, under Rate Schedule Nos. 12 and 22. The estimated annual decrease in rates from those being presently charged and collected, is $42,417.

Humble, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to Texas Eastern under the subject rate schedules in excess of the settlement rates. The estimated total dollars to be refunded approximates $60,500, exclusive of interest. However, it may be that Texas Eastern will take the position that it is not presently under obligation to flow-through to its jurisdictional customers all or a part of their proportionate share of the amount of money it will receive from Humble. For the reasons set forth in our order in *Hunt Oil Co.*, Docket No. G–9065, *et al.*, issued July 16, 1963, 30 FPC 220, we shall condition our approval of Humble's settlement offer to require it to retain (without further interest obligation to it) the refunds due to Texas Eastern in a special account, and shall direct Texas Eastern to submit a report setting forth what it intends to do with the refunds if they are made to it, and, if it proposes not to pass them on to its jurisdictional customers why it believes it is entitled to retain these refunds.

On October 4, 1963, as noted above in connection with its original offer, Humble tendered notices of change in rate under Rate Schedule Nos. 12, 14 and 22, along with executed contract amendments.[3] The contract amendments are acceptable, but the proposed rate increases contained in the notices exceed the applicable area ceilings and are in excess of the rates proposed in the amended offer. We shall therefore reject the notices of change tendered on October 4, 1963.

In support of its offer, Humble cites the deletion of the favored-nation and price redetermination provisions from its gas sales contracts with Texas Eastern, and states that such provisions were important elements of consideration required by Humble under the contracts for the long-term commitment of its gas reserves to the performance of the contracts. Texas Eastern has concurred in the offer. No objections or protests to the offer have been filed by any party to any of these proceedings.

Since the proposed settlement rates are acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589 and the Seventh Amendment to the policy statement issued November 27, 1963 in Docket No. R–251, the public interest will best be served by accepting Humble's proposed offer of settlement, as conditioned herein.

However, we desire to make it clear that our conditional acceptance of the offer of settlement shall not be construed as approval of any possible future increased rates proposed by Humble.

---

[3] The contract amendments are designated as Supplement Nos. 16, 16 and 14 to Humble Rate Schedule Nos. 12, 22 and 14, respectively.

The Commission finds:

The proposed settlement of the proceedings herein, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Humble on October 4, 1963, as amended on November 18, 1963, and herein conditioned, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Humble on October 4, 1963, as amended on November 18, 1963, is hereby approved in accordance with the provisions of this order.

(B) Humble shall file, within 30 days from the date of issuance of this order, notices of change in its FPC Gas Rate Schedule Nos. 10, 12, 14, 22, 257 and 258, reflecting the settlement rates set forth in the appendix hereto, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 10, 15, 19, 257 and 258, which Humble shall execute with Texas Eastern in conformity with Humble's offer of settlement, as amended, in all respects, in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The executed contract amendments filed with the Commission by Humble on October 4, 1963, are accepted as supplements to the respective rate schedules effective as of the date of this order.

(D) The notices of change in rate tendered by Humble on October 4, 1963, to its FPC Gas Rate Schedule Nos. 12, 14 and 22 are hereby rejected.

(E) Humble shall compute the refund to Texas Eastern to the date of the issuance of this order as the difference between the rates collected subject to refund under each of the rate schedules herein and the related settlement rates, in Docket Nos. G–18324, RI60–146, RI61–126, RI61–130, RI61–348, RI62–82, RI62–313, RI62–389 and RI63–137, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination.

(F) Humble shall retain the refund due to Texas Eastern, which it shall have computed in accordance with Paragraph (E) above, in a special account, with no further interest obligation after the date of issuance of this order, pending Commission action and further order respecting such monies.

(G) Upon notification by the Secretary of the Commission that Humble has complied with the terms and conditions of this order, the settlement rates set forth in the appendix hereto shall be effective as of the date of issuance of this order, and the proceedings in Docket Nos. G–13732, G–14927, G–16806, G–17784, G–18324, G–18470, G–19157, G–19747, RI60–146, RI60–220, RI61–126, RI61–130, RI61–132, RI61–348, RI62–82, RI62–313, RI62–389 and RI63–137 shall be deemed terminated insofar as such proceedings pertain to sales made under the rate schedules involved herein.

(H) Upon notification by the Secretary of the Commission in accordance with Paragraph (G) above, Docket Nos. G–13732, G–14927, G–16806, G–17784, G–18470, G–19747, RI60–146, RI61–126, RI61–130, RI61–132, RI61–348, RI62–82, RI62–313, RI62–389 and RI63–137 shall be severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(I) The acceptance by the Commission of Humble's offer of settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending, or hereafter instituted by or against Humble.

APPENDIX

HUMBLE OIL & REFINING COMPANY, ET AL. DOCKET NO. G-13732, ET AL.

Texas R.R. District	R/S and supp.	Suspended docket	Effec. date of suspension	Suspended rate [1]	Proposed settlement rate [1]	Underlying accepted rate [1]
2	10-15	G-14927	9-29-58	[2] 14.3733	[3] 15.0	[2] [3] 11.4266
	16	G-18324	10- 1-59	[3] 15.0432		
	18	RI60-146	8- 5-60	[2] 15.3765		
	19	RI61-348	7-13-61	[3] 15.7099		
	20	RI62-313	7- 4-62	[3] 16.0432		
1	12-14	G-14927	9-29-58	[5] 13.8733	[5] 14.1	[3] [5] 10.921
2	14-12	G-14927	9-29-58	[4] 13.8733	[4] 14.1	[3] [4] 10.921
3	15-14	G-13732	4-21-58	14.4	15.0	[3] 13.500
	15	G-16806	4- 3-59	14.6		
	16	G-19747	4- 1-60	14.8		
	17	RI61-132	4- 1-61	15.0		
	18	RI62-82	4- 1-62	15.2		
	19	RI63-137	4- 1-63	15.4		
6	19-14	G-19157	1-20-60	14.6	15.0	13.2
	16	RI60-220	9-20-60	14.8		
	17	RI61-132	4- 1-61	15.0		
	18	RI62-82	4- 1-62	15.2		
	19	RI63-137	4- 1-63	15.4		
1	22-13	G-14927	9-29-58	[4] 13.8733	[4] 14.1	[3] [4] 10.921
2	257-13	G-18470	10-18-59	[2] 14.3733	[3] 15.0	[2] [3] 11.6288
	14	RI61-126	3-20-61	[3] 15.3765		
	15	RI62-389	9-19-61	[2] 15.7099		
2	258-12	G-17784	8- 3-59	[3] 14.7067	[3] 15.0	[2] [3] 11.6288
	13	RI61-130	3-20-61	[3] 15.3765		
	14	RI62-389	9-19-62	[3] 16.0432		

---

[1] Cents per Mcf at 14.65 psia.

[2] Includes 0.5¢ dehydration allowance paid by buyer.

[3] Includes applicable tax reimbursement.

[4] Exclusive of buyer's 0.5¢ costs to gather and dehydrate the gas.

[5] Exclusive of either seller's 0.5¢ dehydration allowance paid by buyer for gas delivered from the Hostette Field or buyer's 0.5¢ cost for gathering and dehydrating the gas delivered from other fields.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NAFCO OIL AND GAS INC., DOCKET NO. G-17282

ORDER ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued January 27, 1964)

On October 30 and 31, 1963, NAFCO Oil and Gas Inc. (NAFCO) submitted offers of settlement in Docket No. G-17282 pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by NAFCO. The first relates to a sale made under NAFCO's FPC Gas Rate Schedule No. 1 in Liberty and San Jacinto Counties, Texas (Texas R.R. Com. District #3) and the second relates to a sale made under NAFCO's FPC Gas Rate Schedule No. 3 in Wharton County, Texas (Texas R.R. Com. District #3). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by NAFCO on June 1, 1959.

Under the terms of the offers, NAFCO proposes to eliminate the favored-nation, price redetermination and periodic escalation provisions from the rate schedules and to establish 15¢ per Mcf rates for the subject sales. NAFCO's annual revenues will be decreased about $32,000 from the presently effective rates. No protests or objections have been filed to either offer.

NAFCO, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedules in excess of the settlement rates.[1] The estimated total dollars to be refunded approximates $164,000, exclusive of interest.

The proposed settlements are consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and their acceptance would serve the public interest.

However, we desire to make it clear that acceptance of NAFCO's offers of settlement shall not be construed as approval of any future increased rate filed in accordance with the reservation of NAFCO of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving each of NAFCO's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by NAFCO on October 30 and 31, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by NAFCO on October 30 and 31, 1963, are hereby approved in accordance with the provisions of this order.

(B) NAFCO shall file, within 30 days from the date of issuance of this order, notices of change in rate providing for the 15¢ per Mcf rate specified in its offers of settlement, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 1 and 3, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) NAFCO shall compute the refund to TGT to the date of issuance of this order as the difference between the rates collected subject to refund under each of the rate schedules herein and the settlement rates, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination.

(D) Upon notification by the Secretary of the Commission that NAFCO has complied with the terms and conditions of the order, the rates and charges of 15¢ per Mcf at 14.65 psia, specified in its offers of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of NAFCO's offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against NAFCO, including area rate or other similar proceedings.

---

[1] NAFCO's FPC Gas Rate Schedule No. 3 is subject to a 0.21931¢ per Mcf dehydration charge by TGT, for which allowance must be made in computing the refund.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTHWEST GAS PRODUCING COMPANY, INC. (OPERATOR), ET AL., DOCKET NO. G-16714, ET AL.[1]

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACTUAL AMENDMENTS, TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued January 27, 1964)

On April 18, 1963, Southwest Gas Producing Company, Inc. (Southwest) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in these proceedings. By letter, dated June 7, 1963, the Commission advised Southwest that its offer was not satisfactory in certain particulars. On August 16, 1963, Southwest filed an amendment to its offer. These proceedings relate to four sales of natural gas to three pipeline purchasers in four South Louisiana parishes.

Under the terms of the amended offer, Southwest proposes to delete the favored nation provisions from its rate schedules and to amend the periodic escalation provisions therein so as to provide for no increase in rate under its FPC Gas Rate Schedule Nos. 10 and 12 until January 1, 1967, and under its Rate Schedule No. 7 until November 1, 1967. Southwest is presently selling gas to United Fuel Gas Company (United) under The Atlantic Refining Company's FPC Gas Rate Schedule No. 63. Southwest proposed to file an application for a certificate of public convenience and necessity to make this sale, and will file its own rate schedule. Such schedule will not contain a favored nations clause, and will provide for no increase in rate until November 1, 1967.

Southwest proposed to charge rates below the area ceiling, with one exception. It proposes to charge a rate of 16¢ per Mcf, including tax reimbursement, for a sale of gas to Tennessee Gas Transmission Company in the Bell City Field, Calcasieu Parish, Louisiana. Its justification for exceeding the area ceiling of 14¢ per Mcf, plus tax reimbursement, as promulgated by the Commission in its Statement of General Policy, 24 FPC 1107, as amended, is its waiver of periodic rate increases for the moratorium periods, and elimination of favored nations provisions. We find no basis, however, for approval of a rate for this sale in excess of the applicable area ceiling of 15.75¢ per Mcf and accordingly we shall condition our acceptance of Southwest's offer to require it to reduce the rate under its Rate Schedule No. 7 to 15.75¢ per Mcf.

Southwest proposes a rate of 20.75¢ per Mcf for sales of gas made by it to Texas Gas Transmission Corporation under its FPC Gas Rate Schedule Nos. 10 and 12 in St. Mary Parish, Louisiana. On September 10, 1963, Long Island Lighting Company (Long Island) filed a comment regarding the proposed settlement rate for these sales. Although recognizing that the proposed settlement rate is, in each instance, the certificated rate, and is below the area ceiling, Long Island states that the Commission should condition its acceptance of Southwest's offer to conform these sales to other of our recent settlements, e.g., *Texaco Inc., et al.*, Docket No. G-13169, *et al.*, 28 FPC 247. The contracts for these sales were entered into 1957 and 1958, respectively, and as noted by Long Island, permanent certificates were issued at the settlement rate. The proposed rates are below the applicable area initial ceiling as now fixed, and are subject to review by this Commission in the consolidated proceedings in Docket No. AR61-2, *et al.* Therefore, pending our final determination in that proceeding, we shall accept the settlement rate for these sales.

---

[1] The additional dockets involved herein are set forth in the Appendix hereto.

Southwest, in its offer, proposes to refund the difference between the revenues charged and collected and those which would have been received under the proposed settlement rates, with applicable interest, in Docket Nos. G-16714, G-19536, RI61-128, RI62-78, RI63-92 and RI63-198. The estimated total dollars to be refunded is $191,843, exclusive of interest. Southwest's future revenues will be decreased approximately $47,386 annually as a result of the settlement.

In support of its offer, Southwest cites the deletion of the favored nation provisions from its gas sales contracts, amendment of its periodic price escalation clauses, refunds, moratorium periods, and other provisions not specifically noted herein, as being in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

We note that Southwest, in its offer, as amended, proposes that the settlement rates shall be subject to adjustment during the moratorium periods if the Commission should make a final determination in the South Louisiana Area Rate Proceeding, Docket No. AR61-2, *et al.* However, Southwest further proposes: "* * * that the price shall not in any case be reduced below the price already approved by the Commission * * *". All of our orders approving settlement proposals or agreements are unqualifiedly subject to final determination in area proceedings, or proceedings of a similar nature, and we will make no exception here.

Since the proposed settlement rates are acceptable under the provisions of the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended, the public interest will best be served by accepting Southwest's proposed offer of settlement, as conditioned herein. Our action herein shall not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceeding, including area rate proceedings, or other similar proceedings, involving each of Southwest's rates and rate schedules.

The Commission finds:

The proposed settlement of the proceedings herein, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Southwest on April 18, 1963, as amended on August 16, 1963, and herein conditioned, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Southwest on April 18, 1963, as amended on November 18, 1863, is hereby approved in accordance with the provisions of this order.

(B) Southwest shall file, within 45 days from the date of issuance of this order, notices of change in its FPC Gas Rate Schedule Nos. 7, 10 and 12, reflecting the settlement rates set forth in the appendix hereto, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 7, 10 and 12, which Southwest shall execute with its purchasers in conformity with Southwest's offer of settlement, as amended, in all respects, in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Southwest shall refund to United Fuel Gas Company and Tennessee Gas Transmission Company to the date of the issuance of this order as the difference between the rates collected subject to refund under each of the rate schedules herein and the related settlement rates and shall report to the Commission in writing, within 45 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination.

(D) Southwest shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order applicable to it.

(E) Any other party to the proceeding or settlement negotiations having objections to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (original and one copy), and shall serve copies thereof on the other parties.

(F) Upon notification by the Secretary of the Commission that Southwest has complied with the terms and conditions of this order, the settlement rates set forth in the appendix hereto shall be effective as of the date of issuance of this order, and the proceedings in Docket Nos. G–16714, G–19536, RI61–128, RI62–78, RI62–230, RI62–241, RI63–92 and RI63–198 shall be deemed terminated insofar as such proceedings pertain to sales made by Southwest under the rate schedules involved therein.

(G) Upon notification by the Secretary of the Commission in accordance with Paragraph (F) above, Docket Nos. G–16714, RI62–230, RI62–241 and RI63–198 shall be severed from the consolidated area rate proceeding in Docket No. AR61–2 without further order of the Commission.

(H) The acceptance by the Commission of Southwest's offer of settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending, or hereafter instituted by or against Southwest, including area rate or other similar proceedings.

APPENDIX

SOUTHWEST GAS PRODUCING COMPANY, INC. (OPERATOR) *et al.* DOCKET NO. G–16714, *et al.*

Rate schedule No.	Field and parish	Purchaser	Date of contract	Certificated rate (cents)	Last firm rate (cents)	Rate in effect 5-1-63 (cents)	Settlement rate (cents)	Section 4(e) docket No.
([1])	Midland-Esterwood, Acadia.	United Fuel Gas Co.	1- 5-53	17.5	17.5	20.7	17.5	G–9443 G–11247 G–13440 G–16518 G–19536 RI61–128 RI62–78 RI63–92
7	Bell City, Calcasieu.	Tennessee Gas Transmission Co.	3- 1-55	10.72633	10.72633	23.675	15.75	G–16714 RI63–198
10	Ramos, St. Mary.	Texas Gas Transmission Corp.	11–22–57	20.75	20.75	[2] 21.75	20.75	RI62–230
12	Jeanerette, St. Mary.	Texas Gas Transmission Corp.	6–18–58	20.75	20.75	[2] 21.75	20.75	RI62–241

[1] Gas being sold under The Atlantic Refining Company (Operator), et al. FPC Gas Rate Schedule No. 63.
[2] Southwest states no money has actually been collected at this rate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–108

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 27, 1964)

On November 12, 1963, as supplemented on December 16, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP64–108 an application pursuant to Sections 7(c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon facilities which are to be replaced or retired as follows:

(1) the construction and operation of an additional 2,000 horsepower of compression at each of three different locations: United Compressor Station, Grant County, Kansas; Alva Compressor Station, Woods County, Oklahoma; and Tonganoxie Compressor Station, Leavenworth County, Kansas;

(2) the replacement of approximately 20.5 miles and the looping of approximately 17.5 miles of existing system with new and larger lines;

(3) the reclamation of approximately 3.5 miles of existing lines and the sale of approximately 1.7 miles of line to Cities Service Oil Company;

all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The total estimated cost of construction proposed in this application is $3,206,440, which reflects the cost of removal and salvage credit for facilities to be abandoned.

The proposed facilities will be financed from short-term bank loans. Cities Service estimates that $8,000,000, of a total 1964 construction program costing $14,000,000 will be financed by such loans. The financing will be at the prime rate, which at present, is 4.5 percent.

All construction herein proposed is to be completed during the year 1964.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 22, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity at present or in the future do not require the maintenance or operation of those two short stretches of pipeline of 3.5 and 1.7 miles respectively hereinbefore described. Therefore permission and approval of the proposed abandonment by Applicant should be allowed.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157,20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in operation not later than January 1, 1965, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

(D) Permission for and approval of the abandonment by Applicant of the pipeline facilities hereinbefore described and as more fully described in the application, in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of removal of those facilities so removed and the date of sale of the other facilities within 10 days of such removal and such sale, respectively.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF LIBERTY, TEXAS v. GULF STATES UTILITIES COMPANY, DOCKET NO. E-7047

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND TERMINATING PROCEEDINGS

(Issued January 29, 1964)

Complainant, City of Liberty, Texas on December 30, 1963 moved to dismiss the above-entitled matter. This proceeding was initiated on July 23, 1962, upon formal complaint of the City of Liberty which then sought, pursuant to the provisions of Section 202(b) of the Federal Power Act, to secure a firm wholesale electric power supply arrangement from Gulf States Utilities Company. The hearing in this proceeding set initially on December 4, 1962 has been continued from time to time upon joint request of City and Gulf States to afford those parties opportunity to resolve their differences.

The City operates a retail electric distribution system and formerly purchased a portion of its electric requirements from Gulf States under a short term contractual arrangement[1] filed with this Commission as Gulf States' Rate Schedule FPC No. 94.[2] The remainder of the City's electric requirements were generated by means of several small and relatively high cost internal combustion generating units operated by the City.[3]

Pursuant to an agreement with the City, Gulf States has undertaken to supply all of the City's electric requirements under the Company's standard Schedule 423 "Other Electric Corporations for Resale" as modified by Schedule 423-A and Rider A. Schedule 423 provides for monthly billings based upon blocked demand and energy charges, subject to fuel cost and power factor adjustments,[4] ranging from $2.00 per kw for the first 50 kw of demand to $1.25 per kw for all demands over 200 kw and 10 mills per kwh for the first 50,000 kwh to 5.5 mills per kwh for all kwh in excess of 200,000 kwh. The fuel cost adjustment is based upon a factor equivalent to a heat rate of 13,000 BTU per kwh and the power factor clause adjusts for power factors less than 80% and more than 90%. Under Schedule 423-A Gulf States will allow City a varying standby credit ranging from $1.00 per kw to $.50 per kw for generating capacity which the latter maintains in operating condition. Rider A provides the terms and conditions under which City alternatively may continue to generate a portion of its electric requirements or supply those requirements wholly with power purchased from Gulf States. On December 30, 1963 Gulf States tendered for filing, pursuant to Section 205 of the Federal Power Act, the foregoing proposed rate schedules for service to the City, which schedules have been tentatively designated as the Company's Rate Schedule FPC No. 96.

---

[1] Providing for the supply by Gulf States to the City of Liberty of 600 kw of maximum demand during the months of June through September 1962 and 1200 kw of maximum demand during the comparable months of 1963.

[2] The City of Liberty was advised by letter dated May 10, 1962 that any discontinuance by Gulf States of service under its Rate Schedule FPC No. 94 would be subject to prior approval of the Commission, *Pennsylvania Power Co.* v. *F.P.C.*, 343 U.S. 414, 422–424.

[3] 4490 kw aggregate generating capability.

[4] Additionally Schedule 423 provides for adjustments to reflect any future additional taxes.

Additionally, Gulf States has entered into an arrangement whereby the City purchased certain electric distribution properties of the Company formerly used to supply electric service at retail in a portion of the City of Liberty. As a part of that transfer of facilities Gulf States will supply, under a non-exclusive franchise, electric service at retail in certain areas not currently served by the City.

We think these arrangements represent, in general, a satisfactory solution to the problem raised in the City's original complaint and that acceptance of its motion to dismiss will accordingly be in the public interest. However, in accepting the City's motion to dismiss we do so without prejudice to any future action by the Commission regarding the lawfulness of Gulf States rates and charges under its Schedule 423. Available office data indicate that certain revisions therein may be appropriate in the light of current operations of the Company. These include the possible need for revision of the Company's fuel adjustment clause and a justification of the level of the Company's rates and charges under its Schedule 423. It is anticipated that further review of these matters will be conducted by Commission staff for purposes of formulating recommendations for possible Commission action.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 202, 205 and 206 thereof, that Gulf States' Rate Schedule FPC No. 96 be accepted for filing to become effective January 30, 1964 superseding the Company's Rate Schedule FPC No. 94 and that this proceeding be terminated all as hereinafter provided.

The Commission orders:

(A) Gulf States' Rate Schedule designated and referred to above as FPC No. 96 is hereby accepted for filing to take effect as of January 30, 1964 superseding that Company's Rate Schedule FPC No. 94. Invocation of the tax provisions of Rate Schedule FPC No. 96 will constitute a change in the Schedule within the meaning of Section 205(d) of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

(B) The motion of the City of Liberty for dismissal of the above-entitled proceeding is granted and this matter is hereby terminated.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such service or rate provided for in the rate schedule as designated above, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding involving the City of Liberty or Gulf States.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL. AND AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.; HUNT OIL COMPANY, DOCKET NO. RI61-551; HASSIE HUNT TRUST, DOCKET NOS. RI64-53, G-17287; WM. HERBERT HUNT TRUST ESTATE, DOCKET NOS. RI64-54, G-13506, G-16643, G-19750, RI61-143, RI62-140, RI63-140, RI64-199; H. L. HUNT, DOCKET NO. RI62-512; N. B. HUNT, DOCKET NOS. G-10564, G-11721, G-12995, G-16086; HIDALGO GAS PRODUCTION CORPORATION, DOCKET NOS. G-16674, G-19746, RI61-144, RI62-138, RI63-100, RI64-206; CAROLINE HUNT TRUST ESTATE, DOCKET NO. RI61-37; A. G. HILL, DOCKET NO. RI64-225

ORDER DENYING MOTIONS FOR RECONSIDERATION

(Issued January 30, 1964)

On December 26, 1963, a joint motion for reconsideration of our "Order Instituting Area Rate Proceedings", issued in these proceedings on November 27, 1963, 30 FPC 1354, was filed by the eight natural-gas producing companies named in the caption hereof.[1] Specifically, the movants request the Commission (1) to cancel the November 27th order, or, if denied, (2) to allow respondents to the two newly initiated area rate proceedings "to present individual company cost presentation", or alternatively, the Commission is urged to assure them that the "final order or orders issued in these proceedings [will] include a 'savings clause' * * *" preserving to them an opportunity to adduce individual company evidence prior to the time when the area rates ultimately established become effective, if such area rates reduce any rates for sales of natural gas in the areas under investigation.

Our reasons for initiating additional area rate proceedings are set out in the November 27th order and need no further elaboration. The initiation of these two new proceedings and the enlargement in the coverage of fully effective producer rate regulation (an increase from approximately 40 percent to 75 percent of the natural gas sold in interstate commerce) provided by the Commission's ultimate decisions and orders fixing just and reasonable rates for the Hugoton-Anadarko and Texas Gulf Coast regions are consistent with our duties under the Natural Gas Act. There can be no question that the ratemaking objectives of these proceedings, instituted pursuant to Sections 4, 5, 10, 14, 15, and 16 of the Act, are in the public interest and should be achieved with minimum delay.

Procedurally, the administrative technique adopted by our order of initiating proceedings prior to scheduling actual hearings will contribute significantly, as in pending cases, to the identification of issues, to the planning of group participation, to the preparation and orderly distribution of evidence, and to the planning and establishment of the procedures to be followed during the course of two large and complex hearings. For these reasons and others contained in our order, proposals for its cancellation must be rejected.

---

[1] The joint motion is styled as an application for rehearing and reconsideration filed pursuant to the Natural Gas Act, Section 19(a) and the Commission's Rules of Practice and Procedure, Section 1.34. However, these sections provide for the filing of applications for rehearing only in connection with final orders and not procedural orders such as that issued November 27, 1963. See Section 1.30(e) of the Rules. We, therefore, treat the application as a motion for reconsideration.

The movants' request that we decide now, either to permit evidentiary cost presentations by individual companies during the instant area rate proceedings, or to promulgate a statement (a "savings clause") assuring parties desirous of making such presentations of an opportunity to do so prior to the issuance of an order making effective those area rates which we find to be just and reasonable, should be denied on the grounds that the first alternative is incompatible with the area rate concept and present consideration of the second alternative is clearly premature in the absence of any record evidence which might establish a need for such a clause.

We previously considered and disposed of almost identical motions filed by one of the present movants and others in the Southern Louisiana area rate proceeding. Our disposition there is equally applicable to the instant joint motion. In that proceeding, we stated:

> * * * With particular reference to individual company cost presentations, we have indicated in a number of orders issued in the Permian Basin area proceeding Docket No. AR61-1, *et al.*, that such presentations are not proper matters for consideration in determining any area price. Having so concluded, we shall not permit the introduction of individual company cost presentations in these proceedings. See Area Rate Proceeding, *et al.*, Docket No. AR61-2, *et al.*, 29 FPC 981, 982 Order Adding Respondents, Prescribing Hearing Procedures and Setting Hearing Dates, issued May 16, 1963.

On the motions for reconsideration, we adhered to this view and also explained why it would be premature to consider the propriety of "savings clauses" prior to the adoption of a final decision and order:

> In the *Phillips* case,[8] the Commission determined that individual company costs do not form an appropriate basis for fixing producer rates and that the area basis should be used. The Commission has reiterated on numerous occasions that individual company cost evidence would not be acceptable in these proceedings for the purpose of fixing the proper area price or prices. The movants have failed to demonstrate the invalidity of the area approach or to show why the Commission should now deviate from this course.
>
> In the Permian case, Docket No. AR61-1, *et al.*, the Commission has deferred ruling on the inclusion of so-called "savings clauses", since any action taken prior to a final decision in the proceedings necessarily would be premature. Similarly, in the instant proceedings, it is obvious that, prior to the time the Commission has before it the entire record, it would not be in a position to determine the appropriateness of a savings clause. Consequently, we will deny the motions in this regard without prejudice to future consideration by the Commission. See Area Rate Proceeding, *et al.*, Docket No. AR61-2, *et al.*, 30 FPC 400, "Order Denying Motions For Reconsideration", issued July 24, 1963.

The Commission orders:

The motion filed on December 26, 1963, by the above-named movants for reconsideration of the Commission's order of November 27, 1963, is hereby denied except insofar as it requests the amendment of the order to include a savings clause as to which the motion is denied without prejudice to future consideration by the Commission.

Commissioner Ross *dissenting.*

---

[8] Opinion No. 338, *Phillips Petroleum Company*, Docket No. G-1148, et al., issued September 28, 1960, 24 FPC 537.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CLAUD B. HAMILL, DOCKET NO. G-16860, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued January 30, 1964)

On December 9, 1963, Claud B. Hamill (Hamill) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Hamill. The offer relates to sales made under Hamill's FPC Gas Rate Schedule Nos. 2, 3, 4 and 6 in Colorado, Wharton and Starr Counties, Texas (Texas R.R. Com. Districts #3 and #4). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Hamill on June 22, 1959, April 1 and September 28, 1960.

Under the terms of the offer, Hamill proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from the rate schedules and to establish 15¢ per Mcf rates for the subject sales. Hamill's annual revenues will be decreased about $7,259 from the presently effective rates. No protests or objections have been filed to the offer.

Hamill, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedules in excess of the settlement rates.[2] The estimated total dollars to be refunded approximates $53,345, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Hamill's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving each of Hamill's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Hamill on December 9, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Hamill on December 9, 1963, is hereby approved in accordance with the provisions of this order.

---

[1] See the appendix attached hereto for the additional dockets involved herein.

[2] Hamill's FPC Gas Rate Schedule Nos. 2, 3, 4 and 6 are subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

(B) Hamill shall file ,within 30 days from the date of issuance of this order, notices of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and executed contractural amendments to its FPC Gas Rate Schedule Nos. 2, 3, 4 and 6, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Hamill shall refund to TGT to the date of issuance of this order the difference between the rates collected subject under each of the rate schedules herein and the settlement rates, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from Tennessee.

(D) Upon notification by the Secretary of the Commission that Hamill has complied with the terms and conditions of the order, the rates and charges of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Hamill's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Hamill, including area rate or other similar proceedings.

APPENDIX

CLAUD B. HAMILL DOCKET NO. G-16860, ET AL.

[Cents per Mcf at 14.65 psia]

Rate schedule No.	Area and field	Sec. 4(e) rate increase Docket No.	Last accepted rate	Rate in effect	Settlement rate
	Texas Railroad Commission District No. 3:				
2	Buck Snag	G-16860	13.49751	16.16947	15.0
3	Egypt	G-17125	13.27820	15.95016	15.0
4	Nada	G-17075	13.49751	16.16947	15.0
	Texas Railroad Commission District No. 4:				
6	Arkansas City	G-19428	12.12268	15.09520	15.0
		RI60-267	12.12268	17.24347	15.0

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

G. H. VAUGHN AND JACK C. VAUGHN (OPERATOR), ET AL., DOCKET NOS. G-19894 AND RI60-379

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued January 30, 1964)

On December 9, 1963, G. H. Vaughn and Jack C. Vaughn (Operator), *et al.*, submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Vaughn. The offer relates to two separate sales made under Vaughn's FPC Gas Rate Schedule No. 1 in San Patricio County, Texas (Texas R.R. Com. District #4). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Vaughn on April 1, and November 9, 1960.

Under the terms of the offer, Vaughn proposed to eliminate the favored-nation, price redetermination and the periodic escalation provisions from its rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Vaughn's annual revenues will be decreased about $12,175 from the presently effective rates. No protests or objections have been filed to the offer.

Vaughn, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $38,421, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Vaughn's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving each of Vaughn's rates and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Vaughn on December 9, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Vaughn on December 9, 1963, is hereby approved in accordance with the provisions of this order.

(B) Vaughn shall file, within 30 days from the date of issuance of this order, notices of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notices of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Vaughn shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from Tennessee with respect to such refunds.

---

[1] Vaughn's FPC Gas Rate Schedule No. 1 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

(D) Upon notification by the Secretary of the Commission that Vaughn has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(E) The acceptance by the Commission of Vaughn's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Vaughn, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E–7143

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued January 31, 1964)

Arkansas Power & Light Company (Arkansas Power), a corporation organized under the laws of the State of Arkansas, and doing business in the States of Arkansas, Tennessee, Missouri and Louisiana, with its principal business office located in Little Rock, Arkansas, filed an application on December 13, 1963 requesting authorization pursuant to Section 203 of the Federal Power Act for the purchase and acquisition of certain electric distribution facilities from Dierks Forests Inc. (Dierks), a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Arkansas, with offices at Hot Springs, Arkansas.

Arkansas Power is engaged as a public utility in the generation, transmission, purchase, distribution and sale of electricity. Substantially all of its operations are in the State of Arkansas where it renders service in 61 of the 75 counties in the State. In addition it serves 5 customers in Missouri, 75 in Tennessee and 266 in Louisiana. Arkansas Power had a net plant of $291,440,000 as of September 30, 1963.

Dierks is chiefly engaged in the business of growing timber and manufacturing lumber and wood products in Garland County, Arkansas. Dierks provides electric service to approximately 345 customers who occupy residences or business structures, as its tenants, in or near the unincorporated community of Mountain Pine, Arkansas. Dierks does not regard itself as a public utility nor is it operating as a public utility under the laws of the State of Arkansas.

The facilities to be acquired by Arkansas Power consist of an overhead distribution system, operated by Dierks at 2400 volts, including poles, conductors, transformers, meters and all appurtenances used for the service rendered. The power for the distribution system is presently supplied from a 1500 kw generator in the lumber mill of Dierks but it is inadequate to supply sufficient electric service for the mill operation and the electric consumers. Arkansas Power will integrate the distribution facilities into its interconnected system, which is adequate to serve the load growth of the area, at an estimated cost of $2,500. It will continue the operation of the facilities and it will charge its approved regulated rates for rural areas or unincorporated areas generally throughout its service area.

Pursuant to an agreement entered into by Arkansas Power and Dierks on October 21, 1963, Arkansas Power has agreed to purchase the facilities for a cash consideration of $137,500. The application states that the facilities have never before been devoted to public use. The facilities will be recorded on Arkansas Power's books at acquisition cost of $137,500, which is "original cost" as defined in the Commission's Uniform System of Accounts. On the books of Arkansas Power, the cost of $137,500 will be classified in the following accounts under Account 101, Electric Plant in Service.

Distribution plant:	
Account 360, Land and land rights	$4, 819. 87
Account 364, Poles, towers, and fixtures	34, 472. 32
Account 365, Overhead conductors and devices	15, 276. 49
Account 368, Line transformers	21, 724. 31
Account 369, Services	30, 970. 76
Account 370, Meters	29, 906. 09
Account 373, Street lighting system	330. 16
Total	137, 500. 00

The proposed transaction which is subject to the authorization of the Arkansas Public Service Commission was authorized by its order, Docket No. U-1789, issued December 3, 1963.

Written notice of the application has been given to the Public Service Commission of the State of Arkansas and to the Governor of that State. Notice was published in the Federal Register on December 28, 1963 (28 F.R. 14451) stating that any person desiring to be heard or to make any protest with reference to the application should, on or before January 20, 1964, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Arkansas Power is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 21, 1962, in Arkansas Power and Light Co. Docket No. E-7069 (28 FPC 844).

(2) By the proposed transaction, as described above, Arkansas Power will merge or consolidate with its facilities, subject to the jurisdiction of the Commission all of the distribution facilities of Dierks.

(3) The proposed acquisition of Dierks' distribution facilities by Arkansas Power, as described above, upon the terms and conditions specified in the application and subject to the provisions of this order, will be consistent with the public interest, as expressed in Section 203 of the Act.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the distribution facilities of Dierks by Arkansas Power, as referred to above and described in the application is hereby authorized and approved upon the terms and conditions and for the purpose set forth in the application, subject to the provisions of this order.

(B) Arkansas Power shall record the proposed transaction herein authorized and the facilities referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 180 days from the day of the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DUKE POWER COMPANY, PROJECT NO. 2232

ORDER APPROVING PROJECT EXHIBIT

(Issued January 31, 1964)

On September 5, 1963, Duke Power Company, licensee for Project No. 2232, filed for Commission approval, Exhibit K showing the project boundary for the Cowan's Ford Development of the project.

The licensee also filed Exhibit F showing the right of use the licensee has acquired for lands within the Cowan's Ford Development. Commission approval of Exhibit F is not required.

No lands of the United States are involved.

The Commission finds:

Exhibit K, Sheets 5-A, 5-B, 5-C, and 5-D (FPC Nos. 2232-89 through 92) conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

The Exhibit K sheets described in the above finding are hereby approved as part of the license for Project No. 2232.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GRAND RIVER DAM AUTHORITY, PROJECT NO. 2183

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued January 31, 1964)

Application was filed on July 11, 1963 by Grand River Dam Authority, licensee for major Project No. 2183, for further amendment of its license to exclude therefrom the presently authorized single circuit 110-kv transmission line and in lieu thereof to include a double circuit 110-kv transmission line.

The presently authorized line connects the step-up substation at the Markham Ferry plant to the licensee's existing Markham Ferry switching station, a distance of about 3.75 miles. The proposed double circuit line would extend a distance of about 2 miles from the Markham Ferry plant to the licensee's existing 302 transmission line extending from the Pensacola switchyard of licensed Project No. 1494 to the Markham Ferry switching station. The proposed line will be split with the north circuit going to the Pensacola switchyard and the south circuit going to the Markham Ferry switching station.

The proposed change is necessary and desirable for the reasons that: the double circuit line will provide two ties to the licensee's high-voltage system in lieu of one; the south circuit of the double circuit line will provide the same connection from the Markham Ferry hydro station to the Markham Ferry switching station as the presently authorized single circuit line; and the north circuit will provide a direct connection from the Markham Ferry hydro station to the Pensacola switchyard. The double circuit line would terminate close to the licensee's industrial load center.

No lands of the United States are involved.

The Commission finds:

(1) The proposed double circuit transmission line is part of a "project" as defined in Section 3 (11) of the Federal Power Act and should be included in the license as part of the project works.

(2) The license for Project No. 2183, further amended as hereinafter provided, is in the public interest.

(3) Exhibit M (Revised), filed as part of the application for amendment conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M, now part of the license and which has been superseded, should be eliminated from the license.

The Commission orders:

(A) The license for Project No. 2183 is hereby further amended, effective as of January 1, 1964 as follows:

Paragraph I. The presently authorized 110-kv transmission line from the Markham Ferry plant to the Markham Ferry switching station is eliminated from the license.

Paragraph II. The proposed double circuit 110-kv transmission line from the Markham Ferry plant to the existing Line 302 which extends from the Pensacola switchyard of licensed Project No. 1494 to the Markham Ferry switching station is included in the license as a part of the project works.

(B) The aforementioned Exhibit M (Revised) is hereby approved as part of the license for the project, and the aforementioned superseded Exhibit M is hereby eliminated from the license for the project.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2106

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued January 31, 1964)

Application was filed on December 10, 1962 by Pacific Gas and Electric Company, licensee for major Project No. 2106, for further amendment of its license for the project located on the McCloud and Pit Rivers in Shasta County, California, and affecting lands of the United States within the Shasta National Forest.

The application for amendment, which relates to the McCloud-Pit Development, would: (1) eliminate therefrom the proposed Hawkins Creek Diversion Dam, Reservoir, and shaft connecting it to the McCloud Tunnel, and adit for driving the tunnel; (2) realign McCloud Conduit which then will consist of Tunnel No. 1 about 10,500 feet long, Hawkins Creek pipe crossing about 500 feet long, plus transitions into tunnels Nos. 1 and 2, the latter to be about 26,800 feet long; (3) relocate McCloud-Pit powerhouse to a point on Pit River about ½ mile upstream from the licensee's Pit 5 powerhouse of Project No. 233; (4) eliminate the extensive tailrace excavation previously planned downstream from its former location, and; (5) realign the Iron Canyon Conduit and McCloud-Pit penstock to the new location of the McCloud-Pit powerhouse, the conduit then to consist of Tunnel No. 1 about 4,800 feet long, a pipe about 1,100 feet long across an unnamed depression plus transitions into tunnels Nos. 1 and 2, the latter to be about 9,400 feet long, and McCloud-Pit penstock about 5,700 feet long.

The license order issued August 18, 1961 eliminated the Hawkins Creek Diversion. Therefore, it is not included in the license. The proposed changes are desirable for the reasons that: the elimination of the Hawkins Creek Diversion permits realignment of the McCloud Conduit and a reduction of about 2,700 feet in its length; and the relocation of the McCloud-Pit powerhouse will make it unnecessary to excavate a major tailrace channel downstream therefrom. The proposed changes would reduce materially the capital cost of the McCloud-Pit Development.

The proposed changes would result in a slight increase in the area which the McCloud-Pit Development occupies within the Shasta National Forest (5.48 acres), which will increase the amount of annual charges for such occupancy by $13.15, or from $2,613.58 to $2,626.73.

The Department of Agriculture, in reporting on the application, recommended, for inclusion in the license, a special condition for the protection and utilization of the Shasta National Forest.

Pursuant to request therefor, the licensee was advised by Commission letter dated October 8, 1962, that it would interpose no objection to the licensee proceeding with the construction of the realigned McCloud Tunnel (as proposed in the subject application) at the licensee's own risk, under a Forest Service Special Use Permit. We are hereinafter making this amendment effective as of October 8, 1962.

The Commission finds:

(1) Public notice of the application has been given. No protests have been received.

(2) The license for Project No. 2106 further amended as hereinafter provided is in the public interest.

(3) The increased amount of annual charges for recompensing the United States for the increased occupancy by the McCloud-Pit Development of national forest lands is reasonable as hereinafter fixed and specified.

(4) Exhibits K-2A, K-3A, K-4A and K-5A (FPC Nos. 2106-47 through -50), filed as part of the application, conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K-2, K-3, K-4 and K-5 (FPC Nos. 2106-22 through -25), now part of the license and which are superseded, should be eliminated from the license.

The Commission orders:

(A) The exhibits described in finding (4) above as conforming to the Commission's rules and regulations are hereby approved as part of the license for Project No. 2106, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(B) Pacific Gas & Electric Company's license for Project No. 2106 is hereby further amended in the following respects, effective as of October 8, 1962:

Paragraph I. The license is amended by authorizing the realignment of the McCloud Conduit; the relocation of the McCloud-Pit powerhouse; the elimination of the tailrace excavation previously planned downstream from its former location; and realignment of the Iron Canyon Conduit and McCloud-Pit penstock to the new location of the McCloud-Pit powerhouse.

Paragraph II. Subparagraph (ii) of Article 28 of the license is amended by changing the annual land charge figure of $2,613.58 to $2,626.73.

Paragraph III. The following additional article is added to the license:

Article 48. The Licensee shall cooperate with the Forest Service in the preparation of a recreational use study for the lands adjacent to the Iron Gate Reservoir and shall within one year from the date of completion of the development, file with the Commission for approval its proposed recreational use plan.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 417

ALABAMA-TENNESSEE NATURAL GAS CO., DOCKET NO. G-5471, ET AL.

OPINION AND ORDER ON PROPER RATE TREATMENT OF LIBERALIZED DEPRECIATION TAX DEDUCTIONS

(Issued February 3, 1964)*

Syllabus

1. Instant decision constitutes final element in determination of just and reasonable level of return for Alabama-Tennessee and proposed decision respecting those pipelines to which this specific issue was reserved. P. 209.

2. Commission *rejects* asserted denial of its discretionary authority to depart from policy of allowing normalized taxes and permitting 1.5 percent return upon accumulated deferred taxes. P. 210.

3. In enacting Section 167 of the Internal Revenue Code (liberalized depreciation), Congress did not prohibit rate flow-through to consumers of resulting pipeline tax savings. PP. 210, 211.

4. Merely because tax benefit is made available to both regulated and unregulated businesses alike, does not mean that former *pro tanto* cease to be subject to regulation. P. 210.

5. While agreeing with *Amere* and *El Paso* that congressional intent of Section 167 is to assist in modernization and expansion of industrial capacity, Commission does not conclude that this can only be achieved by normalization. P. 211.

6. Section 167, making utilities eligible for same benefits as non-regulated enterprises cannot be viewed as direction to Commission to allow them additional return equivalent to amount of tax savings. P. 213.

7. Commission *rejects* argument that it would be an abuse of administrative discretion to allow anything more than dollar total of currently payable taxes in income tax allowance of pipeline. P. 214.

8. Claim that normalization is required because Section 167 may be repealed *rejected* as speculative. P. 215.

9. Tax consequences of liberalized depreciation must be measured with respect to all properties of taxpayer. PP. 215, 216.

10. Where there is growth in size of gross plant normalization is premature and unnecessary. P. 216.

11. Fact that gas reserves may be exhausted in 21st century does not establish that there is present need for additional normalization. P. 218.

12. Rate flow-through is more effective stimulus to new investment than normalization since lower rates tend to generate higher volumes of sales and thus ultimately to require expansion of facilities. PP. 218, 219.

13. Existing provisions of Uniform System of Accounts respecting accumulated deferred tax balances are grounded on erroneous premise that liberalized depreciation results in mere tax deferral—not tax saving. P. 219.

14. Pipelines should be given option of retaining past tax accumulations as consumer-contributed reserves, or amortizing same over period of years by refunds or rate reductions. P. 220.

15. No return need be allowed prospectively on accumulated "deferred tax" balances since balances must now be regarded as consumer-contributed capital. P. 220.

---

*Order issued April 3, 1964, granted rehearing for further consideration, 31 FPC 768. Modified; rehearing and stay denied by Opinion No. 417-A, issued April 15, 1964, 31 FPC 928. Affirmed, *Alabama-Tennessee Natural Gas Co. v. F.P.C.*, 359 F. 2d 318 (CA5-1966); cert. denied, 385 U.S. 847 (1966)

16. Rates established for Alabama Tennessee and other similarly situated pipelines will reflect fair and reasonable return upon recognized rate base after deduction of accumulated balances in account 282. P. 220.
17. Use of liberalized depreciation results in permanent reduction in tax payable by natural gas pipelines which maintain either growing or stable plant. P. 221.
18. Commission *determines* proper rate treatment of liberalized depreciation tax deductions in proceeding under Section 4 of the Natural Gas Act.

Commissioners O'Connor and Woodward *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

This case was initiated by the deferral for separate decision, in Opinion No. 360 [1] of the issues raised therein as to the proper treatment of liberalized depreciation in Alabama-Tennessee's allowance for Federal income taxes. The specific issue is whether Alabama-Tennessee's allowance for Federal income taxes should be based on the liberalized tax depreciation deductions which it uses or on straight-line tax depreciation deductions and if the latter is used whether it should be permitted to earn a return upon the accumulated deferred tax funds, and if so, at what rate. This important issue was deferred because the Commission determined that it was appropriate to reexamine and reevaluate our policy thereon in light of our more recent experience. We therefore issued an order scheduling the matter for oral argument and invited the participation of interested persons as *amici curiae.*[2]

The same issue was also deferred in a number of Commission orders prescribing future rates for other natural gas pipeline companies, conditioned on the decision in this case.[3] In thus reserving this issue, we uniformly provided that any changed policy which might be formulated in this proceeding would have only a prospective effect on the rates and charges of the individual pipelines concerned. We are aware that a number of such pipelines have argued in these proceedings that the result we reach here cannot be made binding upon them in the absence of further proceedings. While we are not convinced as to the validity of such arguments, we shall afford such other pipelines an opportunity to show cause why the determination we are making here is not applicable to them. Accordingly, the decision rendered herein will constitute the final element in determining a just and reasonable level of return for Alabama-Tennessee and a proposed decision on this point with regard to the various other pipelines with respect to which this specific issue has been reserved.

Apart from those companies, however, it is evident that the decision to be rendered in this proceeding will have a substantial impact upon other regulated companies subject to this Commission's jurisdiction. In the nine years that liberalized depreciation deductions have been available, the natural gas pipelines and electric utilities have, respectively, accumulated $286,320,000 and $540,690,000 of deferred tax funds.[4] While our decision does not disturb these accumulations (which we are allowing the respondent and other companies under FPC juris-

---

[1] *Alabama-Tennessee Natural Gas Co.*, issued June 13, 1962, 27 FPC 1180.

[2] Order setting Oral Argument, *Alabama-Tennessee Natural Gas Company*, Docket No. G-5471, *et al.*, issued June 1, 1962, 27 FPC 1063.

[3] *American Louisiana Pipe Line Co.* and *Michigan Wisconsin Pipe Line Company*, Opinion No. 363, issued September 17, 1962, 27 FPC 482; *El Paso Natural Gas Company*, Opinion No. 366, October 19, 1962, 28 FPC 688; *Southern Natural Gas Company*, Opinion No. 379, February 18, 1963, 29 FPC 323; *Natural Gas Pipeline Co. of America*, RP61-8, Opinion No. 367, October 25, 1962, 28 FPC 731.

[4] *Statistics of Natural Gas Companies*, 1962; *Statistics of Electrical Utilities in the United States*, 1962.

diction to retain, but at a zero return for the future) but goes only to the question whether additional accumulations in those accounts should be permitted, this is a question of large importance to consumers generally as well as having industry-wide implications. We have therefore given appropriate weight to all material and relevant technical and scientific facts of established character which are within the ambit of our general knowledge as an expert body and may properly be officially noticed under Section 1.26(d) of the Rules of Practice and Procedure, as well as to the record in this case.

The issue before us is the proper rate-making treatment for Alabama-Tennessee and other regulated companies which claim the benefits of liberalized depreciation on their tax returns. We do not have before us the question whether a utility which has not exercised its option to claim the tax benefits of liberalized depreciation should have its rates fixed on the basis of the availability of such higher depreciation deductions, and nothing in this opinion should be taken as an indication of our views on that question. Also, we are not re-examining our present policies with respect to the rate treatment of accelerated amortization under Section 168 of the Internal Revenue Code in this proceeding.

Congress Did Not Prohibit Rate Flow-Through

At the outset, we are met with a vigorously asserted denial of our discretionary authority to depart from our presently established policy of allowing normalized taxes[5] and permitting a 1.5 percent return to be earned upon the accumulated deferred taxes.[6] Alabama-Tennessee, the Independent Natural Gas Association of America (INGA) and many of the pipeline interveners (hereinafter referred to as the pipelines) contend that Congress intended liberalized depreciation to serve as a tax incentive to the modernization and expansion of operating plant and that flow-through to consumers is illegal because it would defeat this statutory objective.

The legislative history of Section 167 like the language of the section, admittedly makes no reference to the manner in which taxes computed thereunder by regulated companies should be treated for rate-fixing purposes. We are therefore left without the aid of any contemporaneous expression of Congressional intent as to the proper regulatory treatment of liberalized depreciation.

The section was made applicable to both regulated and unregulated industries alike. An unregulated business availing itself of liberalized depreciation could *if competition permitted it to do so* use the tax savings for reinvestment in new plant. Accordingly it is argued, this option should also be available to any regulated company choosing to utilize liberalized depreciation.

The short answer is that merely because a tax benefit is made available to both regulated and unregulated businesses alike does not mean that regulated businesses *pro tanto* cease to be subject to regulation. Thus, it would hardly be contended that if Congress reduced the general corporate tax rate to encourage business expansion, as the President has proposed, regulated companies could continue to have their rates set on the basis of taxes calculated at the previous higher rate merely because unregulated companies could, if economic conditions permitted, retain the difference between the taxes they would have been required to pay under the old rates and those due under the new.

---

[5] The existing precedent as set out in Opinion No. 326, *El Paso Natural Gas Company*, Docket No. G–4769, 22 FPC 260, 266–267, is to the effect that a natural gas company will be permitted to include in its cost of service income taxes on the basis of straight line depreciation, while paying such taxes on the basis of liberalized depreciation.

[6] In Opinion No. 342, *Northern Natural Gas Co., et al.*, Docket No. G–19040, *et al.*, 25 FPC 431, it is concluded that the aforementioned use of liberalized depreciation should be taken into consideration in fixing a rate of return for the pipeline company by including the amounts in the deferred income tax account resulting therefrom as part of the company's capitalization and providing for an allowance of 1.5 percent return thereon.

In the case of the unregulated industries, tax benefits, like other cost reductions, need not be earmarked; the forces of competition determine whether savings will be passed on to the stockholders in dividends, set aside in a reserve, reinvested in new plant, or utilized to enhance the company's competitive position by a reduction in prices. The underlying premise of the regulatory process, on the other hand, is that the interplay of competitive forces is inadequate to assure determinations consistent with the public interest. The Commission's regulatory function is a substitute for the kind of competition that exists in the unregulated industries.

A general Congressional purpose to make tax benefits available to both regulated and unregulated taxpayers "does not mean that these tax benefits are to be translated into additional profits for the regulated company over and above a reasonable return on its investment . . ." (*El Paso Natural Gas Company* v. *Federal Power Commission*, 281 F. 2d 567, 571 (CA5–1960); cert. denied, 366 U.S. 912). The benefits to taxpayers contemplated by the Congress in adopting section 167 of the Internal Revenue Code were intended as a stimulus to investment. As we show *infra*, this intent can better be achieved in the case of natural gas pipelines by flow-through than by normalization. The pipelines are not thereby deprived of the benefits of liberalized depreciation; instead by permitting lower rates the benefits ". . . are available to the regulated companies to make it so much the easier for them, in competition with other fuels and in competition with other industries seeking the investor's dollar to earn a fair return . . ." (*ibid.*).

We are, of course, aware that a majority of the then Commissioners took a different view of this matter in *Amere Gas Utilities Co.*, 15 FPC 781 and *El Paso Natural Gas Co.*, 22 FPC 260. We have carefully reexamined the reasoning behind these opinions and, with all deference, cannot persuade ourselves to the same conclusion. The former opinion admits (15 FPC at 782) that "Section 167 of the Internal Revenue Code contains no specific mandate" for normalization. Instead, the opinions refer to a "clear Congressional intent" to have the authorization to all taxpayers to use liberalized depreciation assist in the modernization and expansion of industrial capacity (*Amere, supra* at 782, *El Paso, supra* at 266), which we do not dispute, and leap from this foundation to the unsupported conclusion that this can only be achieved insofar as the natural gas pipelines are concerned by providing for normalization. Superimposed on this line of argument is an assumption that the Congress, though it did not say so, must have intended liberalized depreciation to be treated as a permanent tax deferral, even if, because of the installation of additional facilities, "there will be a balance in the reserve accounts at all times in the foreseeable future" *Amere, supra*, at 782. The only basis for this contention seems to be a number of general statements in the committee reports on the bill authorizing liberalized depreciation to the effect that, insofar as individual items are concerned, liberalized depreciation results in a tax deferral rather than a tax saving, and the statement in the Examiner's decision in *Amere* (with which the Commission expressed its agreement (15 FPC at 781)) that "It must be *assumed* that the fact that on a composite basis, as compared with the treatment of separate units, with a growing plant income tax payments would always be less under liberalized methods than under the straight-line method was known to Congress." (*Amere, supra* at 776).[7] [Emphasis supplied.]

---

[7] The only other support the cited decisions purported to find in the legislative history of Section 167 was testimony by natural gas and electric utility officials to the effect that because of the inflation factor, straight-line depreciation hurt industries such as theirs with long-lived facilities. (*El Paso,* supra at 266) This argument would bear on the question of the proper rate of depreciation to be allowed these companies, but it does not demonstrate anything with respect to the rate-making treatment of liberalized depreciation for tax purposes.

We think none of the foregoing can possibly be characterized as a Congressional mandate for us to treat companies utilizing liberalized depreciation in any particular manner in the rate-making proceedings to which, as far as the legislative history of Section 167 indicates, Congress gave no consideration whatsoever at the time. On the contrary it seems clear to us that Congress left this matter to the sound discretion of the Commission. Of course, in our consideration of the matter in ratemaking proceedings we must give due consideration both to the question whether the use of liberalized depreciation by the particular types of company subject to our jurisdiction results in a tax deferral or a tax savings, and whether a proposed method for handling liberalized depreciation is consistent with and will enhance the general Congressional objectives in authorizing its use.

All three of the Federal circuit courts of appeals which have been called upon to consider the matter have expressly rejected contentions that our treatment of liberalized depreciation is dictated by any Congressional mandate or, that any Congressional intent can be spelled out of the legislative history as to how we should treat liberalized depreciation in rate-making cases. Thus in *El Paso Natural Gas Co.* v. *Federal Power Commission*, 281 F. 2d 567 (CA 5, 1960) certiorari denied 366 U.S. 912, an appeal stemming from the first Commission rate-making decision in which the Commission rested its normalization conclusion upon an appeal to a supposed Congressional directive (see 22 FPC 266), the Court instead stated (281 F. 2d at 572):

> We think there is nothing in the legislative history that would warrant our concluding that Congress intended the statutory depletion, deduction of intangible drilling expense, *and rapid depreciation* provisions of the Revenue laws to amend or modify the express language of [Section 5(a) of] the Natural Gas Act. [Emphasis added.]

It is, of course, true that the court in the *El Paso* case, after holding that with respect to tax savings "[no] theoretical amount not actually paid can be so included" in the company's cost of service (*ibid.*), went on to approve normalization of liberalized depreciation on the basis of its agreement with the Commission that "in practical effect this [liberalized depreciation] works a tax deferral rather than a tax savings" (*ibid.*). This conclusion however was based not upon any Congressional mandate but rather on indulgence of the Commission's finding that in practical effect a tax deferral rather than a tax savings was involved. It does not preclude a contrary determination by the Commission upon a different record and more comprehensive evaluation of the problem.[8]

In *Cities of Lexington, Kentucky, et al.*, v. *Federal Power Commission*, 295 F. 2d 109 (CA 4 1961), the Fourth Circuit, reaching the same result as in the *El Paso* case, expressed its approval of the earlier decision's conclusions as to the absence of legislative history modifying the Natural Gas Act with respect to the treatment to be accorded rapid depreciation or statutory authority to treat tax savings other than as a reduction in a company's cost of service (295 F. 2d at 117). And, referring to the differing treatments of liberalized depreciation by various state and Federal agencies, the Court observed (*id.* at 114):

---

[8] This was recognized by the Solicitor General in his brief in the Supreme Court in opposition to the petition for a writ of certiorari on the question filed by the State of California. After describing the two methods ("flow through" and "normalization") by which the various Federal and state regulatory agencies had approached the problem he stated (at pp. 11–12):

> From this survey, it appears that, whatever merit there may be in either method, the least that can be said is that a regulatory commission's choice between the two is assuredly within its discretion, depending on the particular views of the particular agency. No general issue of law is involved, only a discretionary choice among competing accounting systems. Such a choice is not one which warrants review by this Court. Under the same principle, the choice is one which can be changed by the Commission should it become convinced that the other method is preferable. Such a change can be made without disturbing the requirement that reserves already accumulated be used only for the originally intended consumers' benefit.

> It is obvious that we are confronted in this case with a problem in a special field which requires the exercise of expert skill that has been generally entrusted by state and Federal legislation to administrative regulatory tribunals whose decisions, in the absence of an abuse of discretion, should be followed by the courts.

Construing the Fifth Circuit's *El Paso* decision as having taken "the same course," the court "adopted" the course of deferring to the Commission's "exercise of expert skill" in the case before it (*ibid.*). Obviously, this decision's subsequent contrary determination based upon a rational analysis of facts demonstrating that liberalized depreciation resulted in tax savings rather than deferral would be equally sustainable.

Finally, there is the decision this last year by the District of Columbia Circuit in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 316 F. 2d 659 (CADC), certiorari denied, 375 U.S. 881. The specific issue before the Court in that case was the right of the Commission to allow less than a "full return" upon funds which had accrued as a result of normalization of liberalized depreciation, and the Court accordingly carefully refrained from intimating any opinion concerning the validity of action by the Commission to adopt flow-through or any other form of treatment of liberalized depreciation. However in considering Panhandle's argument that the legislative history of Section 167 expressed a Congressional intent that a regulated company should benefit from liberalized depreciation at the expense of its ratepayers, the Court held (*id.* at 662):

> Nothing in the language or legislative history [of Section 167] indicates that Congress considered its regulatory consequences. Thus to infer that the statute materially altered fundamental principles of rate regulation—which requires rates to reflect actual costs of capital—it must appear that Congress intended to benefit [pipelines] to the exclusion of consumers. It does not so appear * * *

The Court went on to hold that the real question was whether the particular rate-making treatment afforded to a company utilizing liberalized depreciation was whether it "would be consistent with the Congressional policy underlying the tax statute"—*i.e.*, to "assist modernization and expansion of industrial capacity." And as indicated above its conclusion that the 1½% return allowed in Panhandle was a sufficient incentive to the continued use of liberalized depreciation, was expressly made without prejudice to a possible conclusion that a different type of regulatory treatment of the problem would also be appropriate.[9]

Certainly, the mere action of Congress in making utilities eligible for the same tax benefits as non-regulated enterprises cannot be viewed as a direction to this Commission to allow such utilities, in addition to a fair return on invested capital, an additional return equivalent to the amount of such tax savings. Neither the text of the Internal Revenue Act of 1954 nor any of the pertinent Committee reports is inconsistent with the flow-through of these tax benefits or requires us to declare that the purpose of such legislation would be frustrated unless utilities are permitted to retain the differential in tax payments. In fact, no part of the legislative history of the Internal Revenue Act of 1954 bears upon regulatory treatment of liberalized depreciation.

---

[9] The District of Columbia Court of Appeals in *City of Detroit* v. *Federal Power Commission*, 230 F. 2d 810 (CADC 1955) had characterized the legislative history of the accelerated amortization provisions of Section 168 of the Revenue Code as demonstrating a Congressional intent to benefit the taxpayer rather than its consumers, but these provisions and their history are different from those involved in Section 167, with which we are here concerned. The Court majority in the *Panhandle* case limited the application of the holding in the *City of Detroit* case to its own special circumstances and refused to adhere to it as controlling with respect to Section 167.

We are, therefore guided in our determination by two fundamental considerations which are basic to the determination of just and reasonable rates under the Natural Gas Act. First is the rule of law that only the amount of Federal income taxes actually payable if a reasonable return is earned can be included as an operating expense to be covered by the utilities' rates. As early as 1922 the Supreme Court in the case of *Galveston Electric Co.* v. *Galveston*, 258 U.S. 388 (1922) ruled that rates should cover as an operating expense "* * * all taxes which would be payable if a fair return were earned * * *" (p. 399)

Another consideration basic to our determination herein is our statutory responsibilities under the Natural Gas Act to assure that natural gas is sold in interstate commerce for resale at the lowest reasonable rate consistent with the maintenance of adequate service. As the Supreme Court recently stated in *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388 (1959):

> The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas. *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944). As the original § 7 (c) provided, it was "the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." 52 Stat. 825. The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.

The Commission must now reexamine the question of the proper method of reflecting liberalized depreciation in income tax allowances on the basis of its independent evaluation of the tax and rate consequences of normalization and flow-through in the light of the statutory standards of the Natural Gas Act and the clear legislative intent of the tax statute to benefit the nation's economy by stimulating new investment in capital facilities.

The Tennessee Valley Municipal Gas Association and certain interveners favoring flow-through believe that it is immaterial whether the use of Section 167 results in a tax saving or a tax deferral. In their view, the Commission must ignore any increase in future taxes because the customers of the utility are legally obligated to pay higher future rates to the extent necessary to compensate for such higher tax burdens. Therefore, these parties contend that it would be an abuse of our administrative discretion to allow anything more than the dollar total of currently payable taxes in the income tax allowance of Alabama-Tennessee and other companies similarly situated.

We have considered the arguments and the precedents cited in support of this position, but we believe it is unsound. Under certain circumstances, a refusal to normalize tax deferrals might well compel future customers to subsidize present ones, or shift to jurisdictional customers a tax burden properly chargeable to non-jurisdictional customers. These parties have erred in equating current taxes paid during the test year with the taxes properly allowable for rate-making purposes. Income tax allowances have never been mechanically geared to test year tax expenses. On the contrary, past tax expenses are significant only insofar as they constitute a guide to recurring tax obligations. Deferred taxes are merely one example of rate adjustments designed to normalize the actual taxes of the test year.

The assertion that this Commission as a matter of law can recognize only currently payable taxes regardless of the factual circumstances runs afoul of the relevant Court decisions which establish that the rate treatment of liberalized depreciation is a matter of administrative discretion.

In view of the foregoing considerations, we conclude that the choice between normalization and flow-through must be made in the light of the present and long-range tax consequences of liberalized depreciation and, specifically, upon the basis of whether additional accumulations of deferred tax reserves are necessary in the foreseeable future. In making this factual determination, we shall assume the continuation of present tax rates and of the laws and regulations governing the calculation of gross and net income for tax purposes.

By the same token, we are also rejecting the claim of the pipeline companies that normalization is required because Section 167 may be repealed at some future time. Rates must be based upon presently known facts and factually based projections of pertinent future conditions. We cannot justify the imposition of tax burdens upon the ratepayers on the basis of suppositions and speculations as the course of future amendments of the Federal income tax laws. If such speculation is to control our decision herein then we must speculate also on the likelihood of passage and probable terms of the pending legislation to reduce corporate income taxes, which would reduce the accumulations for deferred taxes needed to cover the past as well as the future and in addition, would reduce the amount of taxes to be included in the companies' cost of service.

The Tax Consequences of Liberalized Depreciation Must Be Measured With Respect To All Properties of The Taxpayer

We come now to the question of the practical consequence of the use of liberalized depreciation. Alabama-Tennessee and the various pipeline interveners in this proceeding assert that such use of Section 167 must result in an increase in future taxes equalling the reduction in present taxes. Alabama-Tennessee failed, however, to adduce any evidence supporting its position. Nor have any of the natural gas companies or electric utilities participating in this proceeding as *amici* suggested any factual basis to support their thesis of tax deferral. On the other hand, a witness for the Tennessee Valley Municipal Gas Association introduced exhibits and testimony,[10] which established that the use of liberalized depreciation deductions produced a tax saving; that flow-through of these savings to consumers would not burden future taxpayers; and that such flow-through resulted in stable rates and did not impair the financial integrity of the company or adversely affect its ability to attract capital for plant expansion.

The proponents of normalization argue that the Commission must evaluate the tax consequences of a regulated company's use of liberalized depreciation solely by reference to the taxes payable (or excused) upon the basis of specific assets or upon the basis of total assets acquired in a single year. It is axiomatic that, other tax elements remaining constant, the total taxes payable (or excused) with respect to each specific asset will be the same under the straight-line and liberalized methods of tax depreciation; but income taxes are not associated with specific assets or with the total capital additions made in any particular year. Moreover, the actual tax depreciation is based on the taxpayer's *total depreciable assets.* A utility's depreciable properties include assets of various vintages. Consequently, the "below normal" depreciation on older assets is conterbalanced by "above normal" depreciation on newer assets so long as the company continues the use of liberalized depreciation and continues to make capital additions. Under these conditions liberalized depreciation will always exceed straight-line depreciation and the accumulations established under normalized rate and deferred tax accounting will continue to increase until the dollar value of gross plant stabilizes. Even if the composite plant of a company remains stable, where the dollar value of retirements equals the cost of replacements, annual liberalized depreciation will not be lower than straight-line depreciation and the reserve established under normalization will not decline.[11] The significance of these mathematical conclusions is that a regulated utility will never be required to pay higher income taxes because of its election to claim liberalized depreciation unless its gross plant declines in dollar value as a result of lower demand or lower plant construction costs. Thus, the need to establish a reserve can only be determined upon the basis of an analysis of the relevant factors controlling the level of future expenditures for operating plant in a utility which is a going concern.[12]

---

[10] Ex. 48, 49 and 50; Tr. 1157–1198.

It is crucial in determining whether an income tax allowance for rate purposes should be limited to currently payable taxes to consider whether Section 167 tax benefits will occasion a reasonably certain increase in future taxes or whether they essentially are a permanent tax reduction. This is the first proceeding in which the Commission has deemed itself legally free to bring its expertise to bear on the resolution of this factual issue. Viewed as a matter of administrative discretion, the tax consequences of liberalized depreciation must be evaluated in the light of expert judgment as to probable future developments in such areas as demand for gas; plant capacity; the adequacy of gas reserves; the level of plant construction costs and the likelihood and impact of declining plant situations. We are fully cognizant of the fact that our inquiry cannot be limited to present conditions but must anticipate as well as possible the conditions of the future.

The proponents of normalization argue that a failure to recognize the certain loss of tax depreciation deduction on specific assets which have been rapidly depreciated can only be justified on the unrealistic assumption that new construction will continue forever. We agree that this is a speculative and doubtful assumption, but these parties have posed a false dilemma by visualizing the mechanics of payback in the context of a flat choice between indefinite plant growth and declining plant for a full life cycle. A decline in plant investment is not the only possible outcome upon the termination of growth. A relatively stable plant is, in fact, a probable and realistic alternative. Indeed, a utility may continue to operate at a constant level of sales volume and plant capacity for many years. Assuming that plant construction costs remain constant, the taxes experienced by such a utility will never increase above the level of those payable under the straight-line method of depreciation.

These considerations make it apparent that normalization is premature and unnecessary as long as there is growth in the size of the dollar investment in gross plant (caused by either increasing demand or higher construction costs). Furthermore, even the levelling off of gross plant investment would not justify normalization unless it was shown to be the likely precursor of a decline in the plant. Normalization before these conditions are realized means that the ratepayers are forced to provide funds to pay a hypothetical tax liability which may never become payable or, at the very least, to provide such funds many years in advance of the time when they are needed. Accordingly, so long as plant capacity is expanding such premature approval of rate normalization would result in tremendous and ever-increasing accumulations in the reserve account.

---

[11] Tr. 1167, Ex. 48, Committee on Accounts and Statistics, National Association of Railroad and Utilities Commissioners, Report of 67th Annual Convention, 1955, pp. 439–440; Eismer, *Depreciation Under the New Tax Law,* 33 Har. Bus. Rev. No. 1, pp. 66–74; Davidson, *Accelerated Depreciation and the Allocation of Income Taxes,* 33 Accounting Rev. 173; and two arithmetic charts presented by the Secretary of the Treasury to the Senate Finance Committee in connection with the recent Revenue Act of 1962 (hearings on H.R. 10650, 87th Cong. 2nd Sess., Part 1, p. 384).

[12] This Commission has never denied that continuing capital additions will forestall any future increase in taxes. However, it believed that this tax consequence was immaterial because the consumer had no legal claim to the tax benefits accorded under Section 167 (*Amere Gas Utilities Co., et al.,* 15 FPC 760, 782 (1956) and Brief 782 (pp. 16–17) filed by the Solicitor General in *People of the State of California and Public Utilities Commission of the State of California* v. *Federal Power Commission,* 281 F. 2d 567 (CA 5, 1960)).

Discussion of cumulative growth in the size of "deferred tax" accounts is more than academic. Between 1954, when Section 167 was enacted, and the end of 1962, the 40 Class A and Class B Natural Gas Pipelines subject to the Commission's jurisdiction amassed $272,027,245 in deferred tax funds attributable to liberalized depreciation. The increase was $50.7 million in 1960–61, and $53 million in 1961–62.

Accordingly, our principal task is to evaluate the present necessity for continued rate normalization in the light of all pertinent facts and circumstances affecting the likelihood that Alabama-Tennessee and other pipelines similarly situated will be faced with an actual increase in future taxes as a result of their current use of liberalized depreciation. In performing this task, we will give maximum weight to currently known facts and existing conditions. Nevertheless, we shall also consider predictions of future developments for the limited purpose of validating the inference to be drawn from the logical and legal presumption that present conditions will continue. Since, however, current rates cannot be based upon mere speculation and conjecture we must reject rate normalization unless the weight of all the pertinent data points to a definite probability of higher future tax payments attributable to the loss of depreciation tax deductions, under Section 167, in the reasonably foreseeable future.

Growth Prospects of Gas Pipelines

Alabama-Tennessee's Form 2 Annual Reports on file with this Commission show that its sales have increased from 9,504,752 Mcf in 1954 to 20,807,306 Mcf in 1962. Thus, it has experienced a substantial growth in demand for its services. Witness Van Scoyoc testified that natural gas pipelines were expected to continue their growth indefinitely (Tr. 1192). From 1954 to 1960, natural gas pipelines increased their gross plant by an average of 11.07 percent each year.[13] During this same period, electric utilities increased their gross plant at the smaller annual rate of 8.38 percent.[14]

Almost all responsible forecasts reflect the widespread belief that the gas pipeline industry will continue to expand at least until 1980. A recent report by the National Fuels and Energy Study Group to the Senate Committee on Interior and Insular Affairs, rendered on September 7, 1962 comprehensively surveyed and assessed all available information on energy in the United States. The study group concluded (at p. 37 of the Report) that the use of gas in 1980 will be somewhat less than double the 1960 usage and observed that the majority of the pertinent estimates clustered in the range between 20 and 23 trillion cubic feet. Moreover, three of the eleven forecasts projected future usage to the year 2000 and respectively estimated consumption at 15, 36 and 56 trillion cubic feet. Apart from the fact that two of these estimates envision continued growth for 40 years, the lowest estimate is still substantially above the 13.3 trillion cubic feet used in 1960. We are not aware of any forecast that the demand will decline below present market levels even by the end of this century. Although these estimates relate to gas consumption rather than to the capacity of gas pipeline plant, it is fair to infer that an approximate doubling of sales will generate a roughly proportional increase in plant investment. Thus, the level of plant investment in 1980 should be much higher than it is today. Confirmation of this conclusion may be found in a recent estimate by the Bureau of Statistics of the American Gas Association which predicts that the investment in gas pipeline facilities will increase from 24.7 billion dollars in 1962 to 42.4 billion dollars in 1972.

---

[13] Statistics of Natural Gas Companies, 1960.

[14] Statistics of Electrical Utilities in the United States, 1960.

In view of the foregoing, we believe that it is reasonable to conclude that the pattern of growth in demand and plant capacity with respect to Alabama-Tennessee and in the gas pipeline industry generally will continue for the reasonably foreseeable future.

Adequacy of Gas Reserves

INGA and the Illinois Commerce Commission have argued that rate flow-through is inappropriate for natural gas pipelines because they differ from other utilities, whose Section 167 tax savings have been used to reduce their rates, by virtue of their complete dependence upon a finite supply of a wasting asset. No factual data were offered in support of this general allegation.

The report of the National Fuels and Energy Study Group squarely rejects the thesis of these interveners. Thus, in discussing energy supply in 1980 it states that:

> Gas has been called a wasting asset so valuable that "conservation is paramount." We find no factual basis for this conclusion; in fact, we find no factual basis for any conclusion except that there will still be a satisfactory supply of gas in 1980 * * * [p. 304.]

We do not dispute the contention that economically extractable gas reserves will suffer exhaustion at some indeterminate future date. However, we know of no reliable claim that such exhaustion of gas supplies is certain or even probable within this century. The fact that our gas reserves may be exhausted in the 21st century certainly does not establish that there is a present need for additional normalization.

Rate Flow-Through Is a More Effective Stimulus to New Investment Than Normalization

The parties urging deferred tax treatment claim that unless regulated companies are permitted to retain the dollars made available by their use of liberalized depreciation, they will be deprived of the benefit of these accumulations to finance new investment. They further contend that rate flow-through will transfer all of such tax benefits to the ratepayers and thus nullify the intended tax incentive.

The major expenditures by natural gas pipelines for new facilities result from system expansion to serve additional loads. To a minor degree, investments reflect replacements to take advantage of improved technology, as in the occasional replacement of a compressor with another of higher efficiency. On the whole, however, the technology is sufficiently stable so that technological obsolescence is not a large investment factor. If new loads exist, the pipelines have always been able to attract the necessary new capital to finance the required expansion; they do not need to resort to interest-free loans from their ratepayers. However, no amount of additional funds will stimulate new pipeline investment unless the market for additional gas exists. In fact, if the pipeline's customers do not require additional facilities the facilities will not be built, even if the pipeline might otherwise be induced to make the investment, since this Commission is duty-bound to deny a certificate for any expansion which is not required by the public convenience and necessity.

Lower rates tend to generate a higher volume of sales and thus ultimately to require expansion of gas transmission facilities. Recent rate cases before this

Commission have repeatedly demonstrated that at current gas price levels many potential uses, particularly among the larger commercial and industrial users, are sensitive to relatively small variations in rates. We believe, also, that the effect of price changes upon house-holder demand cannot be ignored in a period when the level of gas rates is important in determining the extent to which natural gas can attract air-conditioning loads and resist the increasing competition from the all-electric home. We do not accept the argument that the reduction in unit rates resulting from flow-through will not be sufficiently large to generate any material increase in consumer demand.[15]

We are convinced that flow-through, rather than normalization, is the rate-making treatment of the liberalized depreciation tax saving which, by permitting lower prices, will stimulate increased consumer demand and corresponding additional investment in the pipeline industry as a whole and Alabama-Tennessee in particular.

In concluding that the adoption of flow-through will best carry out the Congressional purpose of stimulating additional investment in natural gas pipelines we have not ignored the argument that normalization will provide additional capital to the company to assist the financing of plant expansion. We do not believe that such additional capital is necessary for the expansion of natural gas pipelines or indeed would result in any expansion if made available.

Natural gas pipelines are allowed a rate of return sufficient to attract necessary new capital and, in fact, are constitutionally guaranteed the opportunity to earn a return which will serve that purpose. They are permitted to include an adequate cash working capital allowance in the rate base upon which their dollar return is calculated. In the past two decades pipelines have financed a tremendous expansion, at a cost of over $9 billion, and there is no indication that they will have any problems in financing the more moderate rate of expansion which is expected in the coming decades. Specifically, with respect to Alabama-Tennessee we found in Opinion No. 360, after reviewing the facts concerning that company's past operations that it had achieved a "favorable position in the eye of the investor" and an "ability to finance successfully" (27 FPC 1180 at 1190). In these respects, the situation of Alabama-Tennessee and other regulated companies differs from that of industries which have been traditionally hampered by their inability to generate funds internally and to secure new debt and equity capital. (*City of Pittsburgh* v. *Pennsylvania Public Utilities Commission*, 182 Pa. Super. 551, 573; 128 A. 2d 372, 383 (Superior Court, Pa., 1957); *City of Alton* v. *The Commerce Commission*, 19 Ill. 2d 76, 82, 165 N.E. 2d 513, 520 (Supreme Ct., Ill., 1960)).

The Accumulated Deferred Tax Balances Should Be Maintained But No Return Need Be Allowed Thereon

The question arises as to the proper disposition of the existing accumulations for "deferred taxes" of Alabama-Tennessee and the other pipelines utilizing liberalized depreciation. Under the existing provisions of our Uniform System of Accounts, which are grounded in the erroneous premise that liberalized depreciation results in a mere tax deferral, these accumulations would be amortized to income beginning when there is a payback of advance depreciation deductions taken on the specific assets with which such accumulations are connected and ending with the retirement of all such property units. However, as we have seen, the record demonstrates that these funds will not be needed for the purpose they were collected to serve under the present provisions tying them to specific assets.

---

[15] In addition to the direct stimulation of increased demand for gas, requiring new pipeline facilities, lower gas rates to householders will release consumer funds for other buying needs and lower contract prices to industrial users of gas will tend to be translated into lower prices for their goods, thus also indirectly stimulating the economy.

We are of course not now dealing with the question of whether as an initial matter these reserves should have been accumulated. The accumulations are already in existence. In these circumstances there would appear to be two possible alternatives; we can require the accumulations to be gradually dissipated or we can require them to be maintained as contingency reserves against even the remote possibility that due to some improbable but conceivable combination of circumstances future ratepayers may be called upon to defray the cost of higher taxes attributable to the use of liberalized depreciation in the earlier years. We believe that the pipeline companies should be given the option of retaining the accumulations as consumer-contributed reserves or of amortizing the accumulations over a period of years by refunds or rate reductions which will return the money to their consumers. The latter can be done only by directing that prior to any withdrawal of any part of the accumulated fund the pipeline can be directed to present the Commission with a plan outlining in detail how the accumulations are to be returned to their original source. Pending submission of such a plan and its approval by the Commission the accumulations will remain available as contingency reserves for use in the event that in any given year the company's taxes are greater than they would have been had it not been taking liberalized depreciation.

Accordingly, appropriate adjustments to the prescribed procedures for recording accumulated tax balances should be considered in a rule-making proceeding undertaken with a view to conforming such accounting to our rate-making determinations herein.

We must next consider whether this determination that liberalized depreciation results in a tax saving, rather than a tax deferral, requires any modification in our present policy of permitting gas pipeline companies to earn a 1.5 percent return on the amounts accumulated in their "deferred tax" accounts. It is clear, from our findings in this proceeding, that the accumulations presently standing to the credit of the companies in such accounts will not be needed in the foreseeable future to defray any increase in the taxes payable upon earnings from all depreciable properties used in rendering regulated service. Thus, these balances must now be regarded as consumer-contributed capital collected for a specific purpose of remote and improbable occurrence. Viewed in this light, the rate of return should be zero since rates must be fixed upon the basis of a company's actual total costs, including its cost of capital, and no cost has been incurred in the accumulation of these balances.

Our determination in this respect will not be retroactive but will apply only from and after the effective date of the order issued herein. Our prospective change in policy is dictated by the necessity to reflect the changed status of such accumulated balances.

In view of the foregoing, the rates established for Alabama-Tennessee and other pipelines similarly situated will reflect a return element based upon the application of the fair and reasonable return for each company to its recognized rate base, after the deduction of accumulated balances in Account 282.

Revision of the Uniform System of Accounts

The instant decision, although in terms applicable only to Alabama-Tennessee and other pipelines with respect to which this issue has been reserved will, properly and necessarily, serve as a precedent in other rate cases involving the income tax allowance for liberalized depreciation. Thus, our action here marks a departure from the presently established rate policy of normalization. Under that policy, we found it appropriate to authorize normalized tax accounting for companies using liberalized depreciation on their tax returns. Our new policy of rate flow-through clearly requires the elimination of this option and its replacement by a direction to follow actual tax expense accounting. Furthermore, as already noted, it is equally imperative to revise the present accounting system insofar as it governs the book entries for such balances.

Accordingly, we have directed our staff to prepare a notice of proposed rulemaking revising the Uniform System of Accounts to reflect the new regulatory policies determined herein.

The Commission further concludes and finds:

(1) In enacting the Internal Revenue Act of 1954, as amended, Congress did not attempt to prescribe the manner in which this Commission should reflect such tax benefits in rates established under the Natural Gas Act.

(2) The use of liberalized depreciation, under Section 167 of the Internal Revenue Code, results in a permanent reduction of taxes payable to the Treasury Department by natural gas pipelines which maintain either a growing or stable plant.

(3) Alabama-Tennessee will maintain a growing or stable plant for the foreseeable future.

(4) Rate flow-through will effectively and substantially promote expanded plant investment by regulated companies, including Alabama-Tennessee and will best implement the fundamental objective of Section 167 of the Internal Revenue Code, to benefit the national economy by stimulating plant modernization and expansion.

(5) Accumulated "deferred tax" balances should be maintained intact and retained by Alabama-Tennessee as a contingency reserve (not a segregated fund) and withdrawn only to offset any increased taxes resulting from a decline in over-all tax depreciation deductions, attributable to earlier use of liberalized depreciation, on all depreciable properties used in rendering public service, below the level of the normal tax deductions under straight-line depreciation, or until amortized pursuant to a plan approved by the Commission as provided herein.

(6) Upon reexamination of the present policy of basing income tax allowances for a company which pays taxes calculated under liberalized depreciation on the deductions available under straight-line depreciation, we find that there is no present factual justification for thus normalizing the prospective rates of Alabama-Tennessee and other natural gas companies similarly situated so that such rates should reflect only the actual taxes currently payable during the applicable test year in Docket No. G–19984 herein.

(7) Upon reexamination of the present policy of permitting a specific return of 1.5 percent to be earned upon the portion of the rate base equivalent in amount to accumulated "deferred tax" funds in Account 282, we find that Alabama-Tennessee and other natural gas companies similarly situated are not entitled to any return upon such customer-contributed capital so that the amount of such funds in Account 282 during the applicable test year in Docket No. G–19984 will be excluded from the recognized rate base herein.

The Commission orders:

(A) Within 20 days from and after the date upon which this decision becomes final, by failure to file a timely petition for rehearing or upon the denial of such a petition, Alabama-Tennessee shall reduce the rates presently in effect under Docket No. G–19984 by filing new rate schedules reflecting the lower Federal income tax allowance and the lower rate base herein found to be just and reasonable in finding paragraphs (6) and (7) above.

(B) If this decision is appealed and stayed by the reviewing court, within 20 days from and after the date of any affirmance of this decision by the court of review, Alabama-Tennessee shall file new rate schedules in accordance with the provisions of Paragraph (A) above.

(C) If this decision is appealed and stayed by the reviewing court, within 45 days from and after the date of any affirmance of this decision by the court of review, Alabama-Tennessee shall refund to its jurisdictional customers, for the period commencing on the date upon which this decision becomes final under the provisions of Paragraph (A) above and terminating on the date of such affirmance, the difference between the amounts collected in Docket No. G–19984 under the presently effective tariff sheets and those which would have been collected for such period under the rate schedules required to be filed in Paragraph (A) above, together with interest thereon at the rate of 7 percent per annum from the date of payment to Alabama-Tennessee to the date of refund.

Commissioner O'Connor *dissenting.*

Commissioner Woodward *dissenting.*

WOODWARD, Commissioner, *dissenting:*

I respectfully dissent from the majority's decision which finds that rate flow-through will best implement the fundamental objective of Section 167 of the Internal Revenue Code. The statute does not place it within the province of this Commission to confiscate a benefit provided by the Congress of the United States or to channel that benefit to present ratepayers for their exclusive advantage, thus placing the company and future ratepayers in jeopardy. Increasing a company's risk in order to benefit the present ratepayer defeats the very purpose of Section 167 of the Internal Revenue Code and thus defeats the intent of Congress.

The order adopted in the instant proceeding is totally inconsistent with prior Commission and court decisions which have consistently held that normalization effectuates the Congressional intent. It is not consistent with accounting regulations previously approved by the Commission and is inconsistent with accounting principals supported by a preponderance of opinion in the accounting profession.[1] The majority's error will have a national impact with consequences far transcending the importance of this particular case because it effects a fundamental and drastic change in our regulatory policy regarding the natural gas industry.[2] Our primary duty is limited to giving vent to the intent of Congress as expressed in the statute. The facts that follow will confirm that no interpretation or construction of a statute by this Commission may legally prevail over the plain language of a statute duly adopted so as to have the force of law.

---

[1] Accounting Research Bulletin No. 44 issued by the Committee on Accounting Procedure of the American Institute of Accountants, revised in July, 1958, stated, "Where material amounts are involved, recognition of deferred income taxes in the General Accounts is needed to obtain an equitable matching of costs and revenues and to avoid income distortion, even in those cases in which the payment of taxes is deferred for a relatively long period. * * *"

[2] Alabama-Tennessee is one of the smallest interstate gas pipeline companies in the United States. Its system consists of 140 miles of pipeline extending from a point of connection with its sole supplier, Tennessee Gas Transmission Corp. at Selmer, Tennessee, in an easterly direction to its eastern terminus at Huntsville, Alabama. The company serves 14 small resale customers, all but one of which are municipal distributors and five direct sales customers. As of December 31, 1959, Alabama-Tennessee had a net plant in service of slightly more than $5,000,000 with an accumulated reserve for deferred taxes of $100,000; *roughly one-half of one percent.*

Mr. Justice Brandeis has aptly noted that no accurate measure of plant consumption in any particular year has ever been devised.[3] The almost universal method of handling this inponderable has been to spread equally, over the service life of a property, the cost less the estimated salvage recovery. Prior to the adoption of the Internal Revenue Code of 1954, the law permitted "reasonable allowances" for depreciation for Federal Income Tax purposes and, as a result, most natural gas pipeline companies used the straight-line method of calculating depreciation for book, rate and tax purposes. With the overhaul of the income tax system by the Congress, Section 167 of the Internal Revenue Code of 1954 authorized various methods of accelerated depreciation in computing deduction for income tax purposes. The permissible accelerated methods enable the taxpayer to take, during the first half of the service life of the property, as much as two-thirds to three-fourths of the cost as a tax deduction. During the second half of the service life, the aggregate depreciation charge against taxable income would aggregate only one-fourth to one-third of the cost. Being limited to the net cost of the property, the aggregate depreciation charges against taxable income remain the same whether the straight-line or an accelerated method is used. Similarly, the total income taxes to be paid over the service life of the property will be the same, assuming no change in the tax rate. By its terms, the statute is designed to *alter the timing but not the amount of tax payments.*[4]

In essence, the effect of liberalized depreciation is to borrow, presently, a portion of future tax depreciation allowances and use them in computing the current year's income tax payable. The taxpayer incurs an actual cost in the year in which he elects the use of liberalized depreciation. Under established accounting principles, costs are to be recorded in the periods in which they are incurred and not necessarily in the periods in which cash is disbursed.

It must be concluded therefore, that there is more tax depreciation under liberalized depreciation during the early years and less in the later years; if there are less taxes in the early years there must be greater taxes in the later years. Faster depreciation will merely shift the tax deductions from later to early years—it will not increase the total reduction. The declining balance covers ultimate exhaustion. *The depreciation base may be recovered but once.*

As a matter of law, and as a matter of fact, there has been no reduction and no increase in the amount that may be deducted for depreciation purposes over the life of a given asset. What has been done is to rearrange the tax periods in which deductions may be taken for the recovery of that cost.

The key question is this: Do we use the statute as an excuse for a windfall for the current ratepayers and store up the liability for the future ratepayers and imperil the financial integrity of the company, or do we utilize the reserve method of accounting which is implicit in almost every item with which this Commission deals?

As an accounting matter, there is an expense incurred when there is a difference between the straight-line depreciation taken for general accounting purposes and liberalized depreciation taken for tax purposes producing a temporary withholding or deferral of income taxes. It must be recognized as an expense, although it is not paid out in cash because the business world does not operate on a cash basis; it operates on an accrual basis matching income with expenses for a particular period regardless of when the payment is made. Expense must be matched with income and that can be accomplished only by charging the full tax for a particular period allocable to the revenues for the period. That charge must be reserved and put aside so that when there is lesser depreciation to credit against taxes, the fund in the reserve will be available to make up the deficit.

---

[3] *United Rys. & Elec. Co.* v. *West,* 280 U.S. 234, 262 (1930) (Dissenting Opinion).

[4] Emphasis supplied throughout this statement unless otherwise indicated.

Flow-through is totally incompatible with the Congressional purpose in authorizing liberalized depreciation since it treats a deferral of taxes as a permanent saving—it assumes that the benefit achieved in utilizing liberalized depreciation is immediately obtained through such saving.

There can be no dispute that the intent of Congress in enacting Section 167 of the Internal Revenue Code was to expand the economy of this nation by furnishing an inducement to industry to invest in new plant. The absence of any intent to reduce income taxes is also abundantly clear. The legislative history reinforces the natural consequences of the statute, namely, deferring taxes under Section 167.

The clear intent of Congress in enacting Section 167 was that the allowance of liberalized depreciation would accelerate recovery of plant investment costs, assist further plant expansion and stimulate additional plant investment, thus encouraging economic growth and benefiting the national economy.

The purpose of Section 167 is expressed in the legislative history of the 1954 Revenue Act which first permitted liberalized methods to be used in computing an allowance for depreciation. Both the House and the Senate reports[5] stated that the more liberal depreciation allowances for *"all segments of the American economy" should "assist modernization and expansion of industrial capacity, with resulting economic growth, increased production, and a higher standard of living."*

The report of the House Ways and Means Committee stated[6] "In addition to the rearrangement, however, your committee has made many substantive changes in the code. In general, the purpose of these changes has been to remove inequities to end harassment of the taxpayer and to reduce tax barriers to future expansion of production and employment."

The President of the United States, in his annual address to the Congress, supported his request for legislation authorizing liberalized depreciation by stating:[7] "I recommend that the tax treatment of depreciation be substantially changed to reduce the restrictions on new investment, which provides a basis for economic growth, increased production, and improved standards of living. * * * *Faster depreciation, it should be noted, will merely shift the tax deductions from later to early years. It will not increase total deductions.* The change should, in fact, increase Government revenues over the years because of the stimulation which it will give to enterprise and expansion."

The Secretary of the Treasury, testifying before the Senate Committee on Finance in support of the bill which became the Internal Revenue Code of 1954 argued: "Another provision of this bill allows more flexible changes for depreciation. * * * Here, again, the purpose is to stimulate employment, plant expansion, and modernization."[8]

After exhaustive hearings, the House Committee on Ways & Means and the Senate Committee on Finance concluded:[9] "More liberal depreciation allowances are anticipated to have far-reaching economic effects. The incentive resulting from the changes are well timed to help maintain the present high level of in-

---

[5] H. Rep. 1337, 83rd Cong., p. 24, S. Rep. 1622, 83rd Cong., p. 26.

[6] Report of the Committee on Ways & Means, House of Representatives, to accompany H.R. 8300, a bill to revise the internal revenue laws, H. Rep. 1337 *Supra*, p. 1.

[7] 100 Cong. Rec. 571, January 21, 1954.

[8] Hearings on H.R. 8300 before the Committee on Finance, U.S. Senate, 83rd Cong., 2nd Session, p. 95; see also testimony of the Under Secretary of the Treasury, p. 104.

[9] H. Rep. No. 1337, p. 24; S. Rep. No. 1622, p. 26.

vestment in plant and equipment. The acceleration in the speed of the tax-free recovery of costs is of critical importance in the decision of management to incur risk. The faster tax write off would increase available working capital and materially aid growing businesses in the financing of their expansion. For all segments of the American economy, liberalized depreciation policies should assist modernization and expansion of industrial capacity with resulting economic growth, increased production and a higher standard of living."

Section 167 makes no distinction between regulated and non-regulated industry although the legislative history makes it clear that Section 167 is applicable to all tangible and depreciable assets. The House Committee on Ways & Means so concluded:[30] "The liberalized depreciation methods provided in the bill are to apply to all types of tangible depreciable assets, including farm equipment, machinery, and buildings, rental housing, and industrial and commercial buildings as well as machinery and equipment. They are limited, however, to property new in use and, therefore, never before subject to depreciation allowances." The Senate Committee on Finance reached the same conclusion.[31] Chairman Millikin thus explained Section 167:[32] "The new method for depreciation will be available to all taxpayers with depreciable property."

On July 1, 1954 when the U.S. Senate was considering the enactment of H.R. 8300, which ultimately resulted in Section 167, Senator Wayne Morse of Oregon proposed an amendment to provide for normal depreciation procedures.[33] The Senator stated that private utilities which had utilized Section 168 of the Internal Revenue Code (accelerated amortization) had received what he termed a hand out at the cost of the taxpayers. He sought, by his amendment, to prohibit the same result with reference to Section 167. The amendment was defeated and H.R. 8300 was passed by the Senate on July 2, 1954.[34]

The Federal Power Commission has not been delegated power to administer the tax laws. As a matter of law, the taxes that are reduced temporarily under Section 167 are deferrals—not savings. As a matter of statutory law, the Congress has established a technique for deferring taxes and this Commission cannot, under the guise of expertise and discretion, convert what is an expense into a profit. No finding can achieve this absurdity, and no finding can establish as a matter of law that a tax incurred in a particular year, the payment of which is deferred to subsequent years, is not an expense.

The Commission's authority does not extend to matters of economic policy on a national scale nor does it extend to national policies on taxation. On the contrary, the Commission must administer the Federal Power Act and the Natural Gas Act in accommodation with the overriding purposes of national economic and tax policies, wherever expressed in the law.[35]

The Natural Gas Act does not authorize this Commission to rescind the benefits which Congress intended companies to receive and retain pursuant to Section 167. Not the slightest suggestion of a permanent saving appears in any part of the legislative history. The flow-through theory has no relation to the terms of legislative history of Section 167. The Commission being an arm of the Congress, is bound to effectuate and implement the intent of Congress.

The Commission has in the past recognized its duty to effectuate Congressional intent. Since the passage of Section 167 of the Internal Revenue Code, the

---

[30] H. Rep. No. 1337, pp. 23–24.

[31] S. Rep. No. 1622, p. 25.

[32] 100 Cong., Rec. 8997, 8998, June 28, 1954.

[33] Vol. 100, Part 7 Cong., p. 9477, 83rd Cong., 2nd Session.

[34] Vol. 100, Part 7 Cong., p. 9481, 83rd Cong., 2nd Session.

[35] See *Southern Steamship* case, 316 U.S. 31, 47.

treatment to be accorded by the Commission to liberalized depreciation deductions in the computation of income taxes for rate-making purposes has been well and soundly settled through a line of Commission and court decisions commencing with *Amere Gas Utilities Co., et al.*, 15 FPC 781, June 30, 1956. In that case the normalization method was employed by which the Commission recognized as a federal income tax expense an amount computed on the straight-line basis and, to the extent that the income tax computed on this basis exceeded the amount of the tax payable on the acceleration basis, the excess was charged as a tax expense and credited to a reserve for deferred taxes.

In its order the Commission states (p. 782): "Admittedly, Section 167 of the Internal Revenue Code contains no specific mandate to create a reserve account for deferred taxes. Nevertheless, we know of no way to effectuate the clear and obvious Congressional intent, except by doing so. * * * The argument that the sums in the reserve account will rightfully belong to the ratepayers, or that the ratepayers will bear any burden they do not now bear, by reason of the creation of the reserve, is wholly erroneous. * * *"

"It is clear that the charging of greater depreciation during the early life of property and the charging of less during the later life operates to create a deferral of income taxes. The fact that there may be continuing additions to plant, year by year, with the result that there will be a balance in the reserve account at all times in the foreseeable future, does not prove that there is no tax deferral. On the contrary, it proves that *there is a continuing tax deferral so long as additional facilities are being installed. This is precisely what Congress intended.* * * *"

"We cannot strike down an act of Congress if we think it unwise, or unnecessary to a particular industry, and enforce it only if it is in accord with our economic and regulatory philosophy. It is undisputed that Section 167 of the Internal Revenue Code does apply, and was intended to apply to regulated natural gas companies, such as Petitioner."

On July 2, 1956, the Commission forwarded letters to the Chairman of the Senate Finance Committee and the Chairman of the House Ways & Means Committee, enclosing copies of the Presiding Examiner's Decision, the Commission's Order in the *Amere* case and the dissenting opinion for the purpose of apprising the Congress that the Commission doubted the need, by the regulated natural gas industry, for the financial incentive provided by Section 167.

Significantly, Congress has left undisturbed the depreciation provisions applicable to pipeline and has not amended either the Internal Revenue Code or the Natural Gas Act to indicate that the Commission has misinterpreted the Congressional intent in its earlier orders. It can be concluded therefore, that Congressional action constitutes approval of the Commission's findings in a most direct fashion.[16] The Commission's prior interpretation that Section 167 was intended, and is still intended, to benefit the taxpayer and not the ratepayer, and that the legislative intent must be given full effect as applied to natural gas pipeline companies, is wholly valid and must be sustained.

Concerning this result, the Commission stated in *El Paso Natural Gas Company*, 22 FPC 260, 267 (1959); "Since that time Congress has not amended the Internal Revenue Code or the Natural Gas Act in this respect, thus affirming [the Commission's] interpretation of its intentions. Compare *United States* v. *American Trucking Association*, 210 U.S. 534, 549; *Signal Oil & Gas Company* v. *Federal Power Commission*, 238 F. 2nd 77 (CA3), certiorari denied, 353 U.S.

---

[16] *Helvering v. R. J. Reynolds Tobacco Company*, 1939, 306 U. S. 110, 115: *U.S. v. Dakota Montana Oil Company*, 1933, 288 U.S. 459, 466; *Panhandle Eastern Pipe Line Company v. Federal Power Commission*, 1956, 232 F. 2d 467.

923. * * *" The Commission held, "There is a deferral of taxes which will not injure (or aid) the consumer, who will reimburse El Paso for taxes both in the early years of the life of a given facility and in the later years just as though El Paso had never utilized liberalized depreciation."

In *United Fuel Gas Company*, 23 FPC 127, 131, 135 (1960)[17] the Commission found that the purpose of Section 167 is to assist expansion of facilities and economic growth and it is not to benefit consumers directly, but by the use of deferral accounting, consumers are to be saved from injury and that there is a deferral in taxes when liberalized depreciation is utilized. Further, "The statutes relating to taxation which we have construed herein must, under elementary principals of statutory construction, be reconciled with those of the Natural Gas Act if such is possible. Our action in this case, as well as in Opinion No. 326, *El Paso Natural Gas Company*, G–4769, gives meaning to all these statutes consistent with their language and with the clear Congressional intent. It is our task to adopt the regulatory plan we use to all applicable laws, and we may not test such statutes by any regulatory scheme we prefer or with which we are familiar, and then discard the statute if they do not seem to fit our plan."

Subsequently, the United States Court of Appeals for the Fifth Circuit affirmed the Commission's decision in the El Paso case, supra, with respect to its treatment of the funds accruing from liberalized depreciation in the case of *El Paso Natural Gas Company* v. *Federal Power Commission*, 281 F. 2nd 567, certiorari denied, 366 U.S. 912, wherein the Appellate Court found (at pages 574–575) that the effect of liberalized depreciation works a tax deferral rather than a tax savings and went on to approve the tax normalization method authorized by the Commission.

The Supreme Court's refusal of review is regarded as particularly significant because the Court of Appeals opinion squarely approved normalization on its merits, without reference to the discretion or expertise of the Commission. Obviously, this issue involves a legal, not factual determination; it is not a matter for the expertise or discretion of a regulatory agency, because it involves a determination of law by the Commission and does not involve an exercise of that peculiar knowledge which the Commission has because of its experience in a particular line.

On March 7, 1961, the Commission issued its Opinion No. 342, *In the Matter of Northern Natural Gas Company*, Docket No. G–19040, *et al.*, 25 FPC 431, wherein the Commission affirmed its position with regard to tax deferrals obtained through the use of Section 167.

In the cases cited and discussed above, the majority does nothing more than attempt to avoid the otherwise controlling effect of these decisions. The continued validity of these decisions has conclusively settled the questions in issue and has given statutory finality to them.[18]

The flow-through principle of accounting and rate regulation is fraught with obvious infirmities. Basically, flow-through accounting for income tax purposes is a rejection of accrual accounting and a reversion to cash-basis accounting. Only the current tax payment is recognized as an expense; no provision is made for any future tax. It is, in fact, a return to the principles which underlie the now thoroughly discredited retirement reserve accounting designed to equalize retirement charges. This archaic theory was based on essentially the same reasoning as that now proffered in support of the flow-through principle. "The public utility industry was the special victim of this misguided theory with

---

[17] Affirmed *Cities of Lexington, et al., v. F.P.C.*, 295 F. 2d 109 (CA4), (1961).

[18] See *Stacey Manufacturing Company* (237 F. 2d 605).

respect to depreciation. Until the depression brought stark reality to the industry, it was confidently assumed by a large segment of the utility industry and regulatory bodies that the retirement, or perhaps the retirement reserve, method would suffice.[19] No systematic procedure to reflect the full consumption of property in the income accounts for the current period and no reserve to measure the accrued consumption in the property accounts were deemed necessary. The distorted accounts, the overstatement of income, and the undermining of confidence yielded dire results for the utilities. The inadequacy and misuse of retirement reserve accounting that preceded sound depreciation accounting "opened the way to financial ruin."[20] It would be ironic were that devastating experience repeated because of a regulatory or judicial assumption that the cash requirements in the future to pay deferred tax expense allocable to current periods will be offset by other items of tax deduction from other properties."[21]

No one factor did as much to contribute to ruin or near ruin for the utility industry than the failure to maintain orderly systematic depreciation accounting. What was then being done at the instance of unthinking managements is now being urged by those purporting to speak for the ratepayer.

An analysis of the flow-through advocates primary argument pointedly reveals its impotence. They assume that, as long as utilities continue to grow rather than retrogress, there can be no need for a deferred tax reserve since the acquisition of new assets will prevent present tax reductions from being offset in later years by an increase in taxes beyond those that would be paid under straight-line depreciation. In short, what appears to be a tax deferral when viewed with relation to any individual asset is, in fact, a permanent saving when considered in light of a company's total operations.

"Such reasoning assumes a continuing or accelerating rate of growth—a circumstance that is hardly universal for utilities as a whole. Nor does it square with the basic considerations of reserve accounting. The reasoning would be equally applicable to charges for depreciation or provisions for pensions, neither of which is a present liability, in strict legal terms."[22] There is not a company in the country that does not make larger provisions today for pensions than they concurrently pay out. Yet the deferral is made and the accumulation established to meet the future liability when it inevitably comes due. It would be folly to eliminate all provision for future payments simply *because anticipatory exactitude cannot be achieved.*

The eminent economist, Prof. James C. Bonbright[23] conclusively counters the flow-through argument by stating: "True, under the plausible but somewhat speculative assumption made by the persons who advocate this argument, the continued use of accelerated depreciation accounting for tax purposes will not later increase the rate of income taxes to a rate higher than that which would follow from the use of straight-line accounting. But even acceptance of this somewhat risky prediction is not enough to disprove the wisdom of building up a deferred tax reserve. For it ignores the fact that companies now practicing accelerated depreciation accounting with respect to assets acquired since the year 1953 (a limitation imposed by the tax law) are presently enjoying the advantage of higher depreciation allowances on their newer assets without yet suffering any substantial off-setting disadvantages of the lower depreciation allowances on their older assets. This is a fictitious temporary advantage that cannot be expected to persist longer than a few more years. And it forbodes a probable later increase in effective income taxes assuming the continuance of the present 52% official rate, even if this increase should not get beyond the rate that would apply under straight-line depreciation accounting. A major purpose of the deferred tax reserve . . . is to provide both the companies and the later consumers with protection against this probable increased burden of taxation."

---

[19] The retirement reserve method, authorized by the Uniform System of Accounts for Electric Utilities, in 1922, was designed to spread the estimated retirement loss of "important retirement * * * but with due regard for amount of earnings available for this purpose in each year." (1943–44) N.A.R.U.C., Reports of Commission on Depreciation 17.

[20] N.A.R.U.C. Report of Special Committee on Depreciation (November 15–19, 1938) See also final report of the Federal Trade Commission, S. Doc. 92, 70th Congress, 1st Session, Part 72A, pp. 496–512, Part 84A, pp. 354–55, 498–506 (1935).

[21] Max Swiren, *Accelerated Depreciation Tax Benefits in Utility Rate Making,* 28 U. of Chi. L.R. 637.

[22] Swiren, *Op. Cit.,* 28 U. of Chi. L.R. at 637.

[23] Emeritus Professor of Economics, Columbia University—Article in Public Utilities Fortnightly, Vol. 69, May 10, 1962, No. 10 pp. 657–658.

In rejecting the offsetting theories advanced against deferred tax charges, Professor Maurice Moonitz of the University of California had this to say: "The fact that a going concern always has debts which are never 'really' paid off, because any given debt, when satisfied, is replaced by a new debt, is no argument for eliminating the debts from the financial statements."[24]

The Commission's positive assurance, "that the pattern of growth in demand and plant capacity with respect to Alabama-Tennessee and in the gas pipeline industry generally will continue for the reasonably foreseeable future,"[25] emphasizes the complete futility of the case for flow-through. Witness the following declaration submitted to the Supreme Court of the United States by the Commission, through the Solicitor General:

> Continued expansion of the indefinite future can more readily be assumed for the electric power and telephone industries than for gas pipelines, which are dependent on the continuing discovery of exhaustible reserves. * * *[26]

I would point out, however, that even in the electric power industry the advent of automation, the expanding influence of electronic development, and the research in direct conversion of heat or chemical energy into electricity deny any assurance of constancy in plant growth.

"The ultimate exhaustion of the supply is inevitable in the case of all natural gas companies." *F.P.C.* v. *Hope Natural Gas Company*, 320 U.S. 591, 606 (1944). What may appear to be a reasonable assumption of growth when applied to other industries, amounts to a false premise when applied to natural gas pipeline companies. You can build pipelines but you cannot build reserves. Neither the right to use liberalized depreciation nor any other tax incentive will induce a company to invest in capital assets for improvement or expansion beyond its reasonably appraised needs.

Regardless of whether the company will be compelled later to pay increased taxes, the fact remains that Congress intended, and the courts have held that companies should now have additional funds available. Section 167 was intended to benefit industry as a whole rather than consumers. Consumer interests are protected so long as they are not required to reimburse the utility for taxes in excess of those computed by the use of the straight-line method. Normalization is not a capital contribution made by the ratepayer—it is a loan from the Government which would be entitled to full normal taxes in the absence of Section 167. Should tax rates be reduced, the accumulated reserve remains under the control of the Commission which has the power to assure customers their full share of benefits from the accumulated reserve.

---

[24] Moonitz, *Income Taxes in Financial Statements,* 32 Accounting Rev. 181 (1957).

[25] *Supra* p. 218.

[26] Brief of the Federal Power Commission in Opposition to Petition for Writ of Certiorari, *California* v. *F.P.C.,* October term—1960, 599–615, certiorari denied, 366 U.S. 912 (1961).

The majority argues that there will not be an increased tax liability, but, if there should be, it can be met by increased rates. This argument fails under critical scrutiny. Both legal and economic principles militate against the reliability of such an assumption.[27] There can be no assurance that future Commissions will be willing to impose upon future consumers the onus of income taxes attributable to present taxable income. As the Illinois Commerce Commission said *In the Matter of Union Electric Co.*, 29 P.U.R. 3rd 177, 193–94: * * * "We sincerely doubt that a utility could reasonably expect that future increased income taxes resulting from the earlier deduction of declining balance depreciation for income tax purposes will be allowed in future rate determinations. * * *" This was also the conclusion of the Circuit Court in El Paso Natural Gas Co., *supra:* "* * * If the company were charged for rate making purposes with such 'savings' during the year in which the depreciable assets were acquired, and the rate resulting from such treatment of taxes was thereafter used for later years, as is here the case, it is clear that the Company would be paying higher taxes in subsequent years than in the test year, but would not be entitled to an adjustment in rates to cover the increase. * * *"

From the economic point of view, it simply cannot be assumed that, regardless of the state of the economy or of competitive technology, rates can always be raised to produce additional total revenues at any time in the future when such revenues are needed. Witness the state of the economy in the early 1930's, when rate increases might well have produced a geometric decline in total revenues.

The impact of this decision could well impair the financial integrity of any company that continues to use liberalized depreciation under the mandatory requirement of flow-through resulting in a detriment rather than a benefit to the consumer.[28] In practical effect this Commission's order can only be deemed to be irreparable.

Any use of capital involves all the hazards and risks of business enterprise including the risk that capital may not be available or available only at exorbitant costs at the time repayment is required. The majority can only be certain that there will be no impairment of financial integrity if, as they have assumed, there will be no future risk that is not provided for. There can be no such assurance when flow-through is required since flow-through is necessarily based upon the assumption that deferred taxes will never become payable in the future. No matter what platitudes are offered this contention *cannot be proven.* If prudent management believes that there is a future risk, this Commission must not, on the basis of assumptions that cannot be proved, deny management the right, a right conferred by the Congress of the United States, to guard against that risk.

However, when flow-through is adopted, with a consequent reduction in rates, there will be an increase in capital costs which would approximately offset any alleged benefit to the consumer. If utilities are not allowed to normalize liberal-

---

[27] Future ratepayers cannot be called upon to make up past losses. *Board of Public Utility Commission* v. *New York Telephone Company,* 271 U.S. 23 (1926).

[28] See *City of Alton* v. *Commerce Commission,* 19 Ill. 2076, 165 N.E. 2nd 513, 521–522: "If we could see clearly into the future and say with certainty that continued expansion was certain, and countervailing considerations were nonexistent, we would hold that the Commission may not permit current charges for a liability that will never arise * * * Rate regulation is a continuing process; greater experience may bring greater wisdom in dealing with these problems. * * * We think it permissible for the Commission to *safeguard the financial integrity of* utilities by recognizing as present expenses those tax liabilities which are deferred by use of accelerated depreciation for federal tax purposes."

ized depreciation taxes, they often elect to use straight-line depreciation for tax purposes.[29]

Moreover, it is fair to assume that flow-through accounting would tend to increase the reported earnings of all companies using liberalized depreciation; market prices of securities would not increase in relative proportion to reported earnings, since the quality of the "increased" earnings under flow-through accounting is much poorer than the quality of earnings under tax normalization accounting.

Consider the net result: Market prices of stocks of utility companies which use flow-through accounting tend to discount the added uncertainty inherent in the reported flow-through earnings which disregard the exhaustion of depreciation deductions and the increase in liability for taxes in later years. Informed investors must always investigate the quality of reported earnings and the prospect of future variations in earnings from levels currently reported. A decision to switch from normalization to flow-through would seriously affect the ability of each company to attract capital. "The FPC's tendency toward increasingly more stringent regulation of the interstate pipeline companies made the investment outlook for these equities less attractive than in former years."[30]

I strongly advocate that the Commission continue its acceptance of deferred tax accounting alike for purposes of report making and of rate regulation. Further, the resulting deferred tax reserve should serve only as a measure of financial protection and be excluded from the rate base. Since this capital represented by the reserve for deferred Federal income taxes is available to the company without charge, no recovery is required for that component in estimating the cost of capital. The full utilization of the capital provided by the reserve thus inures to the ratepayer without expense. This is warranted both by the principle that the utility should operate on the most economical basis consistent with good service and sound finance and the fact that the funds for normalizing the tax expense and accumulating the reserve are derived from consumers rates. The cost of service concept has proven to be sound, and, since there is no cost for this capital, none should be charged. This concept of normalization at zero return creates interest free capital which inures to the benefit of the ratepayer.

Many companies have been able to raise more funds internally as a result of liberalized depreciation and thus reduce their trips to the capital market. Certainly the increase in internally generated funds reduces industry's need for outside financing.

Cost of capital, both debt and equity, is a reimbursable expense to be recovered by revenues yielded by proper rates of charge. When costs of capital rise or fall, the revenue level which rates of charge must be fashioned to produce, requires appropriate adjustment. By the same token, when capital is provided, without cost, the company should not be entitled to impose a charge for money cost upon the consumer. Both investors and consumers share in the enhanced stability and improved competitive position in the financial markets derived from an increasing fund of interest-free capital.

Normalization assures equality of treatment to present and future customers. Each pays its fair share of depreciation and income tax; each benefits from the interest-free capital the Congress has provided. ***It avoids an unrealistic wind-***

---

[29] ***Northern Natural Gas Co., supra,*** **25 FPC at 438;** ***Public Service Company of N.C.*** **33 P.U.R. 3rd 398, dissenting opinion, p. 421;** ***Tax Treatment of Accelerated Depreciation,*** **57 Cal. P.U.R. 588, dissenting opinions, pp. 605, 610;** ***Ohio Water Service Co.,*** **35 P.U.R. 3rd 385, dissenting opinion;** ***Pittsburg*** **v.** ***Penn. P.U.C.*** **187 Pa. Superior Court, 341, 144 A. 2d 148.**

[30] **Barron's** ***National Business and Financial Weekly,*** **P. 5.—12/9/63.**

fall to present customers and a reservation of unfair burdens to future customers. The normalization and reserve principles strengthen the capital structure of the utility and enhance its financial stability, facilitating financing of new capital requirements at reasonable costs. This is wholly in accord with the public interest we are sworn to protect. Any other result amounts to intolerable regulation.

O'CONNOR, Commissioner, *dissenting:*

It is axiomatic that the majority's decision, which does not compel jurisdictional industries to utilize Section 167 but which penalizes them if they do, will only result in these industries returning to straight-line depreciation. Section 167 will then become a useless anachronism, and this Commission will have on its record an opinion which not only defeated specific congressional intent, but which also forced an industry-regulator impasse. Thus, I wholeheartedly join Vice-Chairman Woodward's conclusion that normalization is the only proper regulatory treatment of the deferred tax reserves generated by Section 167. I am persuaded, however, not only that these tax deferments should be allowed to accumulate, but also that a return on these deferments should be allowed. The only question is: How much?

In the *Northern Natural Gas Company* case, a study was presented by Chairman Kuykendall which indicated that a 3.27075% return on deferred tax reserves generated the same net yield to the company as would a 6.25% return on an identical amount of capital acquired from normal industry sources, but with a 36% saving to Northern's ratepayers.[1] Although this study suggests that a return of 3% could justifiably be allowed on these reserves, recent judicial review has affirmed the propriety of a 1½% return.[2] Persuaded that this rate is neither so high as to impose a burden upon the consuming public, nor so low as to circumvent the purpose of Section 167 I respectfully conclude that the Commission further errs in not allowing a return of 1½% on deferred tax reserves.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64-109

ORDER PERMITTING WITHDRAWAL OF JOINT PETITION TO INTERVENE, DENYING PETITION TO INTERVENE, AND AMENDING ORDER PERMITTING INTERVENTION

(Issued February 3, 1964)

On January 20, 1964, the Fuels Research Council, Inc., National Coal Association, Mid-West Coal Producers Institute, Inc., and United Mine Workers of America (Coal Interveners) filed a notice of withdrawal of their joint petition to intervene in this proceeding. In their notice of withdrawal the Coal Interveners recite the procedural history regarding the filing by Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) of its application in Docket No. CP64-109 and note that they were permitted to intervene in this proceeding by the Commission's order issued herein on December 18, 1963, subject to the Commission's subsequent order issued January 17, 1964, indicating that they had the burden of coming forward with evidence to prove the allegations of economic injury contained in their joint petition to intervene because such allegations had been challenged by Michigan Wisconsin.

---

[1] 25 FPC 431, 447-48 (1961).

[2] *Panhandle Eastern Pipe Line Co.* v. *F.P.C.* 316 F. 2d 659 (D.C. Cir. 1963), cert. denied 375 U.S. 881 (1963) where the "sole question" was the rate of return that should be allowed on deferred income tax reserves generated by Section 167.

The primary reason given for their request to withdraw is that (Notice of Withdrawal, p. 3):

> * * * it has been represented to these Intervenors that should the Commission not permit the use of the facilities in question for delivery of gas to Weston, Public Service would convert its Pulliam generating station located at Green Bay, Wisconsin, from coal to natural gas and would use the gas which would otherwise be consumed at Weston in Pulliam. * * * Assuming the accuracy of such representations, it would appear that should the use of the facilities at Weston, as proposed by Mich. Wis. not be approved, the boiler fuel gas usage involved would merely be shifted from one boiler station to another and the time and effort of the Commission and the parties, including these Intervenors, will have been wasted. * * *

On January 20, 1964, Milwaukee Gas Light Company (Gas Light) filed a petition for leave to intervene in this proceeding. Gas Light states that its late filing was made because it was unaware until after January 9, 1964, of the issues Iowa Southern Utilities Company had mentioned in its petition to intervene which had been filed in Docket No. CP64–109 on January 6, 1964. The "issues" to which Iowa Southern referred in its petition to intervene were the same matters which had been discussed in the notice of application issued December 18, 1963, in Docket No. CP64–109, providing for the filing of petitions to intervene on or before January 9, 1964. The reason given by Gas Light for the late filing of its petition to intervene does not constitute the "extraordinary circumstances" which would justify the Commission's granting of Gas Light's petition to intervene pursuant to Section 1.8(d) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Good cause exists to permit the Coal Interveners to withdraw their joint petition to intervene and to amend the order issued herein on December 18, 1963, so as to delete therefrom the granting of the Coal Interveners' petition to intervene in this proceeding.

(2) Good cause has not been shown, pursuant to Section 1.8(d) of the Commission's Rules of Practice and Procedure, to grant Gas Light's petition to intervene filed January 20, 1964.

The Commission orders:

(A) The Coal Interveners are hereby permitted to withdraw their joint petition to intervene filed herein on November 27, 1963.

(B) Milwaukee Gas Light Company's petition for leave to intervene, filed January 20, 1964, is hereby denied.

(C) The order issued December 18, 1963, in Docket Nos. CP62–57 and CP64–109 is hereby amended by deleting therefrom all references to the Coal Petitioners' joint petition to intervene, particularly such language as is contained in paragraph (F) of said order specifically permitting the Coal Interveners to become parties to this proceeding.

(D) In all other respects, the order issued December 18, 1963, in Docket Nos. CP62–57 and CP64–109 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; THE ATLANTIC REFINING COMPANY, DOCKET NO. G-11904, ET AL.

ORDER DENYING MOTION FOR MODIFICATION

(Issued February 3, 1964)

On December 10, 1963, The Atlantic Refining Company (Atlantic) filed a motion for modification of our order of November 27, 1963, in the above-entitled proceedings. Atlantic requests that the November 27 order be amended to state that the certificate issued in Docket No. G-11904 is issued at an initial rate of 17.5¢ per Mcf[1] rather than at 17.0¢ per Mcf as stated in that order.

At the time Atlantic filed its certificate application in Docket No. G-11904, February 6, 1957, the sale in question was covered by the Operator's (Cities Service Production Company (Cities Service)) certificate issued in Docket No. G-2721 on November 12, 1954, and Cities Service Rate Schedule No. 1. The initial rate under that certificate was 17.0¢ per Mcf but the effective rate (being collected subject to refund in Docket Nos. G-9510 and G-11325) at the time of Atlantic's filing was 17.8¢ per Mcf. Therefore, when Atlantic chose to file its separate application for a certificate, its first rate filing, related to the application in Docket No. G-11904 (R.S.-166), was treated as an increased rate, suspended, and allowed to go into effect subject to refund in Docket No. G-12159. Subsequently, Atlantic filed additional rate increases which have gone into effect subject to refund in Docket Nos. G-13440, G-16518, G-19536, R161-131, R162-77 and R163-93.

Atlantic cites Note (1), Appendix A, of the Commission's order approving settlement proposal in *Cities Service Production Company*, 28 FPC 1114, 1119 (1962) as authority for its contention herein. There, under a *company wide rate settlement* Cities Service refunded all amounts collected above 17.5¢ per Mcf under its Rate Schedule No. 1.

At the outset it must be noted that Atlantic does not propose to settle the matters in its rate suspension proceedings related to Rate Schedule No. 166; it merely seeks a certificate for a sale which will remain subject to the various rate suspension proceedings. Indeed, Atlantic states (Motion p. 2):

> * * * While this matter has no present significance, and even though it conceivably may have no later significance, Atlantic believes that the modifications proposed herein should be accomplished to avoid any possibility of later controversy.

We agree with Atlantic that this matter has no present significance since none of Atlantic's rate suspension proceedings are before us at this time. Atlantic's rate matters will be decided in Area Rate Proceeding, AR61-2, and not in this certificate proceeding. The certificate rate of 17.0¢ per Mcf was stated in the order of November 27, *supra*, so that Atlantic's initial price would be the same as Cities Service's last rate not subject to refund at the time that Atlantic elected to file its separate rate schedule. Cf. *Graridge Corporation (Operator), et al.*, Docket No. G-19246, *et al.*, Opinion No. 408, issued October 31, 1963, 30 FPC 1156.

The Commission finds:

The arguments set forth in the Motion For Modification filed in the above-captioned proceedings on December 10, 1963 present no sufficient reason for changing our determinations made in our order of November 27, 1963.

---

[1] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

The Commission orders:

The motion for modification filed by Atlantic in these proceedings on December 10, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; CONTINENTAL OIL COMPANY, DOCKET NOS. G-16840, G-17521, AND G-20242

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 3, 1964)

On January 8, 1964, Continental Oil Company (Continental) filed a motion for reconsideration of our order of December 18, 1963, denying Continental's motion for severance of the above-captioned Continental dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, (hereinafter referred to as the Union Texas Proceeding) and rejecting Continental's offer of settlement. On January 24, 1964, Continental filed a supplement to its motion for reconsideration.

Although most of the terms of the Continental Settlement proposal are similar to the terms of other recent Union Texas Proceeding settlements,[1] the refund provisions proposed by Continental would result in substantially less monies being refunded than would be refunded had Continental followed the pattern established by the Humble Oil & Refining Company (Humble) settlement,[2] and, with one exception, followed in all Union Texas Proceeding settlements since.[3] The Humble settlement provided for full refunds for monies in excess of the settlement rate collected prior to the settlement effective date, April 1, 1963, in dockets in which the temporary certificates contained refund conditions and no refunds of such excesses in dockets in which the temporary certificates did not contain express refund conditions. Continental proposes to make refunds of ⅔ of the amounts above the settlement rates collected since the dates of initial delivery under all the temporary authorizations in these dockets. The temporary authorizations heretofore issued in Docket Nos. G-17521 and G-20242 contain express refund conditions while the temporary authorization in Docket No. G-16840 contains no refund condition.

As noted above and in our order of December 18, 1963, Continental's proposal would result in less money being refunded to its pipeline purchasers than would be refunded had it followed the pattern of the recent Union Texas Proceeding settlements. We are of the view that, except in unusual circumstances, all parties who chose to settle should be treated alike insofar as it is possible to do so. Continental has not shown any unusual circumstances which would allow a departure from the Humble pattern.

---

[1] See *e.g.* orders issued August 7, 1963, (Humble Oil & Refining Company) and October 9, 1963, (Gulf Oil Corporation and Socony Mobil Oil Company Inc.) in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 456 and 979 respectively.

[2] See Footnote 1, *supra.*

[3] Since our approval of the Humble Settlement, we have approved the settlement of some 140 Dockets which followed the Humble pattern. The one exception was our order of December 18, 1963, in the Union Texas Proceeding concerning Docket Nos. G-14227 and CI61-1412 involving Union Texas Petroleum, a Division of Allied Chemical Corporation and Joseph E. Seagram & Sons, Inc., respectively. This was a unique case involving a court remanded Docket (*Public Service Commission of New York* v. *F.P.C.*, 361 U.S. 195) which was settled in July 1962 (*Texaco Inc.*, 28 FPC 247) except for acreage which had been assigned. Our order of December 18, 1963, in the Union Texas Proceeding approved the settlement for the assigned acreage upon substantially the same terms as the *Texaco Inc., et al.*, settlements including two-thirds refunds of excess monies collected from the date of initial delivery through June 30, 1962, and full refunds of excesses collected thereafter.

The Commission finds:

The arguments set forth in the motion for reconsideration filed in the above-captioned proceedings on January 8, 1964, as supplemented on January 24, 1964, present no sufficient reason for changing our determinations made in our order of December 18, 1963, herein.

The Commission orders:

The motion for reconsideration filed by Continental Oil Company in these proceedings on January 8, 1964, as supplemented on January 24, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. G-16946, G-19223, G-20049, CI60-133, CI60-777, CI61-143, CI61-355, CI61-808, CI61-974, CI62-724, CI62-782, CI62-1341, G-17977, CI61-127, G-10022; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP63-3

ORDER UPON RECONSIDERATION REISSUING ORDER IN PART AND DENYING MOTIONS

(Issued February 3, 1964)

On July 30, 1963, Pan American Petroleum Corporation (Pan American) filed a motion whereby it sought to settle the issues in its dockets which were consolidated with the proceedings in Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* By order issued November 19, 1963, 30 FPC 1324, we approved the Pan American settlement, but pointed out that our approval of the settlement would have the effect of confirming the legality of Pan American's collecting the 23.55¢ per Mcf rate[1] (collected under temporary authorization) in Docket No. G-16946, during the period from the date of initial delivery through March 31, 1963, because under the settlement proposal, no refunds would be paid for amounts collected during this period above the settlement rate of 20.625¢ per Mcf. Thus, we noted, approval of the settlement might have the effect of validating the triggering of other producer rates, at least during the period of the Pan American temporary authorization. Accordingly, we provided in that order that objections might be filed by parties to the proceeding.

We further provided (ordering paragraph (N)) that if objections were filed, the effectiveness of that order would be automatically stayed pending further orders of the Commission. As discussed more fully below, various parties have filed objections to the order of November 19, insofar as it concerns Docket No. G-16946 (Rate Schedule No. 242) and, accordingly, the order has been stayed.

Pursuant to ordering paragraph (N) of our order of November 19, responses were filed by Interveners Public Service Commission of New York (PSC) on

---

[1] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

December 16, 1963, Consolidated Edison Company of New York, Inc. (Consolidated Edison) on December 19, 1963, the United Gas Improvement Company (UGI) and Long Island Lighting Company (Long Island) on December 20, 1963, and by Philadelphia Electric Company on December 23, 1963. Pan American filed a motion for modification of the November 19, 1963, order on December 20, and, on December 27, filed a response to the objections filed by Interveners.

Pan American and the Interveners argue that the settlement was not intended to have any effect on issues in other proceedings and should not be construed by the Commission to have such effect. Pan American, UGI, Long Island and Consolidated Edison therefore request that we delete from our November 19 order all reference to any effects which the Pan American settlement might have on other proceedings.

Deletion of such language from the November 19, 1963, order would not change the views set out in that order, i.e., that approval of the settlement of Docket No. G-16946 without refunds back to the date of initial delivery confirms the 23.55¢ per Mcf rate for the period from the date of initial delivery through March 31, 1963.

PSC requests that the Commission, in the alternative,

(1) reject the Pan American Settlement *in toto;* or

(2) reject the settlement of Docket No. G-16946; or

(3) defer consideration of the settlement pending final determination of *P.S.C.* v. *F.P.C.*, CADC No. 17582 (*Skelly Oil Company*, 28 FPC 401, 28 FPC 1065).[2]

Philadelphia Electric agrees with PSC's second alternative. On the other hand, Pan American proposes that (should we deny its motion for modification) we accept its offer of settlement for all dockets except Docket No. G-16946, sever Docket No. G-16946 from the Union Texas proceeding,[3] "continue" Docket No. G-16946 subject to the offer of settlement and stay the order of November 19, 1963, insofar as it concerns Docket No. G-16946, pending further direction from the Commission. (Pan American does not state what the further direction might be.)

The parties have expended time and effort in arriving at the settlement of fifteen dockets, and the problems involving one docket should not be allowed to stop the settlement of the other fourteen. Therefore, we shall, in accordance with PSC's second alternative and the suggestion of Philadelphia Electric, reissue the order of November 19 conditionally approving the Pan American settlement except insofar as that order relates to Docket No. G-16946. The matters in Docket No. G-16946 will remain consolidated for disposition in the Union Texas proceeding.[4] This action substantially grants Pan American's alternative request, except that we shall reject the settlement proposal insofar as it relates to Docket No. G-16946 rather than "continue" it. Under the circumstances it would serve no useful purpose to "continue" it. Should circumstances change prior to ultimate conclusion of the Union Texas proceeding, Pan American and the other parties would be free to submit another proposal regarding this docket.

In view of this change from its proposal, we shall allow Pan American an opportunity to object to the terms of this order. Should Pan American so object, the settlement proposal shall be deemed rejected *in toto* and the matters will remain consolidated for ultimate decision in the Union Texas proceeding.

---

[2] The Court's decision affirming in part and remanding in part was issued on January 23, 1964, 329 F. 2d 242; cert. denied, 377 U.S. 963 (1964).

[3] Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*

[4] Presiding Examiner's decision issued January 14, 1964. The Secretary's notice of January 24, 1964, provides that parties have until February 17, 1964, to file exceptions thereto.

The Commission orders:

(A) Subject to the provision of paragraph (D) below, the "Order Severing Proceedings, Conditionally Issuing Certificates of Public Convenience and Necessity and Amending Order Issuing Certificate", issued in the above-captioned matters on November 19, 1963, is hereby reissued, except insofar as it relates to Docket No. G-16946 and except for ordering paragraph (N), effective as of the date of issuance of this order.

(B) The motion for severance filed by Pan American Petroleum Corporation on July 30, 1963, insofar as it relates to Docket No. G-16946 is hereby denied.

(C) The Motion for Modification filed by Pan American Petroleum Corporation on December 20, 1963, is hereby denied.

(D) Should Pan American Petroleum Corporation within fifteen days from the date of issuance of this order file with the Commission, and serve copies upon the parties to this proceeding, a notice in writing that it does not accept the terms of this order, then, Pan American's motion for severance and for approval of settlement proposal filed July 30, 1963, shall be deemed denied *in toto*, effective as of the date of such filing of notice.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64-79

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1964)

On September 30, 1963, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64-79 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 of miscellaneous field facilities to enable Applicant to take into its certificated main transmission pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing system, and to operate such facilities only to take natural gas from producers thereof who have received authorization from the Commission to sell natural gas to Applicant, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of such facilities is not to exceed a maximum of $4,169,900, with no single project to exceed a cost of $500,000, which costs Applicant proposes to finance from funds on hand, from cash generated by operations and from internal sources.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 31, 1964, the Commission on its own motion received and made a part of the record of this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $4,169,900, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1964 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $4,169,900, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF OLIVET, KANSAS, DOCKET NO. CP64–100

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 4, 1964)

On October 31, 1963, the City of Olivet, Kansas (Applicant), filed in Docket No. CP64–100 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its transportation facilities with the facilities which the Applicant proposes to construct and operate and to sell and deliver to Applicant its third year peak day and annual requirements of 107 Mcf and 9,370 Mcf, respectively.

Applicant is a municipality as defined by Section 2 of the Natural Gas Act. It proposes to construct distribution facilities in Olivet and a lateral line approximately 1.5 miles in length to connect with the main transmission line of Cities Service at a point in Osage County, Kansas. There is no gas service presently in the community.

On November 12, 1963, Cities Service advised the Commission that it has no objection to rendering the proposed service of natural gas to the Applicant.

Notice of the filing of the application was issued on December 27, 1963, and was published in the Federal Register on January 4, 1964, (29 F.R. 113). The Kansas State Corporation Commission filed notice of intervention in this proceeding but by telegram received on January 17, 1964, stated that said intervention was in support of the application and requested expeditious granting thereof. No other petition to intervene or protest to the granting of said application has been filed.

The Commission finds:

(1) Applicant, City of Olivet, Kansas, is a municipal corporation organized and existing under the laws of the State of Kansas and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas within its boundaries and environs.

(2) Cities Service Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(3) It is necessary and desirable in the public interest to direct Cities Service Gas Company to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, all as more fully described in the application, and to sell and deliver to Applicant up to 107 Mcf of natural gas per day at 14.73 psia.

(4) Applicant should forthwith begin construction of the proposed facilities and be prepared to commence taking natural gas from Cities Service within one year from the date of issuance of this order.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities to be constructed and operated by Applicant as hereinbefore described, together with such metering, regulating and appurtenant facilities as may be required and to sell and deliver to Applicant up to 107 Mcf of natural gas per day.

(B) Applicant shall be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order and shall execute a service agreement with Cities Service in accordance with the Commission's rules and regulations.

(C) Cities Service shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP61-106; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI62-1034

ORDER DENYING APPLICATIONS FOR REHEARING AND GRANTING MOTIONS FOR STAY

(Issued February 4, 1964)

On December 12, 1963, the Commission issued Opinion No. 413 and accompanying order in these proceedings, 30 FPC 1477, finding that 2.63 miles of pipeline built by Tennessee Gas Transmission Company (Tennessee) to connect its reserves in the Bastian Bay field to its interstate system are jurisdictional facilities built without authorization, and that the lease-sale transaction by which Pan American Petroleum Corporation (Pan American) transferred these reserves to Tennessee is a sale of natural gas subject to the Commission's jurisdiction and similarly without authorization. By paragraph (A) of its order, the Commission directed Tennessee to make such filings and take such steps as are necessary to bring it into compliance with the Natural Gas Act (Act) within six months. A similar provision in paragraph (B) directed Pan American to comply with the Act within a period of six months. Paragraph (C) directed Tennessee to maintain separate accounts of its costs relating to the Bastian Bay operations.

Application for rehearing of Opinion No. 413 and accompanying order was filed by Pan American on January 2, 1964, together with a motion for stay of ordering paragraph (B) pending rehearing, and, if the relief sought is not granted, until six months after the issuance of final mandate upon completion of court review proceedings under Section 19(b) of the Act. On January 10, 1964, Tennessee also filed application for rehearing and requested stay of the opinion and order pending rehearing and review.

The Commission finds:

(1) The applications for rehearing filed by Tennessee and Pan American present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 413 on December 12, 1964, or which having now been considered warrant any change or modification of said opinion and accompanying order, except as found and ordered below.

(2) It is appropriate that upon filing of court review proceedings by Tennessee or Pan American the provisions of ordering paragraph (A) relating to Tennessee or of ordering paragraph (B) relating to Pan American, as the case may be, be stayed until six months after the issuance of final mandate upon completion of the court review proceedings.

The Commission orders:

(A) The applications for rehearing of Opinion No. 413 and accompanying order filed by Tennessee and Pan American are hereby denied.

(B) Upon filing of court review proceedings under Section 19(b) of the Act by Tennessee, the provisions of ordering paragraph (A) of the order accompanying Opinion No. 413 shall be stayed until six months after the issuance of final mandate upon completion of the court review proceedings.

(C) Upon filing of court review proceedings under Section 19(b) of the Act by Pan American, the provisions of ordering paragraph (B) of the order accompanying Opinion No. 413 shall be stayed until six months after the issuance of final mandate upon completion of the court review proceedings.

COMMISSIONER WOODWARD *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY, AND NORTH PENN GAS COMPANY, DOCKET NO. CP64-103

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1964)

On November 4, 1963, Transcontinental Gas Pipe Line Corporation (Transco), United Natural Gas Company (United) and North Penn Gas Company (North Penn) hereinafter referred to as (Applicants) filed a joint application in Docket No. CP64-103 for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing minor additional development of the Wharton Storage Field located in Potter and Cameron Counties, Pennsylvania,[1] all as more fully described in the application which is on file with the Commission and open to public inspection.

The second Intermediate Development Program of the Wharton Storage Field, which is the subject of the instant application, relates to the development of the Oriskany Horizon of that field for the purpose of increasing the deliverability thereof for the rendition of service to existing customers.

No added facilities are proposed. Transco will supply an additional 1,090,000 Mcf of cushion gas in the field, which supply will cost $353,269. This will provide for an increase in deliverability of 10,043 Mcf per day over the present volume of 130,425 Mcf per day and the prorated increase to each of the Applicants will be 8,818 Mcf for Transco, 980 Mcf for United and 245 Mcf for North Penn.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 31, 1964, the Commission on its own motion received and made a part of this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas; United

---

[1] The initial development was authorized by Commission Order issued January 18, 1963, 29 FPC 118, as amended by order issued February 1, 1963, 29 FPC 210. The first intermediate development was authorized by Commission Order issued November 20, 1963, 30 FPC 1335.

Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania; and North Penn Gas Company, a Pennsylvania corporation having its principal place of business in the Borough of Port Allegany, McKean County, Pennsylvania, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The Intermediate Development Program No. 2 for the Wharton Storage Field, as more fully described in the application in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The Intermediate Development Program No. 2 for the Wharton Storage Field as proposed by Applicants, Transcontinental Gas Pipe Line Corporation, United Natural Gas Company, and North Penn Gas Company in Docket No. CP64–103 is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Transcontinental Gas Pipe Line Corporation, United Natural Gas Company, and North Penn Gas Company to further develop and operate the Wharton Storage Field to the extent provided for in Intermediate Development Program No. 2, all as more fully described in the subject application in Docket No. CP64–103.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64–106

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1964)

On November 6, 1963, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64–106 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation for a period of six months beginning on November 1, 1963, of metering and regulator facilities and the sale of up to 3,000 Mcf of natural gas per day to High Plains Natural Gas Company (High Plains) for distribution and resale in the City of Spearman, Texas, all as more fully described in the application which is on file with the Commission.

High Plains will use the gas to assure maintenance of adequate service to its customers during the current winter season.

The estimated cost of the proposed facilities is $200.

By letter dated November 27, 1963, Applicant was granted a temporary certificate to install the proposed facilities and to sell and deliver gas to High Plains Natural Gas Company until April 30, 1964.

The subject sale will be made pursuant to a service agreement between the parties dated September 26, 1963, which provides that the rates shall be as set forth in Applicant's existing Rate Schedule SG–1.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 31, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the installation and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The installation and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to install and operate the proposed facilities and to sell and deliver natural gas for a period ending April 30, 1964, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP64-102

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1964)

On November 1, 1963, Valley Gas Transmission, Inc. (Applicant), filed in Docket No. CP64-102 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be produced or purchased from producers thereof in the general area of Applicant's existing system, at a total cost not to exceed a maximum of 500,000, with no single project to exceed a cost of $50,000, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 31, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 27, 1962, in Docket No. CI60-542 (28 FPC 237).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Valley Gas Transmission, Inc., to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BROOKHAVEN OIL COMPANY, DOCKET NO. RI64-358

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 5, 1964)

On December 9, 1963, Brookhaven Oil Company (Brookhaven) filed a motion for reconsideration of the Commission's order issued November 29, 1963, in the above-designated proceeding, providing for hearing on and suspension of the proposed change in rate designated as Supplement No. 21 to Brookhaven's FPC Gas Rate Schedule No. 3. In support of its motion Brookhaven states that it was improper for the Commission to consider the minimum guarantee of 1.0¢ per Mcf for liquids as part of the increased rate for the sale of natural gas in interstate commerce; therefore, the Commission should modify its order of November 29, 1963, by permitting Brookhaven to charge and collect the proposed rate without such rate being subject to suspension.

In Opinion Nos. 390 (29 FPC 1175) and 390-A (30 FPC 479), *El Paso Natural Gas Company, et al.*, Docket No. G-17849, *et al.*, we held that a contractual provision providing for a minimum guarantee for liquids should properly be considered as a component of the rate for the jurisdictional sale of gas in determining whether the rate was in excess of the applicable ceiling. Dealing specifically with this question in Opinion No. 390-A, page 480, we referred to the Examiner's decision for the rationale of our determination. In this connection, see the Examiner's decision issued September 4, 1962, therein (29 FPC 1191), pages 1207 and 1208. Consistent therewith, in the suspension order in Docket No. RI64-358, we treated the proposed increased rate as 14.0¢ per Mcf, *i.e.*, 13.0¢ per Mcf plus 1.0¢ per Mcf minimum guarantee for liquids.

The Commission finds:

The motion for reconsideration filed by Brookhaven on December 9, 1963, in the proceeding in Docket No. RI64-358, sets forth no new facts or legal considerations which were not fully considered prior to the issuance of our order of November 29, 1963, or which now having been considered warrant the modification of the said order.

The Commission orders:

The motion for reconsideration of the Commission's order of November 29, 1963, filed by Brookhaven Oil Company on December 9, 1963, is hereby denied.

COMMISSIONERS O'CONNOR and WOODWARD not participating.

OPINION NO. 418

PACIFIC NORTHWEST POWER COMPANY, PROJECT NO. 2243; WASHINGTON PUBLIC POWER SUPPLY SYSTEM, PROJECT NO. 2273

OPINION AND ORDER GRANTING LICENSE

(Issued February 5, 1964)*

Syllabus

1. High Mountain Sheep project and plan found preferable to mutually exclusive Nez Perce, and best adapted to comprehensive plan for developing relevant portions of Snake and Salmon rivers. PP. 250; 258.
2. Decisive difference between two projects is the effect on the fish problem. P. 251.
3. Commission *discusses* fish problem in connection with competing projects—finds High Mountain Sheep has decisive advantage since it permits postponement of dam on Salmon until fish problem is more clearly solved. PP. 258; 263.
4. Allegation that Examiner's handling of fish problem resulted in denial of due process to Washington Water Power *rejected* as not sustained by record and in any case not prejudicial. P. 262.
5. A balancing of equities in light of relative importance of power and fish claims in the particular case must be determinative—here fishery resource is major one. P. 263.
6. Differences in construction features or cost between applicants is not decisive because plans are not final and can be modified. P. 264.
7. Statutory intent of Sections 4(f) 5 and 10(a) is to give permittee first right to develop that reach of river to which permit relates. PP. 264, 265.
8. Preliminary Permit does not expire when license application is filed nor does it merge into license application. P. 268.

---

*Initial decision appears on p. 305. Rehearing for purposes of reconsideration granted April 3, 1964, 31 FPC 773. Modified; rehearing and stay denied by Opinion No. 418-A, issued April 30, 1964, 31 FPC 1051. Affirmed, *sub nom. Washington Public Power Supply System* v. *FPC.*, 358 F. 2d 840 (CADC-1966); cert. granted, 385 U.S. 926 (1966); Reversed, — U.S. — (1967).

9. Commission *concludes* that Pacific Northwest has statutory priority to develop High Mountain Sheep site—accordingly preference provisions of Section 7(a) are inapplicable. P. 270.
10. There is no record support that Pacific Northwest will be in violation of Section 10(h) or anti-trust laws. P. 274.
11. Commission *denies* Secretary of Interior's request that it recommend Federal development of High Mountain Sheep. PP. 275, *et seq.*
12. Commission *issues* major license to Pacific Northwest Power Company under Section 4(e) of the Federal Power Act.
    Chairman Swidler *dissenting.*
    Commissioner Black *dissenting.*

Hugh Smith, Charles Heltzel, Archie E. Blair, Allan A. Smith, Richard V. Bayless, William J. Grove and *Henry Shur* for the Pacific Northwest Power Company.

Evelyn Cooper, Lloyd W. Ek, Joseph H. Sharlitt, Jack R. Cluck, William C. Wise, Edwin J. Dryer, Arnold, Fortas & Porter, Norman A. Stoll and *Theodore H. Eberle* for the Washington Public Power Supply System

Ralph E. Moody for the Alaska Departments of Fish and Game

George Johansen for the Alaska Fishermen's Union

Joseph T. Mijich for the Alaska Fisheries Association

Harold A. O'Neill for the Association of Pacific Fisheries Puget Sound Salmon Canners

Malcolm S. McLeod for the Chinook and Cowlitz Indian Nations

James H. Cellars for the Columbia River Salmon & Tuna Packers Association

James B. Hovis for the Confederated Bands and Tribes of the Yakima Indian Nation

Albert A. Day and *Roy C. Atchison* for the Fish Commission of Oregon

Bert G. Johnston and *Joseph T. Mijich* for the Fishermen's Cooperative Association, Inc.

T. J. Jones III for Idaho Fish and Game Commission

Frank L. Benson and *John B. Kugler* for Idaho Public Utilities Commission

G. Heber Smith, Bruce Bowler and *James H. Cellars* for the Idaho Wildlife Federation

Joseph T. Mijich for the Makah Indian Tribe

Quentin Markishtum for the Makah Tribal Council

Evelyn Cooper and *Elmer McClure* for the National Hells Canyon Association, Inc.

Douglas W. Hager and *Joseph T. Mijich* for the Northwest Fisheries Association

Evelyn Cooper for the Northwest Public Power Association

Jonel C. Hill, Robert Y. Thornton and *Lloyd G. Hammel* for the Oregon Public Utility Commissioner

Robert L. Avery for the Oregon State Grange and the Washington State Grange

Donel J. Lane and *Robert Y. Thornton* for the Oregon State Water Resources Board

Charles S. Collins for the Oregon Wildlife Federation

Joseph T. Mijich for The Pacific Fish Conservation League, Inc.

Earl Coe, John A. Petrich and *John W. Riley* for the Washington Department of Conservation

Leo J. Gese for the Washington Department of Fisheries and Game

Stephen M. Reilly, Ernest M. Furnia and *John J. O'Connell* for the Washington State Fish and Game Commission

Roy A. Holland and *Joseph T. Mijich* for the Washington State Sportsmen's Council, Inc.

Donald A. Sander and *John D. Lane* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

Ross, *Commissioner:*

This is a proceeding under Part I of the Federal Power Act involving applications by Pacific Northwest Power Company (PNPC) and the Washington Public Power Supply System (WPPSS) for a license to build a hydroelectric project on the Snake River at the confluence of the Salmon River on the Idaho-Oregon border. PNPC proposes to build a project at the High Mountain Sheep (HMS) dam site above the Salmon, and WPPSS proposes to build a project at the Nez Perce dam site just below the Salmon and alternatively, an HMS project.[1] The Secretary of the Interior, Intervener, urges that both applications be denied and federal construction be recommended. The proceeding is before the Commission upon exceptions[2] to the examiner's decision issued October 8, 1962, recommending a license to PNPC for the HMS project.

PNPC is an Oregon corporation qualified to do business in Oregon, Idaho, Washington, and Montana. It is a wholly owned subsidiary of four sponsoring companies, The Montana Power Company, Pacific Power and Light Company, Portland General Electric Company, and the Washington Water Power Company and was formed in April of 1954 for the purpose of providing a supplemental source of power to meet the future requirements of these companies. It does not itself own or operate any electric facilities.

WPPSS was created, as a joint operating agency, composed of 16 public utility districts of the State of Washington, pursuant to an order of the Department of Conservation and Development of the State of Washington dated January 31, 1957, and, under the laws of the State of Washington, is a municipal corporation. It was established for the purpose of acquiring, constructing, and operating electric generating and transmission facilities. It does not own or operate any electric facilities.

The history of these proceedings began April 8, 1955, when PNPC was granted a preliminary permit effective April 1, 1955, for a period of three years for Project No. 2173 consisting of the Mountain Sheep Development at river mile 192.6 and the Pleasant Valley Development at river mile 213.2 both on the Snake River above the confluence of the Salmon and the Imnaha thereby limiting to the greatest extent possible impact on the Columbia River salmon runs (14 FPC 644). PNPC filed an application for a license for this project on September 7, 1955, but the license was denied by the Commission on the ground that any combination of projects which included Nez Perce was consistently superior to any combination of projects which did not include Nez Perce (19 FPC 127, 131).

Thereafter PNPC filed an application for rehearing and stay of the Commission's order in which it asked for time and opportunity to determine what modifications of the project would accord to the determination of the Commission as the best comprehensive development of the resources involved. On March 20, 1958, just prior to the expiration of the three-year permit on March 30, the Commission issued an order denying rehearing and stay with the notation that an opinion and order would be issued later. It was in this situation that PNPC filed its application for a license for the High Mountain Sheep Development, identified as Project No. 2243, located between the confluences of the Salmon and the Imnaha at river mile 189.2 on the Snake. The filing was thus made within the three-year period specified in the permit. It was not until April 11, 1958 (19 FPC 353) that the Commission issued its opinion and order on rehearing in which it generally reaffirmed its decision on the superiority of Nez Perce over the applicant's Mountain Sheep-Pleasant Valley project.

---

[1] See Map, Appendix A.

[2] Filed by Idaho Fish and Game Commission, Oregon State Game Commission and Fish Commission of Oregon, WPPSS, PNPC, staff of this Commission, and the Secretary of the Interior.

On June 27, 1958, PNPC filed a petition requesting a declaratory judgment that the preliminary permit issued April 8, 1955, continued in force and effect, that the application for license in Project No. 2243 was filed in accordance with the preliminary permit, and that the preliminary permit maintained priority of application. This petition was withdrawn on September 28, 1959, with the explanation that the purpose for which the petition was filed was moot.

On March 15, 1960, WPPSS filed its application for the Nez Perce Project at river mile 186.2. Hearings were held in Washington and at Portland, Oregon from November 4, 1960, intermittently to September 12, 1961. On April 24, 1961, WPPSS filed a motion for leave to file an amendment to its Nez Perce application to construct an alternate HMS project. This motion was denied by the examiner, who was affirmed by the Commission on the ground that no good reason had been shown for the amendment at that stage (25 FPC 1004; 26 FPC 174). WPPSS, however, did introduce evidence on an alternative HMS project on rebuttal and at the end of the hearing moved to amend its application to include HMS. After the filing of voluminous briefs the examiner issued his decision October 8, 1962. He denied WPPSS's motion to amend and granted a license for PNPC's HMS project. Exceptions were filed to the examiner's decision as noted above including those by the Secretary of the Interior, who by order of December 14, 1962, was permitted to intervene out-of-time.

Evidence was submitted by the parties with respect to the three principal projects proposed: PNPC's proposal for the HMS site and WPPSS's proposals for both Nez Perce and HMS. All three projects would involve large concrete arched dams, reservoirs extending up the Snake River, and also up the Salmon River in the case of Nez Perce, and powerhouses containing turbines and generators. The evidence included detailed data on these proposals with a number of variations. Evidence was also submitted setting forth plans for a comprehensive development of the Snake River including these projects. For instance, plans of comprehensive development involving HMS also include a dam known as the Lower Canyon Project, on the Salmon River. Further details of the proposed projects and proposed plans of development will be discussed below. There is also evidence submitted on the need for additional power resources by the Pacific Northwest area and by the respective applicants. The evidence of regional resources took into account not only facilities in operation at the time the record was made, but also the effect of certain projects to be installed in the future including those to be built under the proposed treaty with Canada. We are also taking notice that since the close of the record additional projects have been scheduled including the Hanford atomic reactor which will supply power to WPPSS and private companies. On the basis of the evidence and the discussion below, we find that the HMS project is best adapted within the meaning of Section 10(a) of the Federal Power Act to a comprehensive plan for improving and developing a waterway, that PNPC should be given a license for the HMS project and that federal development should not be recommended.

THE PROPOSED PROJECTS AND PLANS OF DEVELOPMENT

An important preliminary question is whether a license should be granted for a project at the Nez Perce site or at the HMS site. This involves a consideration of the potentialities of each, including its adaptability to a comprehensive plan for improving the Snake and Salmon Rivers. While both PNPC and WPPSS submitted proposals for building a project at the HMS site, the physical differences between their proposals, as will be developed, are not so great as to make any appreciable difference in choosing between Nez Perce and HMS.

For the reasons set out below, we find that the HMS project and plan is preferable to the Nez Perce project and plan. The decisive difference between the two projects and their related plans is in their effect on the fish problem. The Nez Perce project would adversely affect the fish runs on the upper Snake, the Salmon and the Imnaha Rivers while the HMS project would not affect in any manner the fish runs on the Salmon River and its only considered impact would be on the fish runs on the Upper Snake where these runs are already impaired. In addition, the HMS project would undoubtedly have some impact on the smaller run on the Imnaha River. However, a canal proposed by PNPC as part of the HMS project would appear to have a substantial chance of continuing the existing fish runs.

The Nez Perce and HMS Snake River dam sites represent two of the most important remaining sites on the Columbia River system. As the attached map (App. A) shows, the Snake at the dam sites flows in a northwesterly direction between the states of Oregon and Idaho; the Salmon flows in from Idaho on the east side of the Snake. The Nez Perce site is at river mile 186.2 about 2.5 miles below the mouth of the Salmon, while the HMS site is at river mile 189.2 about eight-tenths of a mile upstream from the Salmon, but below the mouth of the Imnaha, which flows into the Snake from the west or Oregon side.

A. *Comparison of the Proposed HMS and Nez Perce Projects*

As proposed by PNPC the HMS project would consist of a concrete arch dam approximately 670 feet high from the river bed and would create a reservoir extending approximately 58 miles upstream on the Snake to the Hells Canyon dam site tailwater and 10 miles upstream on the Imnaha. The reservoir would have a gross storage of 3,600,000 acre-feet, of which 2,250,000 acre-feet would be usable with a normal drawdown. Two outdoor-type power houses would be located one on each side of the river near the base of the dam. Each turbine would be connected to a generator rated 175,000 kw. There would be five units initially with a total installed capacity of 875,000 kw.[8] Ultimately there would be ten units with a total installed capacity of 1,750,000 kw. Initial capability would be 1,000,000 kilowatts, and ultimate capability would be 2,000,000 kw.

The HMS project proposed by WPPSS would also consist of an arch dam at the same site and a reservoir with the same capacity. In a number of respects, not necessary to relate here in full, engineering details of construction would differ from the project proposed by PNPC. For instance, an indoor-type powerhouse would be located on the Idaho side of the river near the base of the dam with an initial installation of six generating units, each rated 200,000 kw. Provision would be made to house four similar units in a future underground powerhouse on the Oregon side. Maximum initial capacity would be 1,200,000 kw and ultimate capacity would be 2,000,000 kw.

As proposed by WPPSS in its application as amended in later testimony the Nez Perce project would consist of a concrete arch dam approximately 715 feet high. It would create a reservoir extending approximately 63 miles upstream on the Salmon, 61 miles upstream on the Snake to the Hells Canyon site tailwater and 10 miles upstream on the Imnaha. The reservoir would have a gross storage capacity of 6,600,000 acre-feet and usable storage of 3,130,000 acre-feet with a normal draw down. An underground powerhouse requiring an excavation would be located on the Oregon side of the river and would house the ten initial generating units rated 200,000 kw each or 2,000,000 kw in all. WPPSS plans another underground powerhouse for the Idaho side of the river, which would have six more units, so that the total generating capacity of the project would be 3,200,000 kw.

---

[8] Seven units were assumed for the purpose of company plans of comprehensive development.

(1) *Safety and stability of the dam sites and structures*—The parties have raised an issue as to the adequacy of the proposed sites for both of the proposed dams (as well as the Lower Canyon dam which is eventually to be part of an HMS plan, see pp. 255, 256, *infra.*), but particularly with respect to Nez Perce. The difficulty is geological. The rocks of the area consist of the Columbia River basalts overlying what is known as the Seven Devils formation, consisting of strong metamorphosed volcanic and sedimentary rocks. As the Snake River cut down through these rocks, it permitted lateral stresses to cause complicated fracturing of the rocks. At the Nez Perce site, according to the evidence, the possibility exists that on the left side of the site looking downstream large blocks of rock might slide along a sloping fault plane, but there is also evidence indicating that this would probably not occur because of certain other blocks of rock standing in the way and because the apparent faults might actually be welded by metamorphism.[4] Evidence also indicates doubt about the Lower Canyon site at mile 3.7 on the Salmon River, and the evidence is not sufficient to remove all doubt with respect to the HMS site. What is needed before construction can be authorized at any of these sites is a complete geological study carried out by a more elaborate program of borings. It will be necessary to provide, as recommended by our staff, that the licensee of any of the above projects shall engage qualified independent experts to report on the dam site and the proposed design of the dam before we approve the design drawings for the dam structure. But we do not believe that the evidence supports a finding that any of the sites are inherently unsafe or which would warrant a preference between Nez Perce and HMS on this basis. Specifically we agree with the examiner that the project structures proposed by PNPC and WPPSS for the HMS project can, subject to approval of final plans, be made safe and stable, but final design should be subject to further tests and to our approval as ordered below.

(2) *Costs and power benefits*—Although the record is burdened with conflicting estimates of costs for the HMS and Nez Perce projects on various assumptions, it is clear enough as noted by the examiner, that both the HMS project, as proposed for construction by either PNPC or WPPSS, and the Nez Perce project proposed by WPPSS are economically feasible. Furthermore the record makes clear that Nez Perce, which is the most costly project and, at the same time, produces the most power, shows the greatest excess of annual power values over cost.

WPPSS shows a project cost of $391,080,000 for Nez Perce and $213,000,000 for HMS; PNPC shows a project cost of $185,700,000 for HMS; the staff shows $369,120,000 for Nez Perce, $229,743,000 for WPPSS's version of HMS and $200,231,000 for PNPC's version of HMS.[5] In each case there is an excess of power value over cost—$23,410,000 and $17,482,000 for the WPPSS and FPC analyses of Nez Perce using a cost of money of 4.75 percent and 4.5 percent respectively; $16,792,000 and $12,209,000 for the WPPSS and FPC analyses of HMS using WPPSS financing with a 4.5 percent cost of money; and $5,788,000 and $4,267,000 using the PNPC and FPC analyses of HMS using PNPC financing with a cost of money of 6 percent.

---

[4] The change in structure of a rock as a result of heat, pressure or water.

[5] These cost figures and those to follow relating to the cost of the respective projects reflect WPPSS's revision of figures used by the examiner, for we agree with WPPSS that all cost comparisons should be uniformly computed on the basis for cost and value at site as had been stipulated on the record with respect to comparative plans.

Relying on the same project cost comparison evidence, the unit costs of energy to be generated by Nez Perce or the HMS project are not very different when approximately equivalent financing is used. Thus the cost per kwh is 2.7 and 2.5 mills for energy generated at Nez Perce and HMS using WPPSS figures and WPPSS financing, while the cost is 3.4 mills for either project using the staff figures and WPPSS financing. However, when the PNPC 6 percent cost of money is employed the unit cost per kwh for HMS rises to 3.5 mills under the PNPC analysis and to 4.2 mills under the staff analysis. The record does not directly show what the unit costs would be for Nez Perce power using PNPC's 6 percent financing.

We conclude from the cost comparison of the projects that Nez Perce is the project with the larger absolute excess of value over cost. However, assuming a common cost of money, the difference between the two projects with respect to the unit cost of the energy generated is not very great, even assuming WPPSS estimates, and non-existent assuming the staff's. PNPC's financing, compared to WPPSS's proposed financing, discussed further at p. 274, *infra*, however, would significantly increase the cost of the power sold to the buyer. This is because PNPC would receive a return that would cover its cost of debt and provide an allowance on its equity capitalization. In addition PNPC would incur Federal income taxes. On the other hand assuming WPPSS could finance with 4.75 or 4.5 percent debt it would be paying less for its capital and would pay no Federal income tax. This, of course, does not mean that Nez Perce is for this reason the better project, but merely that if there were no questions of priority and preference (which, of course; there are) this might be a factor favoring a WPPSS application for Nez Perce over a PNPC application for HMS, even if on the basis of comparable financing HMS was as good or better than Nez Perce. If, however, this kind of advantage were controlling as against a valid priority, we would in almost every case be required to grant the license to a municipal rather than a private applicant for a license. If this were so, the preference provisions in favor of states and municipalities in Section 7(a) of the Act would hardly be necessary, and the priority provisions of Sections 4 and 5 would be meaningless.[6]

(3) *Other benefits*—One of the benefits of either HMS or Nez Perce is the ability to store water and so lessen floods on the Columbia River. The initial flood control goal of the United States Corps of Engineers is to limit the flood flow on the Columbia at The Dalles to 800,000 cfs. This would require[7] 17.3 million acre feet of storage while the ultimate goal of a peak flow of 600,000 cfs at The Dalles would require 32.5 million acre feet of storage. The Corps report shows 8.3 million acre-feet existing or under construction. While the construction of Canadian storage[8] would add 8.45 million acre-feet and the Libby Project would

---

[6] As we understand it, one of the major reasons for the priority and preference provisions of the Act was to remove from Commission discretion the controversial issues as to whether competing public or private applicants could best serve the public.

[7] Corps of Engineers Report, March 31, 1961, p. 5.

[8] Canadian storage would be available upon the construction of certain projects on the Columbia River in Canada. The treaty between the United States and Canada providing for such storage was ratified by Congress in 1961, but not by the Canadian Parliament. A somewhat different arrangement for sharing the power benefits is now being negotiated.

add 5 million acre-feet to available storage, thus there still is an authorized use for further storage from a project on the Snake where flood flows, with the Salmon, amount to 6.2 million acre-feet.

The usable storage for flood control at HMS would amount to only 2,250,000 acre-feet compared with 5,015,000 acre-feet at Nez Perce, so that considered only as project versus project the latter would clearly be preferable on this point. As noted below, however, this preference is somewhat diminished in value by the fact that the HMS plan of development would eventually also include 3,265,000 acre-feet of storage for the Lower Canyon development on the Salmon,[9] so that the HMS plan of development would provide usable storage of 5,515,000 acre-feet. The record indicates that either of the rival projects can be operated satisfactorily for flood control.

The applicants have agreed on the annual values to be given their storage potentials. As of 1968 the value of the HMS storage is $1,840,000 compared to $5,300,000 for Nez Perce, but the Lower Canyon Project would add the value of $3,500,000 to the HMS plan. If Canadian storage becomes available, the value of HMS, Lower Canyon and Nez Perce storage would decrease to only $240,000, $370,000, and $560,000, respectively.

The record indicates that some of the recreational potentialities of the double Nez Perce reservoir are greater than for—HMS (or even for HMS with Lower Canyon). The large body of water created by the Nez Perce dam would provide greater opportunity for boating, camping, fishing, hunting and sightseeing than the HMS reservoir or the Lower Canyon reservoir, or both. However, these advantages are offset by the fact that the Nez Perce project would threaten recreational values of fishing for salmon and steelhead trout not only at the site of the reservoir but wherever fish originating on the Salmon River watershed may be caught from the headwaters to the ocean.

The record indicates that downstream navigation benefits achieved by controlled release of water would be of equal value with Nez Perce or HMS. The double reservoir of Nez Perce would permit greater scope for boating above the dam, but there is nothing to show that there is any importance in such navigation apart from recreation.

B. *Comparison of the Proposed Plans of Development*

In determining whether to license HMS, Nez Perce, or neither, the Commission must make the required findings under Section 10(a) of the Federal Power Act providing in part as follows:

> That the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial uses, including recreational purposes; * * *.

To meet the requirements of the statute plans were submitted by WPPSS, PNPC and our staff for the "common reach" of the river,[10] and these parties submitted costs and other data with respect to the plans and variations of them.

---

[9] Assuming this development at mile 3.7 with a reservoir elevation of 1595 feet.

[10] Defined at the prehearing conference as extending from the tailwater of the China Gardens project at Snake River mile 172.5, elevation 845 to the normal pool elevation of the Hells Canyon project on the Snake River, elevation 1683 feet m.s.l., and to the normal pool elevation of the future Freedom project on the Salmon River, elevation 1780 feet m.s.l.

The evidence shows two major plans with variations, and they are mutually exclusive. One plan involves the HMS and related projects and the other plan involves Nez Perce, as well as additional projects. While these plans show the potentialities of development of either Nez Perce or HMS, the cost estimates of the parties respecting the same plan differ widely. Furthermore, as already indicated, more exploration is needed at the project sites so that final plans may differ from the estimates submitted herein. For this reason we do not find that the data submitted respecting these plans precisely represents the ultimate development of either plan, but we are satisfied that such estimates are approximately correct and do provide a satisfactory basis for comparing the two plans. We also note, as did the examiner, that there is no immediate proposal for the construction of projects incident to either plan other than the HMS and Nez Perce projects. Under these circumstances we think that the best way of exercising our responsibilities under Section 10(a) is to determine whether a grant of either the Nez Perce or HMS projects at this time would, the important time factor considered, preclude a superior development of the rivers involved.

The HMS plan consists of the HMS development on the Snake above the mouth of the Salmon, the Lower Canyon development utilizing an even larger head on the Salmon (either at mile 0.5 or 3.7), later possibly the Freedom project at mile 69.2 on the Salmon, and the small China Gardens development on the Snake some sixteen miles below the mouth of the Salmon. The Nez Perce plan consists of the large Nez Perce development on the Snake just below the mouth of the Salmon and the China Gardens development further down the river, either with or without the Freedom development and the Whitebird development, a combination fish trap and generating facility at the head of the Nez Perce reservoir on the Salmon River.[11]

PNPC proposes an HMS plan with an arch dam at HMS and an arch dam at Lower Canyon, mile 3.7. PNPC also introduced evidence on a Nez Perce plan. It excludes the cost of fish facilities from its plans as impossible to estimate and excludes the Whitebird and Freedom developments as uneconomic until development of the Crevice project further upstream on the Salmon. However, it did include evidence of Whitebird costs. WPPSS presents a Nez Perce plan with an arch dam at Nez Perce with the Whitebird development and, eventually, the Freedom development included. Its HMS plan employs a rock filled dam at Lower Canyon at mile 0.5 on the Salmon and includes the Freedom project for future development.

The staff originally presented comparative plans similar to those of PNPC, but on rebuttal proposed plans based upon an arch dam (the more economical type) at HMS, Nez Perce and Lower Canyon (mile 3.7), but did not include the relatively minor Freedom project or its costs.[12] We are of the opinion that the staff rebuttal presentation provides the most valid comparison between the two plans of development. However, the data presented by PNPC and WPPSS on power and costs are shown in the following table for informative purposes.

(1) *Power Production under the Proposed Plans*—The record shows that under most of the estimates, including the staff's revised comparison which we are adopting as most reasonable, the installed capacity would be slightly greater

---

[11] No Whitebird development was proposed in connection with the HMS plan, for the Lower Canyon dam utilizes greater head and would flood the Whitebird site.

[12] Presumably since Freedom power and costs would be equally applicable to both plans and thus represents a "wash" item.

under the HMS plan than under the Nez Perce plan as shown in the tables below:

	PNPC	Installed capacity (MW)	
		WPPSS	Staff revised[18]
HMS plan (HMS, Lower Canyon, China Gardens)	2,180	2,315	2,347
HMS plan (with Freedom and Crevice in operation)	2,700	2,315	
Nez Perce plan (Nez Perce, China Gardens, Whitebird)	2,062	2,235	2,268
Nez Perce plan (With Freedom and Crevice in operation)	2,626	2,240	

[18] Lower Canyon installed capacity of 910 MW and reservoir at elevation 1595.

The record also shows that under most conditions and stages of development of the Snake and Salmon, with and without Canadian storage, the HMS plan would exceed the Nez Perce plan with respect to nominal prime energy (energy during the critical winter storage control period), average annual generation and plant peak capability. This power differential in favor of the HMS plan results from one intrinsic advantage. That is the reservoir elevation at Nez Perce (or HMS) must be limited to approximately 1510 feet so as not to interfere with the Hells Canyon site upstream, but the Lower Canyon dam can be built to produce a higher reservoir and greater power.

(2) *Costs compared with power benefits under the rival plans*—Cost estimates for all projects were presented by PNPC, WPPSS, the Department of Conservation of the State of Washington and our staff. There were different original estimates and modifications of them leading to wide variations in cost resulting from different overall project layouts. A summary of some of the cost presentations is shown in the following table. The Freedom project, which would not change the difference in costs as between the two plans, is omitted from the figures. The figures reflect the HMS plan, as composed of HMS, Lower Canyon and China Gardens, and the Nez Perce plan, as composed of Nez Perce, China Gardens and Whitebird, shown on the previous table.

Summary of Construction Costs ($1000) Comparative Plans for Development of Middle Snake River

	HMS plan	Nez Perce plan
Without fish facilities:		
Staff (revised)[a]	$443,089	[b] $393,473
PNPC (direct)	405,673	[c] 403,098
WPPSS (rebuttal)	460,289	[b] 367,253
With fish facilities:[e]		
Staff (revised)	500,022	[d] 471,963
WPPSS (rebuttal)	522,000	[d] 429,000

[a] In making its revised presentation the staff actually used two different project layouts—in one a Harza design with all power plants located across the river, in the other a more economical design with power plants located parallel to the river. We are adopting this second comparison assuming also that the Lower Canyon Dam will have installed capacity of 910 MW and a reservoir elevation of 1595 feet.

[b] Whitebird costs omitted because part of these costs were charged to Nez Perce fish facilities.

[c] Without Whitebird costs amounting to $38,592.

[d] Includes Whitebird costs.

[e] PNPC did not present evidence of the cost of fish facilities.

In each case the Nez Perce plan is the least expensive. Using the PNPC figures this difference is only $2,575,000 (excluding Whitebird and fish facilities in each plan), but using the WPPSS figure the difference is $93,036,000.

As the examiner points out, the difference in cost between the HMS plan and the Nez Perce plan on the basis of the staff comparison ($49,616,000 without fish facilities) is about midway between the difference between the two plans using the PNPC figures and the difference between the two plans using the WPPSS figures. Because the staff's study alone compares the two plans on similar bases, in our opinion it reflects the approximate difference in cost between the two plans.

Annual costs vary roughly with the construction costs, and these are shown in the following table.

Annual Costs ($1,000)[a]

	HMS plan	Nez Perce plan
Without fish facilities:		
Staff (revised)	$28,337	[b] $24,992
PNPC (direct)	26,103	[c] 25,298
WPPSS (rebuttal)	29,030	[b] 23,377
With fish facilities:		
Staff (revised)	32,554	[d] 30,600
WPPSS (rebuttal)	33,373	[d] 27,865

[a] Using stipulated operations and maintenance and administrative and general expenses.
[b] Whitebird costs omitted because part of these costs were charged to Nez Perce fish facilities.
[c] Without Whitebird costs amounting to $2,266.
[d] Includes Whitebird costs.

As the data reflect, the greatest excess of the HMS plan costs over the Nez Perce plan costs are shown by WPPSS and the least excess by PNPC without the Whitebird development. In fact, PNPC shows an excess of the Nez Perce plan costs over the HMS plan costs counting in the Whitebird development. The staff revised estimates, which we adopt, fall in between.

As shown in the joint exhibit filed by the parties, with Canadian storage available, the annual power benefits of the HMS plan (HMS, China Gardens, Lower Canyon) are $56,649,000. By computation using the power values prescribed in the joint exhibit the power benefits of the Nez Perce plan (Nez Perce, China Gardens, Whitebird) also with Canadian storage amount to $54,367,000 per year. These figures and figures for other stages of river development both with and without Canadian storage show that the HMS plan produces greater power benefits than the Nez Perce plan. In any case annual power benefits exceed annual costs by substantial amounts for each plan, and we find they are each economically feasible.

The staff and the examiner compared the difference between the two plans as to annual costs and as to annual values and derived a net difference between annual cost and value for the two plans. The examiner found that using the staff's revised comparison the HMS plan is superior to the Nez Perce plan in a somewhat vaguely defined initial period, assuming the completion of Lower Canyon, but the Nez Perce plan is superior to the HMS plan in subsequent periods.

WPPSS objects to the propriety of the examiner's comparison arguing that the Lower Canyon project will not be in operation at the time the HMS project goes into service, that the China Gardens project will be delayed beyond the time either the HMS project or the Nez Perce project is completed, and that there is a premature assumption of seven units at HMS although the license application provides for five units. It is true that omission of the Lower Canyon project would show large net benefits in favor of the Nez Perce plan, the China Gardens development utilizes more head under the HMS plan and so favors that plan, and the more units at HMS, of course, the greater the benefits. Further, there is no question but that these developments may be delayed. However (apart from the fish problem) there is no reason to believe that Lower Canyon would not be built in due time since the evidence shows that Lower Canyon is economic of itself, and if the Lower Canyon project had to be delayed or totally precluded on account of the fish problem so would Nez Perce.

In our view of these and other circumstances the only significant comparative analysis of the two plans is on the basis of the eventual results when all projects which appear to be feasible are built and fully developed. On this basis, as the examiner found, the Nez Perce plan is somewhat superior to HMS. But, taking into consideration the present values of an early start on some of the major projects of a plan, we conclude that this superiority is not so great as to preclude a grant for HMS if, as we shall explain below, other considerations exist which make feasible the commencement of HMS construction now, but which would necessitate an indefinite delay in any Nez Perce construction. Thus the HMS plan has the advantage of permitting an immediate start on major facilities which can bring additional power to the area while the fish questions which are common to Nez Perce and Lower Canyon receive further study.[14] Specifically, in the terms of the statute, we find that despite the somewhat greater advantages which might eventually result from adoption of a plan including Nez Perce over one including HMS, adoption for present grant of the HMS project rather than the Nez Perce project will, for the reasons detailed below, be best adapted to a comprehensive plan for developing the relevant portions of the Snake and Salmon Rivers.

(3) *Other bases of comparison between the plans*—Flood control, navigation and recreation have already been discussed in connection with the Nez Perce and HMS projects. In general the differences between the two plans are not significant. Both plans will provide about the same navigation benefits, and substantial recreational benefits. The HMS plan produces a little more storage because the Lower Canyon dam can be built higher than Nez Perce, but the value of storage is reduced enormously in any case with the advent of the Canadian projects.

C. The Fish Problem in Connection with the Projects and Plans of Development

One of the most controversial issues in this proceeding concerns the ability of the applicants to provide for the movement of anadromous fish by their proposed projects. These fish, salmon and trout, as fingerlings, migrate down the rivers to the ocean and several years later as adults migrate up the rivers to their natal headwaters to spawn. The problem here is to determine whether the upstream migrants, which normally progress by swimming and jumping, and the downstream migrants, which are ordinarily carried by the current, can be guided or carried over high dams and through reservoirs such as HMS, Nez Perce or Lower Canyon. Our responsibility for this problem arises from Section 10(a) providing that the project adopted by us will be "best adapted" for improving or developing a waterway for, among other things, "beneficial public uses, including recreational purposes." While the proposed projects and plans are largely designed to produce power, under the statute we are required to consider whether the power use is consistent with recreational and other beneficial public uses including the use of the river for fishing and the production of fish for both sport and commercial purposes.

---

[14] While the record is not complete on the point, there are indications that the fish problem with respect to a Lower Canyon dam will present somewhat lesser difficulties than those involved at Nez Perce, since the problems created by the intermingling of waters from two different rivers will not be present.

According to the record the Columbia River is the greatest producer of Pacific salmon and steelhead trout in the United States. The most abundant species is the chinook salmon, but blueback, silver salmon and steelhead trout are also important. There are three races of chinook salmon, the spring, summer and fall chinook. Of these, the spring chinook, whose most significant source is the Salmon River, are said to be the tastiest and bring the highest prices.

Columbia River salmon have been important in the development of the Pacific Northwest for almost a century. They are caught not only from the river and its tributaries, but also from the Pacific Ocean along the coast. The commercial catch of Columbia River salmon is estimated to be worth $12,000,000 annually and the sport fishing attributable to the Salmon River alone, while no exact estimate can be made, may be worth as much as $8 million a year. The latter figure is based on the amount fishermen spend for the privilege of taking the fish. The value of the fish, of course, cannot be measured alone by the amount spent to take them or the value of the fish as food. Nor can the value be measured by the economic growth stimulated by sport and commercial fishermen. The record and the contentions of the fisheries' interests make it clear that conservation of the fish is an important public end, and we so find.[15]

While the estimating methods employed are subject to inaccuracies, the record shows that a much larger number of fish would be adversely affected by the Nez Perce dam than by the HMS dam. The witness for the Idaho Department of Fish and Game prepared a study based on a count of the fish passing the McNary dam on the Columbia River and an allocation of the fish to the various tributaries. The allocation was based on recovery of a certain number of tagged fish after death in the headwaters and on a comparison of sports catches at various points. The highest year's count for each species was used in arriving at total fish. The study shows 619,750 spring and summer chinook, fall chinook, blueback and steelhead counted at McNary of which 264,200 are estimated to reach the Nez Perce dam site. Of this number 152,700 are spring and summer chinook, of which all but 10.9 percent turn into the Salmon River. All of the 9,000 bluebacks also use the Salmon River, as well as 74.1 percent of the steelheads. On the other hand 85.7 percent of the 35,000 fall chinook continue up the Snake. Thus out of the total 264,200 reaching Nez Perce 75.7 percent are estimated to migrate up the Salmon and the 24.3 percent up the Snake, including 5.7 percent up the Imnaha.

WPPSS criticizes the derivation of these figures arguing that they are not accurate enough on which to base a decision. While no actual counts were made of the fish passing the Nez Perce and HMS sites and the estimates were based on small samples of tagged fish and questionnaires sent to a fraction of the sports fishermen, the estimates are accurate enough to be of significance because based on data systematically compiled and reasonable inferences. According to the record an actual count on the Snake or Salmon would be inordinately expensive. In our opinion the study referred to above in comparison with the record is sufficient to show that the Salmon River has been and still is of great importance for migrating fish, but that the Snake is now of much less importance.

---

[15] We note in this connection that parts of the Salmon River are included in a wilderness area by the Secretary of Agriculture, which is the subject of the Wilderness Bill, S. 4 the purpose of which is to preserve wilderness areas for the good of the whole people. Hearings before the Senate Committee on Interior and Insular Affairs on S. 4, 88th Cong., 1st Sess., pp. 275–276.

The applicants have not been unaware of this fish problem and have designed their projects in an attempt to solve it. At Nez Perce WPPSS plans facilities for upstream passage including a picketed barrier below the dam leading to a fish ladder 273 feet high, which in turn would lead to lock chambers where the fish would be subjected gradually to increasing water pressures and would be discharged into the reservoir 363 feet below the surface. The downstream migrants would be caught in traps in the form of V-shaped louver structures at the Whitebird barrier on the Salmon River and the Imnaha barrier on the Imnaha River, and would then be transported to Nez Perce by barge. A floating skimmer device would also be provided in the forebay of the dam. WPPSS would provide similar facilities at HMS.

The facilities planned by PNPC for upstream migrants at HMS include two fish ladders. One ladder would reach a canal extending 17 miles up the Imnaha River. The other would extend to a point on the dam from which hoppers would carry the fish over the dam and into the reservoir. Downstream Snake migrants would be delivered at the proposed Hells Canyon loading station for transfer by barge to the dam. Downstream Imnaha migrants would be guided by the Imnaha fish barrier to the Imnaha canal and discharged below the dam.

The fish facilities proposed for both upstream and downstream migrants offer a number of hazards. For upstream migrants there are uncertainties as to the operation of WPPSS's proposed barrier below its dam and its proposed fish lock particularly as to the effect of pressure on the fish and whether they will leave the lock. However, the Imnaha canal proposed by PNPC would appear to have a substantial chance of success. The canal would carry only Imnaha water and the fish ladders leading to it would carry principally Imnaha water (except for the introduction of Snake River water at one point on the ladder to attract any stray Snake River upstream migrants). The canal is proposed on the theory that the water from each stream has a distinctive chemical quality that is recognized by the fish spawned in that stream. There seems a good chance that the Imnaha canal will effect a segregation of the Imnaha fish in a natural manner compared with the confused situation discussed below that would develop in the reservoir above the Nez Perce dam.

As for the downstream migrants the louver barriers proposed by WPPSS are particularly suspect. These are based on the theory that a fingerling fish will follow along the louver in preference to passing with the water between the louver bars. This depends on the behavior of the fish and a lack of water turbulence in the approaches to the louver barriers. WPPSS has presented evidence and contends that its louver barrier at Whitebird will not be rendered ineffective by water turbulence and trash, including floating logs, because of the log barrier to be employed and methods for cleaning the trash racks. Nevertheless the record leaves us in considerable doubt whether the louver device will operate successfully on the Salmon where the current will be swifter and the depth greater than at previous installations. The method of collecting the fish in pipes, a secondary louver and tanks also raises grave questions as to whether the inevitable changes in the quality of the water surrounding the fingerlings will not disturb their instinct for returning to their natal headwaters to spawn.

The record shows, that the most important hazard to upstream migrants or downstream migrants passing the louvers is the reservoir created by the dam. As may be recalled the HMS reservoir would extend 58 miles up the Snake River while the Nez Perce reservoir would extend in two branches, one 61 miles up the Snake River and one 63 miles up to the Whitebird fish barrier on the Salmon River. The difficulty arises because the chinook are basically river fish and do not appear to adapt to the different conditions presented by a reservoir.

A reservoir exhibits a peculiar thermal structure. During the winter it is homogeneous with regard to temperature, but as the season advances a horizontal stratification results with the colder water sinking lower. Since Salmon River water is colder than Snake River water, it is possible, if not probable, that in the Nez Perce reservoir the water from the two rivers would be found in separate layers and be drawn off at different times. Presumably the upstream migrants reaching fish ladders might at one time be presented with water from one river and at another time water from the other river. If water quality is important in attracting the upstream migrants to their proper streams, as many experts believe, this stratification would be a source of confusion and delay. Also a source of confusion to the upstream migrants would be the predicted tendency shown by the record for water from the Salmon River arm of the Nez Perce reservoir to flow up the Snake River arm and vice versa. Again the fish are faced with a complicated problem in finding their way.

The velocity of flow in the Nez Perce or HMS reservoir would be very low compared with the free flowing stream or even compared to the flow in the reservoir of the McNary dam on the Columbia. Since the upstream migrants follow water flow and downstream migrants are carried by current, such low velocities offer a further obstacle to the passage of anadromous fish.

The record also shows that during the summer months the oxygen content of the water in the reservoir at the lower levels will fall to amounts which are dangerously insufficient for salmon. The decrease in oxygen content appears to be due to decomposed sinking dead organisms (plankton) from the upper layers of water. The record indicates that salmon require an oxygen content of approximately five parts per million, yet the oxygen content at the 250-350 foot level would fall in August to less than three parts per million.

Another phenomenon of importance is "residualism," a term used to describe the failure of anadromous fish to pass through the reservoir to the ocean. If loss of water velocity or accumulation of dissolved salts can cause the downstream migrants to remain in the reservoir, they are lost as perpetuators of the species, since residual fish do not spawn successfully.

WPPSS tries to rebut the evidence with respect to reservoirs. It cites testimony to the effect that it is not known how a salmon finds its way back to its home stream, that Salmon River water will not appear in the Snake River arm of the reservoir and that the salmon will be able to follow the cool lower strata of water to the upper end of the reservoir. As to the oxygen content issue, which would of course affect this cool lower water, WPPSS argues that the fishery witnesses' testimony did not take into account that the Salmon River contains pure, soft water which would not be conducive to high plankton production, the most important factor in oxygen consumption, and has exaggerated the time that water is retained in the reservoir.

These are matters which, in the present state of the knowledge of fish habits are highly controversial, and are not in our opinion clearly resolved in the record. There is abundant evidence, however, that a reservoir, such as the one that would be formed by the Nez Perce dam (or HMS) would provide many risks to the upstream migrants. Alternative methods of handling the problem suggested by WPPSS do not obviate these severe risks. Thus transporting adult fish in tanks involves the danger of injury and disease. Establishment of hatcheries would not necessarily be effective. While the propagation of fall chinook in hatcheries has been successful, the same is not true of spring and summer chinook although WPPSS argues that it could be done.

As a result of our consideration of the evidence raised in this copious record we agree with the contentions made by the fishery interveners and the staff that high dams and reservoirs present major obstacles to anadromous fish. In the present state of the art it is not possible to build facilities for fish passage with any assurance that they will be effective. The Nez Perce project affects both the Snake and Salmon Rivers and would endanger the fish runs on the Salmon; the HMS project affects only the Snake River where the fish runs are already impaired.

The Snake River fish runs are already subject to the constructed Brownlee and Oxbow developments and the Hells Canyon development, now under construction, of the Idaho Power Company (Project No. 1971, 14 FPC 55). In this connection we take notice that the Idaho Power Company seeks to abandon as ineffective the facilities for downstream migrants required by us at the Brownlee Project (see our order in Project No. 1971 of March 22, 1963). While the eventual effect of the present Snake River projects on the fish runs is not shown in the present record, another project on the Snake would obviously not constitute the threat to the Columbia River fish runs in any way comparable to a project on the untouched Salmon River. This appears to be also the view of the Corps of Engineers expressed in a report to the Secretary of the Army dated March 31, 1961, where it was stated that "at least 15 to 20 years might be necessary to resolve the problem that would be created by the Nez Perce project" while "The High Mountain Sheep project could be constructed now without being a serious hazard to the anadromous fishery." Likewise the Secretary of the Interior, whose department is largely responsible for the preservation of wildlife, stated in a letter of June 28, 1962, that a "calculated risk" at Nez Perce "would not be warranted" but that "The Mountain Sheep project represents less hazard to the fishery resource than the Nez Perce project."

We are well aware, that in reaching this conclusion we are departing from the optimism as to the efficacy of fish passage facilities on high dams which was reflected in the decision approving the application of the Idaho Power Company for its three developments on the Snake River (Project No. 1971)[16] as well as in the original decision on PNPC's application for the Mountain Sheep and Pleasant Valley projects. We can only state that nothing is this record made in the light of subsequent knowledge or which has come to our attention in the course of our day-to-day dealing with the problem in the past two years would justify continuing such optimism. We can hope for the best and we will continue to insist that any licensee building a high dam at a site which presumably involves major fish runs do everything possible within the limits of reasonable expense to preserve the fish runs. But as of now we understandably must assume that the best efforts will be only partly successful and that real damage may and probably will be done to any such fish runs.

WPPSS alleges it was denied due process as a result of the examiner's handling of the fish issue at the hearing. It complains that the rights of the parties were subordinated to considerations of speed and counsel was cut short in efforts to cross-examine the witness for the Idaho Commission. WPPSS also argues that PNPC was given first chance to cross-examine although PNPC's cross-examination was friendly rather than hostile, so that the witness was able to expand his testimony. When counsel for WPPSS attempted cross-examination, it says, objections were sustained on the ground that the subject matter had already been covered. We are of the opinion the WPPSS's allegations are not sustained by the record and that, in any case, the rulings made by the examiner were not prejudicial.

Although counsel for PNPC was allowed to cross-examine the witness for the Idaho Commission first and may have enabled the witness to amplify his testimony, this does not constitute error even if it could be argued that it lengthened the record unnecessarily. Counsel for WPPSS was permitted lengthy cross-examination of this witness; his examination covered some 150 pages in the transcript. WPPSS has set forth thirty-eight instances in which it alleges that the right to cross examine was improperly denied by the examiner. Upon consideration of the questions asked we think that the examiner was not in error in sustaining objections to the questions. In each instance it could reasonably be said that the questions were defective—irrelevant, argumentative, repetitious, or outside the competency of the witness—and we do not think the examiner erred. In several instances counsel for WPPSS secured an answer by a differently phrased question.

---

[16] 14 FPC 55.

Even assuming that some few of the examiner's rulings may have been legally erroneous they are not, we believe, prejudicial. The questions concerned a wide variety of subjects such as possible bias of the witness, fish counts and allocation of fish among river tributaries, angling activity, computation of numbers of downstream migrants on the basis of eggs layed, differences between the Brownlee dam and the proposed Nez Perce dam, comparison of the louver device at Whitebird with one on another river, the effect of water pressure on spawning, and the necessary size of fish ladders. These subjects are for the most part relevant, but none of the questions or their possible answers would cast doubts on the essential basis of our decision here that there are undeniably large numbers of salmon that make use of the Salmon River, that a high dam and reservoir represents a major danger to the fish runs despite WPPSS's best efforts to surmount the problem, and that the Salmon River runs will not be damaged by a dam at HMS.

In order to assure a sufficient flow of water to maintain fish life below the HMS dam the Idaho and Oregon Commissions have recommended amendment of the examiner's ordering paragraphs relating to flood control and navigation. While sympathetic with these Commissions' objectives, the record fails to justify adoption of this recommendation. The two commissions have also asked that conditions be inserted in the license providing for the replacement of fish and wildlife habitat affected by the license. We think this is too broad a requirement and will use the paragraphs relating to fish and wildlife which we are now employing in other licenses. These appear as Articles 16 and 53 in the conditions.

D. *Conclusion on the River Projects and Plans of Development*

As between the proposed HMS and Nez Perce projects we find that HMS itself is a smaller project with a lesser ability to generate power and a significantly lesser ability to store flood waters (a matter of importance only until the advent of Canadian storage). However, as a plan of river development the HMS plan, although somewhat more costly and possibly producing power at a higher unit cost, produces more benefits than the plan involving Nez Perce. While the estimates are contradictory, it does not appear that the net benefits of either plan are very much greater than the other. The HMS plan, however, has one decisive advantage over the Nez Perce plan. It permits postponement of a dam on the Salmon River until the fish passage problem is more clearly solved. On this basis we believe the HMS site rather than the Nez Perce site should be developed.

WPPSS argues that permitting the fishery issues to be a dominant consideration was inconsistent with past Commission actions. It is true that we have approved projects where some damage to fish appeared likely (see *City of Tacoma*, 10 FPC 424) in order to avoid denying the project. But this does not and cannot mean that the fishery resource must inevitably yield to power considerations. A balancing of equities, in the light of the relative importance of the two claims on our natural resources in the particular case must be determinative. Here the fishery resource is a major one. Insofar as a further dam on the Snake is concerned, we believe that the power factors outweigh the possible loss, even assuming that the best efforts at HMS will further diminish the already impaired fish runs there.

PROPOSED DEVELOPERS OF THE PROJECTS

Having narrowed the problem to the proposed HMS project and plan of development, we have before us PNPC's application for a license for this project, WPPSS's amendment of its Nez Perce application to include HMS, and the request of the Secretary of the Interior not to grant any license but to recommend Federal development. We do not think differences in construction features or differences in cost as between the two applicants for the HMS project are decisive because the plans are not final and can be modified and undesirable features eliminated.

As between the applicants, the initial question is a legal one, i.e., whether PNPC has a priority under its preliminary permit. If so, as we believe is the case here, the license should be issued to PNPC provided that it conforms to the requirements of the Act in other respects. For instance, in order that its project, HMS, be "best adapted" within the meaning of Section 10(a), there should be a sufficient market for its power. If PNPC has a priority under its preliminary permit, it will not be necessary to consider whether WPPSS would otherwise have a preference under Section 7(a), for that Section only applies "where no preliminary permit has been issued." Further, it is not necessary to resolve other questions relating to WPPSS such as its legal capacity to undertake a project outside of its own state.

Finally, we have before us the issues raised by the Secretary of the Interior in his request that federal construction be recommended. The most important of these issues is whether a non-federal licensee can effectively coordinate the operation of a Snake River project with the federal projects downstream and whether a probable delay as a result of federal construction would prevent the region and PNPC from obtaining needed power resources.

A. *PNPC's Priority Under its Preliminary Permit*

This legal question is twofold: did the preliminary permit granted PNPC on April 8, 1955 expire before its stated term of three years in the absence of any order terminating the permit; and was the permit limited to the site described in the application for a preliminary permit or did the permit extend to that project which was best adapted to a comprehensive development of that reach of the river?

A preliminary permit is issued under Section 4(f)[17] of the Act to enable an applicant for a license to make studies and gather data and at the same time under Section 5[18] to maintain its priority of application. Section 4(f) specifically states that the permits are to enable applicants to secure the data and perform the acts required by Section 9. The latter requires that each applicant submit to the Commission "maps, plans, specifications and estimates of cost as may be required for a full understanding of the proposed project." Section 5 refers to the permit as being "for the sole purpose of maintaining priority for a period, not exceeding three years, for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements." The statute limits the purpose of the permit to priority to avoid any interpretation that it represents permission to begin construcion. The statute does not prevent but clearly contemplates that proposals and plans made at the time the permit was issued may be changed as a result of investigations made by the permittee. At the same time the permittee is protected by the permit from rival applicants while incurring expenses in the investigation of a project intended and required by Section 10(a)[19], to be best adapted to a comprehensive development of the reach of the river involved.

---

[17] *Sec 4.* The Commission is hereby authorized and empowered—(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by Section 9 hereof: * * *

[18] *Sec. 5.* Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority may be maintained. Such permits shall not be transferable, and may be cancelled by order of the Commission upon failure of permittees to comply with the conditions hereof or for other good cause shown after notice and opportunity for hearing.

We consider it evident that the statutory intent of these provisions is to give a permittee the first right to develop that reach of a river to which the permit relates. Any other interpretation would make the permit meaningless, for if another party could obtain a permit or apply for a license for a nearby project that would develop substantially the same head as the one described in the original permit, there would be no protection to the first permittee. Likewise, if another project affecting essentially the same reach of the river were not considered within the original permit, the original permittee could apply for a separate three-year permit for such project and could thus tie up the development of the river for a period of time substantially in excess of that contemplated in the statute. Thus, to construe these statutory priority provisions narrowly would be, in effect, to write them out of the Act.

To interpret the priority afforded by a permit as limited to a single project would also be contrary to the two most significant objectives of the Act, namely, to encourage the development of our nation's water resources, and to insure that such development would be best adapted to the fullest use of the river, considering all uses. Who would be willing to undertake substantial and expensive investigations looking toward development of a river if a permit were good only in the event—the unlikely event—that the results of the investigations coincided precisely with the permittee's guesstimate at the time the permit application was filed? In this connection, it is the experience of the Commission that a project is rarely constructed at the same exact site and in the same fashion as originally contemplated. Indeed, we are unaware of a single instance where this is true. For example, in the *Alabama Power* case[20] the permit listed specifically five developments on the Coosa River in Alabama. The license also provided for five developments covering approximately the same reaches of the Coosa River but with three of them in different locations.[21] In the *Grant County* case[22] the permit described one dam, Priest Rapids, at river mile 397 on the

---

[19] *Sec. 10(a)*. That the project adopted, including the maps, plans and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

[20] *Alabama Power Co.*, 13 FPC 1235, 18 FPC 265.

[21] The permit described projects at river miles 13.5, 67.5, 105.7, 148.5 and 227.0, while the license described projects which are located at river miles 12, 51, 98, 147, and 227.0.

[22] *Public Utility District No. 2 of Grant County*, 13 FPC 1462, 14 FPC 1067.

Columbia River, but the license described two dams for the same reach of the river, Priest Rapids at river mile 397 and Wanapum at river mile 415.

If priority extended only to that project described in a permit, the pressure would be great upon the permittee not to explore fully alternative projects which might be superior. Clearly, if such investigations were conducted and an alternative development were considered preferable, the first permittee would be in danger of losing its opportunity to develop needed generating capacity as a result of its own actions. Thus, a narrow interpretation of the priority provisions would serve to undermine the objectives of Section 10(a) of the Act which is designed to insure the optimum development of our water resources. As a unanimous Commission recently held:[38]

> It [preliminary permit] is granted in a situation where the feasibility of a project in a particular stretch of a river has not as yet been demonstrated. It gives the permittee a priority over other non-Federal parties in order to encourage the investigations of projects which otherwise might never be investigated or built.

In view of the incongruity of a narrow interpretation of the priority afforded by a permit with the fundamental objectives of the Act, as well as the specific provisions on priority itself, it would require a compelling showing to convince us that PNPC's preliminary permit is of no effect respecting PNPC's HMS license application. To the contrary, we view the numerous terms of PNPC's permit as describing that type of permit contemplated by the Act.

There are six specific articles in the permit which required PNPC to cooperate with various federal, state and other interested agencies for the purpose of evolving the best development of the Snake, irrespective of the detailed description of the project as tentatively proposed. Article 10 required PNPC to cooperate with the U.S. Forest Service to develop a plan for alleviating damage to and achieving maximum utilization of National Forest resources. In Articles 11 and 12, the permittee was obliged to negotiate and cooperate with the U.S. Fish and Wildlife Service and various commissions of the states of Idaho and Oregon in formulating measures in the interest of fish and wildlife conservation. Article 13 required PNPC to cooperate with enumerated State departments and commissions and with the U.S. Forest Service regarding the recreational phases of the project. PNPC was required by Article 14 to cooperate with the Bureau of Mines concerning mineral resource possibilities. Most importantly, Article 15 required PNPC to cooperate with the Corps of Engineers and the Bureau of Reclamation "* * * with the object of determining a plan of development for the two sites best adapted to a comprehensive plan of development of the water resources of the Snake River." To adopt a narrow interpretation of the permit would be anamolous in that PNPC would be required to develop the best plan of development when it would thereby lose its priority to carry out the development.

WPPSS emphasizes that language in paragraph (A) of PNPC's permit, i.e., "This preliminary permit is issued * * * for the sole purpose of maintaining priority of application for a license for Project No. 2173 * * *." However, the specificity in applications for permits required by our regulations arose from the necessity of limiting unnecessary reservations of land for power purposes to the detriment of the public. The legislative history of the Water Power Act evidences a grave concern with undue reservations of public lands for such purposes.[24] It was for this reason that our regulations were designed to provide a detailed description of the lands occupied by the project. While it is not possible to achieve these desired results in every case, as here, we do not view those situations as adequate justification for abandoning our attempts to insure a sensible program of land withdrawals. Thus, as stated above, our regulations governing the filing of applications for preliminary permits require the specification and the location not only of the lands to be used but also of the major project works. Any application for a permit failing to contain the required specificity would be rejected under our Rules. Section 4.81 of our regulations under the Federal Power Act which specifically deals with the filing of applications for preliminary permits, as well as Section 1.14(a) of our Rules of Practice and Procedure, specifically provide for such rejection.

---

[38] *Georgia Power Company*, Project No. 2303, "Order Denying Application for Preliminary Permit", issued April 2, 1962, 27 FPC 663.

While the detailed description of site in both the application and in the resulting permit enables a sensible program of land withdrawals, we do not believe that this aspect should be or is controlling with respect to the scope of a permit.[25]

Moreover, we view the language in paragraph (A) of the Commission's order above cited as emphasizing the fact that no construction authority was being granted, but only a priority to conduct investigations. In several early proceedings, various parties appeared in opposition to preliminary permits when the opposition related to the project itself, and not to the priority aspects of a project.[26] In these cases, the Commission emphasized that only a priority was involved and that the merits of the project ultimately sought was the subject matter of license application.

The scope of a preliminary permit containing language identical to that in PNPC's permit was specifically considered in the *Montana* case.[27] Montana was the permittee for proposed Project No. 2164 (at mile 36.4) and 2163 (at mile 60.7) on the Flathead River. Previously, Montana had been issued a permit for Project No. 2135 at mile 68.6. Project No. 2163, if constructed would have inundated Project No. 2135. Subsequently, Montana filed for a fourth permit, identified as Project No. 2223. If constructed, this project would develop the same reach of the river as Projects Nos. 2163 and 2164. On January 8, 1957, the Confederated Salish and Kootenai Tribes filed an appearance in opposition to Montana's application for a permit for Project 2223. They characterized that application as an attempt to secure an unlawful priority to apply for a license.[28] The Secretary of the Commission had previously requested additional support for the grant of the permit since it appeared that Montana's existing permits enabled it to conduct the necessary studies regarding Project 2223. In response, Montana agreed that the same reach of the river was involved in its existing permits as was covered by Project 2223. Nevertheless, it pointed out that proposed Project 2223 was substantially different from the projects contemplated under permits 2135, 2163 and 2164 and went on to describe some of these major differences. Nevertheless, the Commission denied the application for a permit for Project 2223 as unnecessary. That order carefully explains that the amendment was denied because the examinations, surveys and other acts, the performance of which is contemplated under a preliminary permit could be made with respect to Project 2223 under the outstanding preliminary permits for Projects 2163 and 2164. The Commission made this finding notwithstanding the different identification numbers assigned to the two proposals. The holding in this contested proceeding cannot be reconciled with the minority's position.[29]

---

[24] Hearings, House Committee on Public Lands, 63rd Cong., 2d Sess. on H.R. 14893, May 5, 1914, p. 195, 357–359; Cong. Rec. July 20, 1914, vol. 51, pp. 14061–14062, debate on H.R. 16673. Hearings, Senate Committee on Public Lands, 63rd Cong., 3rd Sess. on H.R. 16673, Dec. 17, 1914, pp. 351–355; H.R. No. 16, 64th Cong., 1st Sess. 1916, Report of Committee on Public Lands to Accompany H.R. 408; Cong. Rec. Jan. 5, 1916, vol. 53, p. 527, debate on H.R. 408; Hearings, House Committee on Water Power, 65th Cong., 2d Sess. May 13, 1918, p. 623–624; Cong. Rec. Sept. 5, 1918, vol. 56, p. 10035, debate on S. 1419; Cong. Rec. July 1, 1919, vol. 58, pp. 2243, debate on H.R. 3184.

[25] After carefully selecting and citing the general requirements of the regulations, the minority assert that it can find no unyielding requirements of specificity. If the minority had gone further and considered Exhibits E, F, H and I prescribed by Section 4.82(k), the specificity we referred to would have been discovered. Exhibit H, for example, requires:

> *Exhibit H*, A general map showing the nature of *the proposed project, its principal features and their location, and the location of the project as a whole with reference to some well-known town or stream.* On this map shall be placed a line indicating the approximate project boundary of the area to be occupied by the principal project works, such as, dams, reservoirs, forebays, waterways, and powerhouses, but excluding transmission lines, and *where necessary in order to determine the location of such structures on the ground, there shall be shown on the map their relative positions with respect to permanent monuments or objects that can be readily recognized from descriptions thereof noted on the map.* (See specifications for drawings, § 4.42.) [Emphasis added.]

[26] *E.g., Linoma Power Co.*, 8 FPC 999 (1949)

[27] *The Montana Power Co.*, 17 FPC 834. Actually this language is found in virtually every preliminary-permit granted by the Commission. In fact, we are not aware of any permit containing broader language.

Both Staff and WPPSS argue, in effect, that the priority granted by a permit, irrespective of the scope thereof ceases to have independent efficacy upon the filing of a license application. We disagree. Section 5 provides for priority "for such period or periods, not exceeding a total of three years * * *." It does not state that a permit expires when a license application is filed nor does it state that a permit somehow "merges" into a license application. Moreover, Article 3 of PNPC's permit specifies certain conditions under which the priority granted by the permit will be lost. None of these conditions is present in this case. Staff and WPPSS place substantial weight upon an opinion of the FPC General Counsel given in 1923. This obscure opinion is not mentioned in any Commission determination of which we are aware. Moreover, the basic issue discussed in that opinion is whether priority extends beyond the term specified in a permit in situations where a permittee filed a license application within the duration of the permit. On this point, there is no dispute. But that is quite a different question from the one involved here, i.e., whether a permit terminates upon the filing of license application. As the minority correctly recognize in one place, the instant case represents the benchmark decision on the latter issue.

PNPC's original license application for a two-dam Mountain Sheep Pleasant Valley development places the dams at a slightly different location than the permit described. And PNPC actually made investigations under the permit of no fewer than three different one-dam High Mountain Sheep developments.[30]

---

[28] Subsequently, these tribes filed an application for a preliminary permit for Project No. 2285 which involves the same reach of the Flathead River.

[29] The minority allege the requested amendment in that case specified a project "at precisely the same site the applicant was already exploring under an existing permit for a smaller dam." A careful review of the *Montana* record does not support this allegation. But even if it were true, the scope of a project and its effect on adjacent lands, waters and other potential projects are affected not only by the site of a project but also by several other features, such as its height. The minority further point to the *Appalachian case* (17 FPC 8, 19 FPC 169) in which an amendment was allowed. That case involved a request for a completely new project—14 miles away—in addition to that already the subject of a permit.

[30] Tr. 1474–5, Project No. 2173

This was consistent with the Resolution of PNPC's Board of Directors, embodied in its application for a permit, which authorized its officers

> "to apply * * * for a Preliminary Permit * * * to make studies, surveys, and investigations of the feasibility of hydroelectric power developments *in the vicinity of the* Mountain Sheep and Pleasant Valley Hydroelectric sites on the Snake River, in the States of Idaho and Oregon, for the purpose of enabling the company to secure the data and perform the acts required by law for filing an Application *or Applications* for the issuance of a license or licenses;" [Emphasis supplied; Exhibit B, application for preliminary permit.]

After the Mountain Sheep-Pleasant Valley application was denied, PNPC was fully aware of the fact that the term of its permit soon would expire. In its application for rehearing of the Commission's Opinion and Order denying the license, PNPC requested the Commission to protect its priority in addition to its argument for the licensing of Mountain Sheep-Pleasant Valley. It asked that the matter be set down for rehearing to consider such modification of its project as would represent the most comprehensive development of the resources. Article 3 of its permit specifically provided for the Commission's modification of the plans submitted by the permittee as, in the judgment of the Commission, would be best adapted to a comprehensive plan of development. PNPC pointed out particularly that an HMS dam between the Salmon and Imnaha had not been considered by the Commission. Nevertheless, on March 20, 1958 (19 FPC 353) the Commission issued an order denying rehearing stating that an opinion would be issued later.

PNPC was faced with a serious problem. Its three-year permit would expire April 1, 1958. It might have obtained an amended permit specifying Nez Perce, but this was most doubtful in view of the *Montana* case, *supra*. More importantly, PNPC adhered to its position that any project which blocked the fish runs on the Salmon was not the best development. While its application for rehearing was denied, there was no opinion and PNPC could not know whether its priority would be preserved by Commission action under Article 3 of its permit. In the meantime, additional studies indicated the probable geological feasibility of the HMS site, and PNPC filed a license application for a project for this site, a site 3.4 miles below the initially proposed Mountain Sheep development.[31] Subsequent to the filing of this license application, the Commission released its opinion on rehearing declaring its view that any combination of projects which includes Nez Perce is consistently superior to any combination which does not include Nez Perce. Interestingly, the Commission did not make the requested finding that a Nez Perce project represented the most comprehensive development of the Snake, considering all uses. Thus, while the dream of Nez Perce was considered adequate justification for a denial of an alternative development, it is anamolous that the Commission apparently lacked the necessary conviction to make or direct appropriate modification of PNPC's plans under Article 3 of the permit to specify Nez Perce.

---

[31] In a footnote, WPPSS makes the argument in cursory fashion that PNPC's HMS license application was incomplete when it was initially filed, and was not completed until after the term of the preliminary permit had expired. Section 4.81 of our regulations and 1.14(a) of our Rules of Practice referred to above provide for rejection of applications tendered to the Commission which do not contain the requisite information. PNPC's HMS license application was not rejected but was accepted for filing by the Commission. The fact that additional data was requested here, as in most cases, and submitted does not change our view regarding the adequacy of the filing or the correctness of its acceptance. WPPSS's contention is untimely and unmeritorious.

As a matter of fact, PNPC is to be commended for sticking with its concept regarding the proper development of the Snake. With the issuance of the Commission's opinion on January 20, 1958, indicating its conclusion that Nez Perce represented the best development of this reach of the Snake, it would have been an easy matter for PNPC to have promptly filed a license application specifying this site. This it did not do. Rather, it insisted that any proposal which would block the Salmon River was not best adapted to comprehensive development. While equitable considerations are not relevant to determining the scope of a preliminary permit, we are nevertheless constrained to observe the irony involved in rejecting PNPC's proposal to develop the Snake when its HMS application would promptly have been granted had the Commission properly analyzed the relative merits of a Nez Perce project.

Our dissenting colleagues also recognize the need for flexibility and attempt to avoid any interpretation of a permit which would impose the "impossible demands" of requiring parties to guess in advance of exploratory studies conducted under a permit. The minority's solution, i.e., filing of amendments to permits, is incomplete because the all important question remains: Does a party having a permit have a right to an amendment to the permit for a project concerning the same stretch of the river? The minority carefully fails to answer this critical point. If they answer negatively, their solution is frustrating and fatuous since it would encourage parties to perform useless activities. If they answer affirmatively, they are simply imposing additional filing requirements of no substance since, in effect, a party obtains priority to a given stretch of the river under the original permit.

The dilemma of the minority may be attributable, at least in part, to its misunderstandings on two important points. First, our decision will not result in tying up our nation's waterways for extensive periods to the exclusion of applicants accorded preference by Congress. Private parties do not have exclusive rights to permits. Preference parties not only have an equal chance to obtain a permit but, in addition, have a preference for a permit guaranteed by Section 7(a). A second major misconception is that our decision would somehow fail to give adequate notice to preference parties of the developments contemplated under a permit. Once a party, preference or otherwise, has a permit describing a project which would develop a specific stretch of river, everyone is on notice that the permittee has priority to construct at least the project described in the permit. Quite clearly, this would foreclose *any* development on that stretch of the river contemplated by any other party. It is therefore inconsequential, as far as notice is concerned, if the construction plans are altered as long as the same reach of the river is involved.

We therefore conclude that PNPC is entitled to priority for its application to develop the HMS site. Accordingly, the preference provisions of Section 7(a) are not applicable with respect to WPPSS. Section 7(a) states that, as a matter of law, preference rights to state and municipal bodies apply only in those situations where no preliminary permit has been granted, regardless of our individual predilections. Even the minority ultimately reveals its concurrence with this limitation, although this concession is nearly lost in its extended discussion of the legislative history of preference, a discussion, incidentally, with which we agree.

In the event our decision on priority is adjudged to be erroneous, it would be necessary, under Section 7(a), to give WPPSS a reasonable opportunity to make its plans equally well adapted to those of PNPC and to evaluate such plans following a hearing thereon. An important element to be developed at the hearing would be WPPSS's need for HMS power. As stated below, the present record is sorely deficient respecting the existing generating capacity of the entities comprising WPPSS. This information would be essential in any determination of the entitlements of WPPSS to a preference under Section 7(a).

This as well as additional data would also be required regarding the financial feasibility of the WPPSS proposal. As pointed out below, we would not grant a license to WPPSS in the absence of far better showing of its ability to finance HMS construction.

Following the hearing on this issue, we would then determine if preference properly accrues to WPPSS, and the effect of such a preference, if any, in the light of all the other factors relevant to a disposition of these applications. We cannot make such a determination at this time, nor is there any reason so to do in view of our finding that PNPC has priority. For the same reason, it is unnecessary to resolve the serious question respecting the legal status of WPPSS outside the State of Washington. Section 9(b) of the Federal Power Act expressly requires from license applicants:

> (b) Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

Idaho has a statute governing this situation. Section 61-327 of the Idaho Code states:

> No title to or interest in any property located in this State which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferrable to or acquired by directly or indirectly by any means or device whatsoever, any government or municipal corporation, quasi-municipal corporation or governmental or political unit, subdivision or corporation organized or existing under the laws of any other state; * * *

Both the Idaho and Oregon Utility Commissions object to the licensing of WPPSS on the basis of WPPSS's failure to comply with state laws. Moreover, a U.S. District Court has found that WPPSS lacks authority from its own state of Washington to develop hydroelectric projects outside the State.[32]

Without deciding this issue, nevertheless the very existence of these acts, however controversial, belies the minority's easy assurance that WPPSS is so qualified. The *First Iowa* case which they cite expressly recognizes a dual system of control by the states and the federal authority:

> In the Federal Power Act there is a separation of those subjects which remain under the jurisdiction of the states from those subjects which the Constitution delegates to the United States and over which Congress vests the Federal Power Commission with authority to act. To the extent of this separation, *the Act establishes* a *dual* system of control. The duality of control consists merely of the division of the common enterprise between two co-operating agencies of the Government, each with *final* authority in its own jurisdiction. [328 U.S. 152, 167, emphasis added.]

---

[32] *WPPSS* v. *PNPC,* 217 F. Supp. 481 (1963)

B. *Power Resources and Requirements*

Evidence was presented by PNPC, WPPSS, and staff on the load requirements of the Pacific Northwest and on resources to meet these requirements by both PNPC and WPPSS. The figures submitted by the parties differ somewhat because, among other things, PNPC used a different area and did not include old steam capacity in the resources. Staff used lower growth figures since population and industrial growth did not measure up to earlier estimates. The figures are extensive and based on estimates as to future loads and resources. They take into account proposed projects such as Monumental, Boundary and Libby, and also the effect of storage under the proposed treaty with Canada, ratification of which was assumed in 1961. The figures, however, do not take into account demand and additional resources that may be available from the proposed inter-tie with California. The effect of the evidence, assuming a further three-year deferral of the Canadian treaty ratification, is to show a substantial deficiency in both capacity and in average energy during the critical storage control period (usually the winter months) at least by 1970–71 in an amount that is substantially greater than the power that would be available from the HMS project.

The Secretary of the Interior argues that the future power deficiency will be removed by the construction of additional projects on the Snake and Columbia and by the Hanford nuclear project. In fact, he says, that by 1967–68 the area will be faced with substantial surplus resources. PNPC itself admits that since the record was closed nine projects have been scheduled in addition to those included in PNPC's evidence. It is natural, of course, that as time passes other projects will be authorized by Congress and scheduled. Otherwise, large deficiencies would develop that would have to be met by more expensive steam generation. We will take notice that such projects are scheduled, including the Hanford atomic reactor, but it appears that at least part of the capacity of HMS could be used on a regional basis by the year 1970–71 assuming ratification of the Canadian treaty this year. The record shows that Canadian storage postpones the regional need for power a year or so. Because of the need of further investigation of the site, preparation of final plans and construction, the HMS project will not be in service in any case until around 1970.

Of more significance in our opinion than the regional power situation are the load and resources of the PNPC companies themselves. The evidence shows, taking into account deferral of the Canadian storage, that the PNPC companies can use the power from the HMS project as soon as 1964–65, and that by 1970–71 the deficiency would be substantially greater than the power that would be available from the HMS project.

We are aware that the four companies have acquired further resources since the preparation of the figures; namely, a share in the Hanford and Wells projects. This is material outside of the record, but it would not appear that these additional resources would meet the load deficiencies in 1967–68 and later, even with HMS.

The Secretary and WPPSS argue that PNPC can obtain its requirements elsewhere; that is, from the Northwest Power Pool, including BPA. The Secretary says that the possibility is extremely remote that he will "pull back" power now sold to private companies. This action could be taken pursuant to the Bonneville Act,[38] which provides that the administration shall "give preference and priority to public bodies and cooperatives" (Section 4(a)) and that "in the case of a contract with any purchaser engaged in the business of selling electric energy to the public, the contract shall provide that the administrator may cancel such contract upon 5-year notice in writing if in the judgment of the administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirements of the said public bodies or cooperatives referred to in this Act" (Section 5(a)). Actually, under letter of August 10, 1960, the Secretary exercised the "pull-back" provision in providing for a declining schedule of deliveries (none in 1966–67 and none after 1970). In view of these statutory provisions, it is our opinion that PNPC is not able to rely on any power supply that BPA may have available, and the company can reasonably claim a need for its own supply. In fact, we think it owes a duty to its customers to obtain power that is not subject to this statutory disability.

---

[38] 16 U.S.C. § 407.

In contrast to PNPC we find that WPPSS and its members and the public power agencies that would participate in Nez Perce do not have the same need for generating capacity as PNPC. According to the record, WPPSS's loads will be met by the generating resources of its own members, and by BPA until 1970. While WPPSS argues that it has no assurance that BPA will be able to supply power to it after 1970, and that in any case the price will go up, WPPSS has a preference for BPA power while PNPC does not. Thus WPPSS is in a far better position to include BPA power as a resource in its planning than is PNPC. WPPSS has failed to show on the record the amount of power resources owned by its members and participating agencies, but we take notice that they are considerable and that WPPSS has failed to take them into account in making its presentation of a need for power. The sketchy evidence in the record on this point shows that the WPPSS member organizations operate generating plants and will operate a plant on the main stem of the Columbia, and that the Cowlitz County PUD operates a steam plant and the Grays Harbor PUD another steam plant. In fact, by the year 1970–71 WPPSS would have available assured resources including power from BPA now available and that withdrawable from others in the amount of 1,907 mw or 144 percent of the estimated load.

To add the resources of HMS to those of WPPSS would be adding a surplus to the resources available to WPPSS. The record shows that WPPSS and its members contemplate disposing of this surplus power to other public agencies, then to industries and private utility companies under contractual provisions that permit the drawback of the power when it is needed by the WPPSS participants. It is relying for the disposition of its power on 46 public agencies which in reply to a letter from WPPSS had signed commitments for the power. While we would not require firm contracts for the power these commitments were on the express condition that the power to be purchased would be at a cost which would make it attractive compared to other long-range alternatives and on mutually satisfactory terms. Whether or not WPPSS and its participants prefer to take HMS power and let the BPA power go to the private utilities, or prefer to hold on to the BPA power and sell the HMS power does not change the result. WPPSS has available power, not set forth in the record, and also BPA power for which it has a preference, while the PNPC companies do not have any preference for BPA power and can use the entire output of HMS as soon as it can be expected to come into operation. The record indicates that a project will not be needed to meet the loads of public agencies in the Pacific Northwest, including those of WPPSS, until some indefinite time after 1970. This is consistent with the statement of the Secretary of the Interior that BPA is suffering a reduction in revenues because of a lack of market for its power.

In summary as to the need for power, we conclude that the PNPC sponsoring companies will be able to use HMS power as soon as it is available. On the other hand WPPSS has failed to demonstrate any need for such power now or in the foreseeable future. We emphasize, however, that if it were not for our determination that PNPC has priority under the permit we would give WPPSS further opportunity to show its need for power and its ability to finance, so that it might show that its project was "equally well adapted" within the meaning of Section 7(a).

On financing, briefly PNPC would raise the necessary funds by selling equity for 15 percent of the capitalization to the organizing companies and floating a public bond issue for the remaining 85 percent of the capitalization. While the high debt ratio has been questioned, a higher ratio has been employed for other power generating projects.[24] The combined capital ratio of PNPC and its sponsor companies using their capitalization as of December 31, 1960, would be 65.48 percent for long-term debt, 4.35 percent for preferred stock, 26.86 percent for common equity, and 3.31 percent for deferred Federal income taxes. The record supports the saleability of PNPC's bonds, and no question has been raised as to the ability of the sponsor companies to finance their participation in the proposed project. We agree, however, with the recommendation of the staff that any PNPC license be conditioned so as to require submission of a complete plan of financing prior to the beginning of construction. WPPSS on its part would finance its project through bonds.

C. *Restraint of Trade*

WPPSS argues that PNPC is a combination in restraint of trade citing Section 10(h) of the Power Act which provides as follows:

> That combinations, agreements, arrangements or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

WPPSS argues that PNPC is a combination of utilities to monopolize for themselves the largest remaining power site on the Snake River, and to deprive all other competing public utilities of access to the power, and this would lead to control over the entire economy of the Pacific Northwest. It also says that the four PNPC companies will fix prices for power, on the theory that they are guaranteed a 6 percent dividend on their capital contributions, and this will put a floor under the prices of PNPC must charge. WPPSS also sees a violation of Section 1 and 2 of the Sherman Act[25] in the allocation of fixed portions of the power generated to each of the four organizing companies. However, we agree with the examiner that there is no support in the record that PNPC or the four companies will be in violation of Section 10(h) or the anti-trust laws.

PNPC's proposal is based upon a normal business need to obtain a supply of power, and this will be accomplished by the issuance of a license by a governmental body. It is true PNPC and its component utility companies are not exempt from the anti-trust laws. Immunity from the anti-trust laws is not lightly implied. *California* v. *F.P.C.*, 369 U.S. 482, 485. However, the anti-trust laws do apply differently to regulated companies. See *F.C.C.* v. *RCA Communications, Inc.*, 346 U.S. 86, 93. Utilities are necessarily monopolies within their areas whether they be telephone companies, power companies or gas pipelines, but there is nothing to show that PNPC is trying to monopolize the sources of power in the Pacific Northwest. Of course, it seeks to gain control over the HMS site, but this type of control is inherent in licenses issued under the Act and was clearly intended by Congress.

---

[24] *Ohio Valley Electric Corporation, et al.*, 36 S.E.C. 304; see *South Carolina Generating Co.*, 16 FPC 52, 61.

[25] 15 U.S.C. § 1 and 2.

There is here no price fixing combination, for each company will fix its own prices subject to regulatory control. The four companies have entered into an arrangement to pay the costs of their supply affiliate, PNPC, and to receive a dividend on their capital contributions. Such an arrangement is, of course, subject to our regulatory control under the Federal Power Act. *Pennsylvania Water & Power Co.* v. *F.P.C.*, 343 U.S. 414; *Safe Harbor Water Power Corporation* v. *F.P.C.*, 179 F. 2d 179 (CA3) certiorari denied 339 U.S. 957 These companies are not competitors in the industrial sense, and in our view this method of obtaining a supply of power was reasonable particularly in view of the enormous costs involved. There is no "public policy that forbids, *per se*, an expansion of facilities of an existing company to meet the needs of new markets * * *." *United States* v. *Columbia Steel Co.*, 334 U.S. 495, 526.

Likewise, the division of the power between the four companies is not in violation of Section 10(h) or the anti-trust laws. This is a joint venture to obtain a supply of electric energy. We have here a business requirement and no attempt to monopolize (*United States* v. *Columbia Steel Co.*, *supra* at p. 527), although, of course, PNPC is seeking cotnrol of the HMS site in accordance with the Power Act.

D. *Federal Development*

Whether we should recommend federal development rather than development by PNPC is an important issue. We think this issue must be resolved against federal development contrary to the arguments of the Secretary of the Interior. The applicable Section 7(b) of the Power Act provides as follows:

> Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development. [41 Stat. 1067; 49 Stat. 842; 16 U.S.C. 800]

We agree with our staff and the examiner that the record supports no reason why federal development should be superior to development by PNPC, and we see no reason why we should withhold a license and recommend that the United States build the project.

While we have extensive material before us on the position of the Secretary of the Interior, there is no evidence in the record presented by him to support his position. The Secretary contends initially that we are in effect bound to a decision in favor of federal development, because Congress has made a determination that the water resource (i.e., the Columbia and Snake Rivers) should be federally developed to the extent of nine-run-of-river dams downstream and that the development of the large storage at HMS affects this federal development. We agree, of course, that in meeting our responsibilities under Section 7(b) we should consider the past history of a river basin as it sheds light on the future. While it is true that there are nine federal projects, authorized or constructed on the Snake and Columbia Rivers downstream from the projects here proposed,[36] it is also relevant that we have previously authorized major non-government projects on the main stem of the Columbia above the confluence with the Snake[37] and on the Snake above the HMS site.[38]

---

[36] Bonneville, The Dalles, John Day, McNary, Ice Harbor, Lower Monumental, Little Goose, Lower Granite, and Asotin.

The fact that the Congress from time to time has authorized considerable federal development within this expansive river basin does not compel a determination that federal development is appropriate with respect to all projects on the river. Our decision must rest upon an evaluation of all the factors relevant to the development on this reach of the Snake at this time.

The factors argued by the Secretary in support of federal development are that federal development offers lower costs, that flood control can be better effected by flexible federal operation than by limitations written into the license, that the Interior Department can better prevent damage to fish than provisions in the license and inadequate supervision by us, that federal development can better provide recreational facilities for an expanding population, and that full co-ordination of the Northwest Power Pool is possible only if the United States constructs and operates the project. He adds that immediate construction of the project would produce an excess of power in the Pacific Northwest which would cause large losses to BPA and severe harm to the economy of the region.

Cost savings to consumers at the expense of the taxpayers of the country at large may, of course, follow from federal development as a result of low cost financing and absence of tax obligations. If this possibility were the criterion, it would be our duty to recommend federal development in almost all cases. Obviously the Federal Power Act does not contemplate any such result.

While flood control (in the event of Canadian storage) and navigation are objectives of lesser significance relative to the proposed projects, provisions in a license with respect to these matters were recommended by the Chief of Engineers, United States Army, were included by the examiner in his recommended decision and will be included substantially here. The proposed project will provide substantial recreational opportunities. In accordance with recommendations made by the Assistant Secretary of Agriculture we shall provide, as did the examiner, that the licensee shall co-operate with local, state and federal agencies in the study and preparation of a recreation public use plan and that such a plan be filed for approval by the Commission. In addition, Article 17 places an affirmative obligation upon the licensee to construct and operate such recreational facilities as may be necessary and desirable.

As for the fish problem we shall provide, as did the examiner, that the licensee shall construct protective devices and modify the project works and operations as we may prescribe hereafter upon our own motion or upon the recommendation of the Secretary of the Interior or the state conservation agencies. We shall also provide that should the United States desire to construct fish handling facilities, the licensee shall permit the United States to use its property free of cost. We see nothing to lead us to believe that the Federal Government could do more. Specifically, there is nothing in this record to indicate that the purposes described above will not be served as adequately under the license conditions as would be the case under federal development.

The Secretary of the Interior puts considerable stress on the factor of co-ordination arguing that a federal project would be better co-ordinated with other federal projects downstream. We agree that the Secretary (or any single operator) normally would have a superior ability to co-ordinate the operations of HMS with the other affected projects on the river. But there is no evidence upon which we can determine the scope or the seriousness of this matter in the context of a river system which already has a number of different project operators and an existing co-ordination system, i.e., the Northwest Power Pool.[39] The parties comprising PNPC are among those having projects on the river. They are members of the Pool and their record of cooperation is good. PNPC has designed its project to be operated and co-ordinated with the Northwest Power Pool in order to benefit all members. To implement this co-ordination and operation we shall use a provision substantially as found in the Wells Project license[40] as requested by both PNPC and the staff, to provide that the licensee shall operate the project in complete co-ordination with the Northwest Power Pool. We have continuing jurisdiction and will insist that this be done. The record does not show that federal ownership is necessary to achieve this result or that proper co-ordination would not be achieved in the absence of federal development.

---

[37] See *e.g.*, Priest Rapids, Wanapum, Rock Island, Rocky Reach, Wells.

[38] The Brownlee, Oxbow and Hells Canyon developments of the Idaho Power Company.

In short, on the basis of the record here, plus such information of which we can take official notice, there is little if anything which would persuade us that federal development of HMS was inherently superior to licensing it to PNPC even assuming that the actual choice we had before us was between federal construction now and non-federal construction now. But these are not the true alternatives. The Department of Interior has frankly admitted it has no present intention of seeking authorization to commence construction or planning to construct an HMS project. Under these circumstances, federal construction of an HMS project is not forseeable even assuming Congress would be willing to authorize a federal project where PNPC is willing and eager to construct it under the terms, conditions and provisions of the Federal Power Act.

One of the principal reasons for the Department's opposition to non-federal construction appears to be its concern over a decline in BPA revenues which it feels might be accelerated if HMS power were made available directly or indirectly to some of its existing customers. As indicated above, however, we are convinced that PNPC specifically will have a need for the additional power which could be made available by early construction of HMS, and the Pacific and the West Coast areas, in general, will have a need for the power at the time HMS will be completed. In summary, the delay inherent in federal construction would foreclose power coming on the line at a time when it will be required. This disadvantage outweighs those benefits which Interior contends would result from federal construction (i.e., superior co-ordination and non-power benefits discussed above), assuming *arguendo*, that such benefits would be realized.

To conclude, Section 7(b) of the Act provides for federal construction where, in our judgment, there is some good reason showing that the development of any water resource for public purposes should be undertaken by the United States. HMS is principally a power project. Neither the record nor our general knowledge of the Columbia River System discloses any major benefits which would result from federal construction over that by PNPC. In the event PNPC is adjudged not to have priority, it might then be necessary to re-evaluate the Secretary's proposal. This would be particularly appropriate respecting WPPSS since its fortunes are so inextricably intertwined with those of the Interior Department.

---

[39] This Pool is a voluntary arrangement among utilities, both public and private in the Pacific Northwest area, including BPA for the co-ordination and operation of their affected systems.

[40] Public Utility District No. 1 of Douglas County, Washington, Project No. 2149, 28 FPC 128, 133.

RECENT DEVELOPMENTS

On January 22, 1964, it was announced that President Johnson and Prime Minister Pearson signed an agreement under the Canadian Treaty herein referred to. This agreement provides:

1. A schedule for completion of the Canadian storage projects as follows: Duncan Lake, April 1, 1968; Arrow Lakes, April 1, 1969; and Mica, April 1, 1973.

2. The U.S. will use its best efforts to arrange a sale to a single U.S. purchaser of the downstream power benefits for a 30 year period after completion of each project.

3. The total downstream benefits are initially 2,800,000 kws of dependable capacity and about 4 billion kw hours of energy annually.

4. These power benefits will have declined to about 660,000 kw annual dependable capacity and about 4 billion kw hours of energy annually at the end of 30 years.

5. The U.S.[41] and Canada will share equally in the power benefits described above.

6. It is contemplated that the purchaser of the Canadian entitlement will be a non-profit organization now being formed in the U.S. by certain public and private utilities in the Pacific Northwest.

Implementation of this agreement will significantly reduce the superiority of Nez Perce over HMS for flood control purposes as described here in p. 253; 258 and 263, *supra*. In addition, this agreement will substantially add to the power resources of the Pacific Northwest. Nevertheless, there is nothing which presently indicates that this new supply of power obviates the feasibility of licensing the HMS project to PNPC at this time. Accordingly, the Commission has decided that a license should be issued, as previously determined.

The Commission further finds:

(1) The Snake River is a navigable water of the United States at least as far upstream as the upper limits of the reservoir of either the High Mountain Sheep or the Nez Perce Projects (*In re Idaho Power Company*, Project No. 1971, Opinion No. 283, 14 FPC 55, 72). The respective project works will be located on lands of the United States, and the reservoir will inundate lands of the United States.

(2) Pacific Northwest Power Company is a private corporation organized under the laws of the State of Oregon as a wholly-owned subsidiary of four sponsoring companies, namely, The Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, and Washington Water Power Company.

(3) Washington Public Power Supply System is a municipal corporation organized and operating under and by virtue of the laws of the State of Washington, for the purpose of acquiring, constructing, and operating electrical generating and transmission facilities.

(4) Pacific Northwest Power Company, on March 31, 1958, filed an application under the Federal Power Act for the proposed High Mountain Sheep Project (No. 2243), also referred to as the Middle Snake River Project, to be located at river mile 189.2 on the Snake River just above the confluence of that river and the Salmon River.

(5) Washington Public Power Supply System, on March 15, 1960, filed an application under the Federal Power Act for the proposed Nez Perce Project

---

[41] Under the treaty BPA will have about 70 percent of the U.S. share and the owners of the non-federal base system projects will have the balance.

(No. 2273) to be located at river mile 186.2 on the Snake River just below the confluence of that river and the Salmon River.

(6) Public notice of these proceedings has been given as required by the Act.

(7) Either the High Mountain Sheep or the Nez Perce Project, whichever may be constructed, would be located in or along a navigable water of the United States and would otherwise affect the interests of interstate or foreign commerce.

(8) The Department of the Interior has requested that the Commission recommend to Congress that the High Mountain Sheep Dam should be built by the United States.

(9) Subject to the terms and conditions hereafter specified, the HMS project is best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(10) PNPC has a statutory priority for its application for the High Mountain Sheep Project (No. 2243) by virtue of a preliminary permit issued by the Commission on April 8, 1955 and WPPSS is not entitled to a preference under Section 7(a) of the Federal Power Act.

(11) Subject to the terms and conditions set forth below, the plans of PNPC to develop the HMS site are best adapted to conserve and utilize in the public interest the water resources of the region, and PNPC is able to carry out such plans.

(12) The development of the HMS project should not be undertaken by the United States itself.

(13) The installed horsepower capacity for the HMS project here authorized is 1,166,700 horsepower for the purpose of computing the administrative annual charge.

(14) The amount of the annual charge to be paid under the license for the HMS Project for the purpose of reimbursing the United States for the cost of the administration of Part I of the Act is reasonable as hereinafter specified.

(15) It is desirable to reserve for future determination the amount of annual charges to be paid under a license for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands.

The Commission orders:

(A) A license is hereby issued to PNPC (hereinafter referred to as Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of the first day of the month in which acknowledgment of acceptance thereof is filed with the Commission by PNPC for the construction, operation and maintenance of Project No. 2243, to be known as the High Mountain Sheep project of the Snake River and its tributaries, Idaho and Oregon, affecting navigable waters of the United States and the interest of interstate or foreign commerce and lands of the United States within and outside of Wallowa, Nez Perce and Payette National Forests, subjject to the terms and conditions of the Act which are incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(i) The proposed project consists of: All lands constituting the project area and enclosed by the project boundary or the limits or which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; the general location of such project area being shown and described by certain exhibits which formed part of the application for license, or amendment thereof and which are designated and described as follows:

Exhibit	FPC No.	Showing
J	2243-1	General map of project area.
K (as amended)	2243-2 through 4, 6 through 20 and 43 (amended and revised).	Project area (tentative).

(ii) All project works consisting of a concrete arch dam approximately 670 feet high, creating a reservoir extending about 58 miles upstream to Hells Canyon tailwater (Project No. 1971) on the Snake River and about 10 miles upstream on the Imnaha River with normal water surface area of about 17,300 acres and gross storage capacity of 3,600,000 acre-feet at normal water surface elevation 1510, of which 2,250,000 acre-feet would be usable with a draw down of 173 feet; a chute-type radial-gate controlled spillway located at the right abutment; low level intakes; two outdoor type powerhouses, one on each side of the river immediately downstream of the dam, having an initial installation of five units with each turbine rated 285,000 horsepower at 550-foot head and each generator rated 175,000 kw (184,000 kva at 0.95 power factor); three on the (left bank) Oregon side and two units on the (right bank) Idaho side, with provisions in the plans for the addition of five similar units, two on the left bank and three on the right bank; and appurtenant electrical and mechanical facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by other exhibits which also formed a part of the application for license as amended and which are designed and described as follows:

Exhibit	FPC No.	Showing
L Sheet 30, amended and revised	2243-44	General plan.
L Sheet 31, amended and revised	2243-45	Profile and sections.
L Sheet 32, amended	2243-37	Powerhouse plans.
L Sheet 33, amended and revised	2243-46	Powerhouse cross-sections.
L Sheet 34, amended and revised	2243-47	Intake and spillway sections.
L Sheet 35, amended and revised	2243-48	Arch dam.

M: "General Description and Specifications of Equipment" regarding High Mountain Sheep project.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful, in connection with the project or any part thereof, whether located in or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(B) This license is also subject to the terms and conditions set forth in revised Form L–6, November 1, 1963, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" which terms and conditions designated as Articles 1 through 37, are attached hereto and made a part hereof, except for Article 7, 8, 9 and 15 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 38. The Licensee shall commence construction of the High Mountain Sheep project within two years of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction and shall complete the project and place it in operation within seven years from the effective date of this license.

Article 39. The Licensee shall engage at least three qualified independent consultants for the purpose of reviewing and reporting on the exploration program of the dam site, the excavation plan for the dam foundation treatment and the design of the arch dam and other major hydraulic structures. The report of the consulting engineers shall be submitted for Commission consideration not later than the date upon which design drawings (Exhibit L) for the dam structure are filed pursuant to Articles 40, 41, and 42.

Article 40. The final design of the arch dam shall be verified by an acceptable method of analysis (such as the trial load method) and reviewed by the use of structural models.

Article 41. The final design of the spillway shall be based on hydraulic model tests.

Article 42. The Licensee shall submit, in accordance with the Commission's rules and regulations, revised Exhibit L drawings for the project structures and Licensee shall not begin construction of the project works until the Commission approves the exhibit.

Article 43. The Commission reserves the right to determine at a later date what transmission facilities shall be included in this license as part of the project works.

Article 44. The Licensee shall consult with the Forest Service in determination of the centerline location of transmission lines on or affecting national forest lands and shall secure concurrence of the Forest Service to the specific location of those lines occupying lands administered by the Forest Service.

Article 45. The Licensee shall not make any claim under the authority of this license against the United States or any water users' organization claiming through the United States for any damage resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands and other beneficial consumptive uses.

Article 46. The Licensee shall make available to the Idaho State College. upon further order of the Commission at the request of the Idaho State College, reasonable sums of money not to exceed $7,500 for the purpose of undertaking an archeological survey and salvage excavations prior to construction and flooding.

Article 47. The Licensee shall, in order to secure maximum recreational benefits, make every reasonable effort to maintain the water surface of the High Mountain Sheep reservoir at the highest level practicable from June 15 to September 15, of each year, as is consistent with the primary purposes of the reservoir to provide pondage for Licensee's daily, weekly, monthly or seasonal power requirements; requirements of downstream releases; and flood control.

Article 48. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 49. The road or roads constructed, owned or controlled by the Licensee for the project developments, shall be made available without charge to the Forest Service, its timber operators, permittees, and other users, for the orderly administration, development, and protection of the national forests involved, and for operations necessary and incident to project development, provided that such use may be limited by reasonable safety and traffic control requirements. In appropriate circumstances and as agreed to by the Forest Service, the Licensee may require payment of the user to cover a fair share of the road maintenance costs.

Article 50. The Licensee shall, prior to impounding water, clear all lands in the bottom and margins of the reservoir between a plane five feet below ultimate low water elevation (El. 1337) of the reservoir and the plane at normal pool elevation of the reservoir, and shall cut all brush and trees below the lower plane so that none protrude above elevation 1332. The Licensee shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margin of the reservoir which may die due to operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the statisfaction of the authorized representative of the Commission.

Article 51. In the interests of flood control downstream from the project, the Licensee shall operate the project in accordance with an agreement to be entered into by the Licensee and the United States Corps of Engineers for the purpose of determining detailed operating procedures for use during flood periods, in accordance with the following principles:

a. The total live storage space of about 2,250,000 acre-feet between elevation 1337 and elevation 1510 mean sea level will be made available for flood control use if and as required.

b. The reservoir level will be no higher than elevation 1475 by 1 March each year to provide about 600,000 acre-feet of storage space for flood control use at that time each year. Additional storage space will be made available between 1 March and the beginning of the flood period to insure the availability on 1 May of the total capacity needed for flood control as estimated by the Corps of Engineers.

c. The space made available as set forth above will be retained until capture of flood flows is requested by the Corps of Engineers, subject to involuntary storage as may be required due to excess of inflows over outlet capacity, or until refilling is authorized by the Corps of Engineers. In the event of involuntary storage during flood control operations, full storage capability will be regained as soon as possible.

d. During the flood storage period controlled outflows will be as warranted by the flood control requirements as determined by the Corps of Engineers with due regard to the requirements for the optimum multiple purpose operations of the project. When the Columbia River discharge at the Dalles is 600,000 cfs or higher the daily outflow may be reduced to a minimum of 10,000 acre-feet; except that during years of severe flood conditions the daily outflow may be reduced to a minimum of 4,000 acre-feet; below 600,000 cfs discharge at the Dalles, the outflow will be determined with due consideration given to all purposes of the project.

e. A discharge capacity of 65,000 cfs at minimum pool elevation 1382 is to be provided by the Licensee. This discharge capacity is based on the gated outlet capacity plus one half of the ultimate turbine hydraulic capacity.

The agreement will be subject to review from time to time as requested by the Licensee or the Corps of Engineers.

Article 52. In the interest of navigation the project shall be operated in accordance with the following requirements:

a. Minimum flow of not less than 13,000 cfs will be maintained at Lime Point, Idaho, during annual storage refill season when determined to be required by the Corps of Engineers in the interest of navigation. Flows of up to 16,500 cfs may be required at other times when determined by the Corps of Engineers to be necessary in the interest of navigation.

b. River fluctuations in the reach between Lewiston and Lime Point resulting from project operation shall not exceed a rate of one and a half feet per hour on the rising stage, and one foot per hour on the falling stage unless otherwise approved by the Corps of Engineers.

Article 53. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Oregon State Game Commission, the Fish Commission of Oregon, or the Idaho Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 54. The Licensee shall prior to beginning of operation of the Low Hells Canyon development of Project No. 1971, enter into an agreement with the Idaho Power Company, Licensee for Project No. 1971, to compensate that Company for backwater effect on the Low Hells Canyon development of Project No. 1971 constructed in accordance with plans approved by the Commission, resulting from the operation of the High Mountain Sheep project with maximum normal pool at elevation 1510 feet at the High Mountain Sheep dam. In the event no satisfactory agreement is concluded by such time, then upon the application of the Idaho Power Company, the Commission shall fix and determine the compensation to be made by Licensee for such encroachment after notice and opportunity for hearing.

Article 55. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of its upstream and downstream fish passage and handling facilities with those for Project No. 1971 of Idaho Power Company, as the Commission may direct upon recommendation of the Secretary of the Interior, the Oregon State Game Commission, the Fish Commission of Oregon, or the Idaho Department of Fish and Game.

Article 56. The Licensee shall pay to the United States the following annual charges:

a. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purposes is 1,166,700 horsepower;

b. For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission-line purposes an amount to be fixed hereafter by the Commission; and

c. For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission-line purposes an amount to be fixed hereafter by the Commission.

(C) The exhibits described in paragraph (A) above are approved as part of the license for the project.

(D) The Licensee shall within one year from the effective date of the license, file with the Commission a plan of financing for Commission approval, and the

Commission reserves the right to require such additional information as it may deem necessary before taking final action on the plan of financing. The Licensee shall not commence construction prior to Commission approval of a plan for financing the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(F) The motion filed by WPPSS on September 12, 1961, for leave to conform its pleadings to the evidence is hereby granted.

(G) The application of WPPSS for license for Project No. 2273 is hereby denied

(H) The request of the Secretary of the Interior that Federal development be recommended is hereby denied.

(I) The examiner's opinion and findings are hereby adopted as part hereof to the extent not inconsistent herewith.

(J) Exceptions not granted are hereby denied.

Chairman Swidler *dissenting*.

Commissioner Black *dissenting*.

Form L-6 (Revised November 1, 1963)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS AND LANDS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as charged in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the

Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of water affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 8. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 9. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 10. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 11. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 12. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 13. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 14. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 15. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 19. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 20. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 21. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statement shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 22. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 23. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by the other lawful authority for avoiding or eliminating inductive interference.

Article 24. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, are used by such agency of the United States in administering the lands under its jurisdiction.

Article 25. The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 27. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communications not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road after construction of the project works is completed.

Article 32. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 33. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

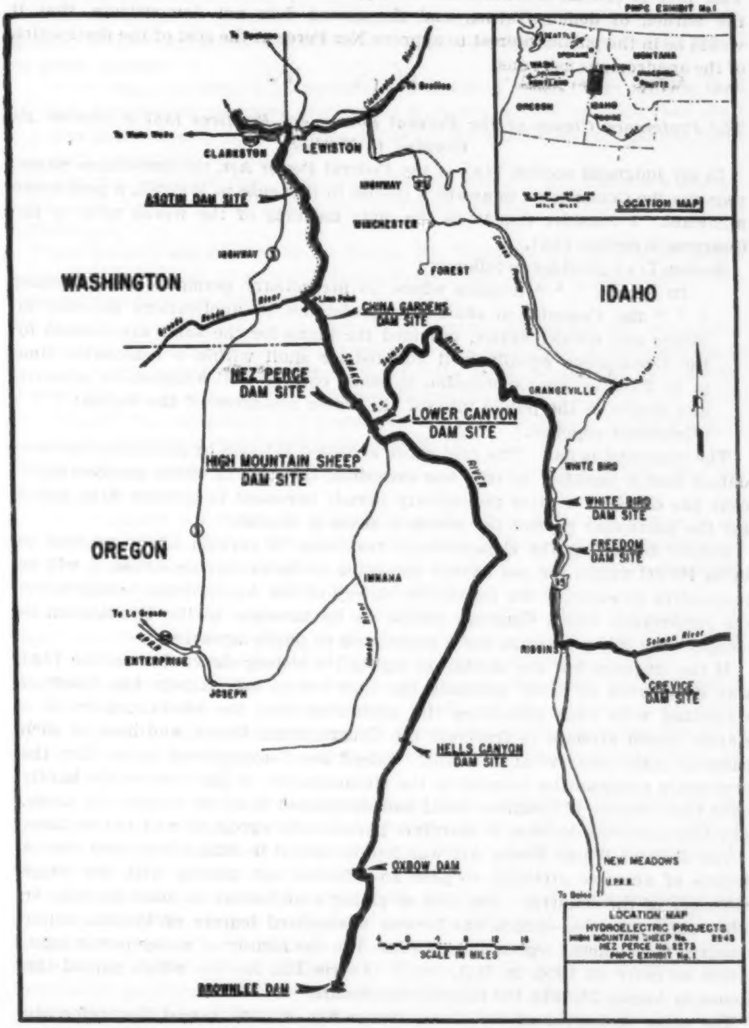
Article 34. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 35. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 36. The right of the Licensee and of its transferees and successors to use or occupy navigable waters or lands of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 37. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPENDIX A


PNPC EXHIBIT No. 1
SEATTLE
SPOKANE
MONTANA
WASH.
PORTLAND
OREGON
IDAHO
LOCATION MAP
To Spokane
To Grafton
To Walla Walla
CLARKSTON
LEWISTON
HIGHWAY
ASOTIN DAM SITE
WINCHESTER
HIGHWAY
FOREST
WASHINGTON
IDAHO
CHINA GARDENS DAM SITE
NEZ PERCE DAM SITE
GRANGEVILLE
LOWER CANYON DAM SITE
HIGH MOUNTAIN SHEEP DAM SITE
SNAKE RIVER
WHITE BIRD
WHITE BIRD DAM SITE
FREEDOM DAM SITE
OREGON
IMNAHA
To La Grande
ENTERPRISE
JOSEPH
RIGGINS
Salmon River
CREVICE DAM SITE
HELLS CANYON DAM SITE
OXBOW DAM
NEW MEADOWS
U.P.R.R.
To Boise
4 0 4 8 12 16
SCALE IN MILES
LOCATION MAP
HYDROELECTRIC PROJECTS
HIGH MOUNTAIN SHEEP No. 2243
NEZ PERCE No. 2273
PNPC EXHIBIT No. 1
BROWNLEE DAM

SWIDLER, Chairman, *dissenting:*

I dissent from the Commission's action in granting a license for the High Mountain Sheep Project to the Pacific Northwest Power Company, because the Commission has rejected the command of Section 7(a) of the Act to grant WPPSS a preference. This dissent is limited to that single question; I accept the result reached by the majority on the question whether the High Mountain Sheep Project or the competing Nez Perce Development is "best adapted to a comprehensive plan" of development for the Upper Snake River. I do not dissent on this phase of the case despite the superiority of Nez Perce as a hydroelectric development because on this record it is improbable that the anadromous fish runs on the Salmon River could be preserved if Nez Perce were constructed.

This fact is crucial inasmuch as the applicants have not attempted to carry the burden of demonstrating, and the record does not demonstrate, that it would be in the public interest to approve Nez Perce at the cost of the destruction of the anadromous fish runs.

I

The Preference Clause of the Federal Power Act Requires that a License Be Granted to WPPSS

In my judgment section 7(a) of the Federal Power Act, the preference clause, requires the Commission to award a license in this case to WPPSS, a preference applicant. I consider this to be the plain meaning of the words used by the Congress in section 7(a).

Section 7(a) provides as follows:

> In issuing * * * licenses where no preliminary permit has been issued * * * the Commission *shall* give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; * * * [Emphasis supplied.]

The command is flat. The preference accorded WPPSS by the statute is mandatory and is qualified by only one exception, the case in which another applicant has obtained a prior preliminary permit pursuant to sections 4(f) and 5 for the particular project for which it seeks a license.

Before discussing the Commission's reasoning in support of its attempt to bring PNPC within the one narrow exception to the preference clause, it will be instructive to examine the legislative history of the Act in order to appreciate the importance which Congress placed on its mandate to the Commission to comply with the provisions for a preference to public agencies.

If the language left any doubt, the legislative history shows that section 7(a) was designated to cover precisely the case before us. Rarely has Congress visualized with such prescience the possibility that the administrators of a statute would attempt to frustrate the Congressional intent, and been at such pains to make clear what it meant. Indeed the Congressional intent that the preference applicant be licensed in the circumstances of this case would hardly have been clearer if Congress itself had designated it as the licensee by name. The Commission's decision is therefore particularly egregious and unfortunate.

The Federal Water Power Act was finally passed in 1920, after more than a decade of abortive attempts to pass an effective Act dealing with the water resources of the country.[1] The idea of giving a preference to municipalities or other state agencies—which has become a standard feature of Federal water resource development legislation—appeared in the history of water power legislation as early as 1914, in H.R. 16673 (Ferris Bill No. 1), which passed the House on August 24, 1914, but failed in the Senate.

The early prototypes of the Water Power Act of 1920 framed the preference provision in discretionary terms, empowering but not requiring the Commission to give preference to public bodies.[2] As finally enacted the discretionary language was eliminated and instead the law states that the Commission "shall" give preference.

During the hearings before the House Committee on Water Power on the

---

[1] The history of water power legislation through June 24, 1919, is set forth in House Report No. 61, accompanying H.R. 3184, June 24, 1919, Committee on Water Power, 66th Congress, 1st Session, p. 2, *et seq.*

[2] *e.g.*, H.R. 16673, 63rd Cong., 2d Session (for text see H. Rept. 842, June 16, 1914, 63rd Cong., 2d Session) ; S. 1419, 65th Cong.. 2d Sess. (See Exhibits A & B in H. Rept. No. 715, 65th Cong., 2d Sess.)

Administration-backed water power bills, the idea of a mandatory preference was first broached by Congressman (later Senator and Vice President) Alben W. Barkley who offered an amendment to section 7 to require that preference "shall" be given, saying:

> * * * what we want is to get section 7 amended so as not to provide that this Commission may give preferences to municipalities, but that they shall give preference to municipalities whenever the conditions are equal or similar.[3] [Emphasis supplied.]

The bill that emerged from Committee did not contain Mr. Barkley's amendment, still leaving the granting of preference within the discretion of the Commission.

When the bill was debated in the House, Mr. Doremus offered an amendment to the first paragraph of section 7 (underlined words are additions; words with lines through them are deletions):

> That in issuing preliminary permits or licenses hereunder the commission ~~may in its discretion~~ shall give preference to applications therefor by States and municipalities provided the plans for the same are deemed by the commission ~~to be best~~ as well adapted to conserve and utilize in the public interest the navigation and water resources of the region as the plans of other applicants; * * * (56 Cong. Rec. 9775).

Mr. Doremus made it clear, in response to a question by Mr. Welsh, that his amendment:

> * * * makes it *mandatory* upon the commission to grant the license to the State or municipality, if the plans submitted by it are, in the judgment of the commission, as good as those submitted by the private applicant. [Emphasis supplied.] (56 Cong. Rec. 9804.)

The amendment was then modified further, by eliminating the words, "as well," and the last words, "as the plans of other applicants." (56 Cong. Rec. 9805.) It was then passed by the House. As passed, it read as follows:

> That in issuing preliminary permits or licenses hereunder the commission shall give preference to applications therefor by States and municipalities provided the plans for the same are deemed by the commission adapted to conserve and utilize in the public interest the navigation and water resources of the region

Thus, the amendment originally proposed by Congressman Barkley in the House Hearings was accepted and, as we know, eventually became a part of the Act. In the Senate, the change of the words "may in its discretion" to "shall" was made without discussion (59 Cong. Rec. 1532).

Under the terms of section 7 as originally proposed a preference applicant was entitled to a preference if its plans as initially submitted "are deemed by the Commission equally well adapted * * * to conserve and utilize in the public interest the water resources of the region." But the Congress went even further to make the preference for municipalities meaningful and effective.

It was during the concluding debates of the Congress on the Federal Water Power Act that the words "or shall within a reasonable time to be fixed by the Commission be made equally well adapted" were added to section 7. The amendment was sponsored by Mr. Sinnott in the House of Representatives and his reasons for introducing it are directly in point:

> Mr. Chairman, * * * I do not want to see a municipality foreclosed and concluded in case its plan is not as good as some other plan. I think if the municipality or the State is willing to amend or modify the interest filed by it and make that plan as good as the other plan filed, that it should have

---

[3] Hearings before the House Committee on Water Power, House of Representatives, Parts 1–4, 65th Cong., 2d Sess., 1918, p. 814.

> that opportunity, and my amendment seeks to give the municipality that opportunity to modify and amend its plan and make it as good and as efficient as any other plan filed. (58 Cong. Rec. 2037–2038.)

Mr. Sinnott's amendment passed, emerged as part of section 7 of the Federal Water Power Act, and remains in the present Act.

The Commission, while not basing its holding on this point, apparently was influenced by its conclusion that WPPSS does not have as great a present need for the power from HMS as does PNPC and that WPPSS could not market all of the power to public agencies until "some indefinite time after 1970." Even if we assume that the "equally well adapted" requirement applies to WPPSS's marketing plans, in itself a doubtful interpretation, the legislative history makes plain that WPPSS need not show an immediate market to preference customers for all of the HMS power. In fact, such a requirement was expressly rejected by the Congress.

After Mr. Sinnott's amendment to section 7 passed, an amendment was offered to limit the preference for municipalities and States to "the extent such power is to be used by such States and municipalities for State or municipal purposes." (58 Cong. Rec. 2039.) This amendment was defeated by the House after Mr. Sims, with a remarkable understanding of the future growth in the demand for electricity, stated in opposition:

> The gentleman's amendment would prevent a city or town from applying for a license and developing water power unless the city at the time it applied for it had need, for purely municipal purposes, for the whole amount of power to be developed. All cities are growing. Suppose here is a city that has a population of 100,000. There is a water-power site within reach of the city of 100,000 population, and it will produce power fully developed for a city of 200,000. Now the gentleman's amendment would prevent that city from receiving a permit or making application—would prevent it from having an opportunity to develop the site—unless it can use the whole output for immediate municipal purposes.
>
> * * * * * *
>
> These things were well studied in the committee, as the gentleman knows, and our intention was in every case to give the State or municipality preference for a permit and license and without charge to the extent of the power used for State or municipal purposes. To deny a license unless the city or municipality or State shall couple with it that it will develop only to the extent it may be needed for municipal purposes is vicious and wrong in principle. (58 Cong. Rec. 2039–40.)

The example used by Congressman Sims in speaking against the amendment to limit the preference is analogous to the case at hand. WPPSS has proven with reasonable certitude that it will develop a market among its members and other supporting public and cooperative agencies during the 1970's for the power that would be produced by the Nez Perce project.[4] *A fortiori* this market would absorb the output of the smaller HMS project. It has also been shown that there is likely to be a regional market for this output, both prior to and during the 1970's, no matter who is operating the project, and WPPSS is essentially a regional power supplier. The situation is essentially that which Congressman

---

[4] The options and commitments held by WPPSS represent a total estimated average load in 1971 according to WPPSS of 1992 megawatts or, according to PNPC's claim, of 1324 megawatts, and in ten year's time these loads can be expected to approximately double. Estimated dependable capacity for Nez Perce is approximately 1850 mw; for PNPC's—HMS project, 930 mw; and for the WPPSS—HMS project, 1218 mw.

The growth in the loads of the public agencies, on either basis can thus absorb the output of the HMS project in the next decade.

Sims posited of a preference agency which can ultimately, if not immediately be expected to consume the entire output of a site. The case for WPPSS then falls squarely within the boundaries of a clearly articulated Congressional intent.

A portion of Mr. Sinnott's statement in support of his proposed amendment to section 7 bears repeating at this point:

> * * * I do not want to see a municipality foreclosed and concluded in case its plan is not as good as some other plan. I think if the municipality or the State is willing to amend or modify the plan first filed by it and make that plan as good as the other plan filed, that it should have that opportunity, and my amendment seeks to give the municipality that opportunity * * *

Mr. Sinnott's amendment was adopted.

The legislative history thus demonstrates that Congress intended no loophole in providing that a municipality which has a preference over a competing non-preference applicant must be given a preference and also afforded reasonable time to make its plans equally well adapted to conserve and utilize the water resources in the public interest. Even the opponents of section 7 were aware of the implications of the section. As Senator Phipps stated in the Senate debate (59 Cong. Rec. 1173):

> * * * under the provisions of the bill [a] municipality can look over the ground and file on it, either the same or, as they may think, a better plan and secure the permit, to the disadvantage of the one who first discovered the possibilities of the stream.

This seemed grossly unfair to the opponents of section 7, but they lost. What they opposed came to pass and became the law. Section 7 was passed precisely to cover the situation in the case before us, and the wisdom and fairness of that Act are not here for decision. The expressed intention of the proponents of section 7, the stated fears of the opposition, as well as the clear language of the section itself, compels the conclusion that WPPSS is entitled to a license in this proceeding. To hold otherwise is to substitute our balancing of the equities for the command of Congress.

II

PNPC is not Entitled to a Priority Under its Preliminary Permit

The starting point in determining the application of the preference clause in this case is to examine its meaning in relation to the over-all scheme of the statutory provisions relating to preliminary permits. PNPC cannot overcome the preference to WPPSS unless it has a priority by virtue of a presently effective preliminary permit for the HMS project.

Section 4(f) of the Federal Power Act authorizes the Commission to issue a preliminary permit to applicants for the purpose of securing the data necessary to support a license application for a hydroelectric project. Section 4(f) expressly requires that the Commission:

> * * * before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application * * * in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

Section 5 provides that permits shall be for the sole purpose of maintaining priority of application for a license during the period required for making preliminary examinations and surveys for a project, but not exceeding a total of three years.

The statute standing alone clearly gives the Commission discretion in granting a permit to define the scope of the grant by limiting it to a specified project. Indeed, it would seem that a definite description of the scope of the project and

the limits of its boundaries was expressly contemplated by the above-quoted requirements of section 4(f) so that agencies entitled to a preference would not lose their rights without clear notice and opportunity for a hearing.

The preliminary permit is the means designated by Congress for initiating a hydroelectric license proceeding and municipalities are entitled to a preference for permits as well as for licenses. It cannot be assumed that Congress intended that the permits, which are the sole means of extinguishing their preference rights, were to be awarded in such vague and uncertain terms that preference agencies would have no notice that their preference interest in particular locations was involved in a permit application. At any rate, the permit granted to PNPC was not vague and uncertain, but was definite and limited. The statute impels the conclusion that a permit should not be broadened beyond its terms for purposes of defeating the statutory preference to a license.

The preliminary permit on which PNPC relies had its genesis on November 9, 1954, when PNPC filed an application for a preliminary permit for Mountain Sheep and Pleasant Valley Projects on the Snake River. The cover of this application reads in pertinent part as follows:

Pleasant Valley Hydroelectric Project
for
Mountain Sheep Hydroelectric Project
. . .
and
Pleasant Valley Hydroelectric Project

A preliminary permit was granted to PNPC by the Commission "for the sole purpose of maintaining priority of application for a license for Project No. 2173 (Mountain Sheep-Pleasant Valley)." Upon the basis of this application and permit, PNPC now asserts a claim of priority in licensing under section 5 of the Federal Power Act[5] for an altogether different project sited at a different location, High Mountain Sheep.

The question whether PNPC can claim priority over WPPSS on the strength of this preliminary permit is a three-fold one: whether HMS was within the scope of its preliminary permit issued for the Mountain Sheep-Pleasant Valley project; whether the preliminary permit remained effective after the denial of its license application for the MS–PV project and whether PNPC's license application for High Mountain Sheep was perfected within the three years statutory limit of a preliminary permit. PNPC cannot prevail unless all three questions are answered affirmatively. In my judgment all three must be answered negatively.

As recounted by the majority, PNPC applied and was issued a preliminary permit to expire April 1, 1958, for the MS and PV dams. The public notice of the preliminary permit for the project was limited to a description of the proposed MS and PV dams. There was no suggestion that the permit was to cover any other project. The Commission, on April 8, 1955, granted PNPC just exactly what it requested—a preliminary permit—"for a license for Project No. 2173 (Mountain Sheep-Peasant Valley)."

After receiving this preliminary permit PNPC filed an application for a license covering these two dams, and after a hearing this license application was denied by the Commission on January 20, 1958. PNPC limited its studies under the permit to the two-dam development for which it had sought a license because the two-dam development avoided interference with salmon runs up the Imnaha River. PNPC specifically instructed its engineers to confine their investigations to sites above the mouth of the Imnaha (PNPC Brief, pp. 327–28). The reports made by PNPC to the Commission under its preliminary permit also reveal that

---

[5] The text of section 5 of the Federal Power Act is set forth at p. 264.

no studies were made of the HMS site during the three-year term of the permit.

Let us assume for discussion purposes with the majority that PNPC's preliminary permit remains in effect eight and one-half years after it was issued. What is its scope? Did it in fact cover the HMS project?

I believe that plain provisions of the permit and the facts of this case make clear that the HMS project, for which PNPC is today awarded a license, was not within the scope of the preliminary permit for Mountain Sheep-Pleasant Valley, and that PNPC cannot legitimately claim a priority right to a license for the HMS project.

It is dispositive of the whole case that PNPC never sought—indeed, that it deliberately avoided seeking—a preliminary permit for HMS. The application for preliminary permit for Mountain Sheep-Pleasant Valley Project No. 2173 specifically described the two dams in the project, giving their location and their capacity, and the permit was issued "for the sole purpose of maintaining priority of application for Project No. 2173 (as described) * * *." The preliminary permit's application to these two specific dams was made plain from the outset, as we have already noted, by the very cover of the application, as well as by every detail of the text.

HMS is a project for a single dam of different size and generating capacity and located below the mouth of the Imnaha River, in contrast to the Mountain Sheep and Pleasant Valley projects. The order issuing the preliminary permit, PNPC's studies and reports under the permit, the hearing on the initial application for license, the denial of license for Mountain Sheep-Pleasant Valley—all of these related only to the Mountain Sheep-Pleasant Valley development, to the exclusion of HMS.

It would seem to be beyond question that the priority afforded by a preliminary permit is limited to the site specified therein. As the Commission said in *Chatanika Power Co., Inc.*, Project No. 2294, 26 FPC 751 at 752.[6]

> The permit * * * represents a valuable privilege, for it prevents others from securing consideration of an application for the *particular site in question* during the term of the permit. [Emphasis supplied.]

The *Chatanika Power Co.* case is but another application of the established rule of law that a governmental grant of a permit is to be strictly construed. As the Supreme Court stated in *Louisville Bridge Co.* v. *U.S.*, 242 U.S. 409 at p. 417 (1917):

> * * * when private rights of an indefeasible nature are sought to be derived from regulatory provisions established in the exercise of this power, the case is peculiarly one for the application of the universal rule that grants of special franchises and privileges are to be strictly construed in favor of the public right, and nothing is to be taken as granted concerning which any reasonable doubt may be raised.

In this case PNPC applied for and was granted a permit for the two specific sites and the terms of the permit were completely clear that it was limited to those sites. I do not mean to suggest that the Commission could not grant a permit with a broader scope but it is hard to imagine how a permit could state its limitations any more clearly than was done in the instant case.

I therefore conclude that the Commission never intended that the preliminary permit cover the HMS project which was completely different from Mountain Sheep and Pleasant Valley; and that in fact the preliminary permit by its terms did not include the HMS project.

This is not to say that an applicant must accurately guess in advance of exploratory engineering studies under a preliminary permit the exact results of these studies. No such impossible demands need be read into the Act. Rather, it is the applicant's responsibility to seek an amendment reflecting any significant changes in the scope of the permit which become warranted by the studies. Amendments to preliminary permits are authorized by the Commission's regulations. (Regulations under the Federal Power Act, Section 4.84). Obviously the statutory notice requirement for the protection of preference customers would be meaningless if the scope of a permit were not limited by its words and could be enlarged by unilateral action of the permittee without knowledge of other interested parties whose rights may be affected. PNPC has shown its awareness of the need for such amendments in other license proceedings (13 FPC 1656) and in the present proceeding, as reflected in a motion it made and later withdrew for a declaratory order seeking a ruling on the scope of the preliminary permit upon which it now relies.[7]

---

[6] See also *Linoma Power Co.*, 8 FPC 999 at p. 1000, cited by the majority where the Commission refers to "a particular project covered by the permit."

To be sure, it is desirable that an applicant be allowed flexibility and be encouraged to study all reasonable alternatives, including those not known at the time of application for a permit. The way to obtain this flexibility, however, is by allowance of needed amendments, not by construing permits which purport to cover specific projects as being in effect a charter for a broad stretch of the river, thereby concealing the scope of the permit from the public and interested preference customers.

The rule enunciated by the majority means that a permit for a particular project affords the applicant a priority over any other projects "affecting essentially the same reach of the river." Applied to this case it means that the preliminary permit to PNPC for two low dams granted it a priority over any other applicant for High Mountain Sheep or Nez Perce, both of which projects affect the same reach of the Snake River, even though both High Mountain Sheep and Nez Perce are downstream from the two low dams, flood out portions of other rivers (the Imnaha and the Salmon) and by any fair standard are different projects from the MS–PV project.

I find the majority's reasoning both mystifying and unreasonable.

The majority position is mystifying because it interprets a permit application as meaning something other than what it says. Were some compelling reason of Congressional purpose advanced in support of this transmutation, I might be persuaded, but no reason is given. The proper course for an applicant in PNPC's circumstances, as already suggested, is either to file a general description of the proposed project in its permit application which would put everyone on notice of its broad scope or to file a specific description and later seek to amend it to reflect any significant changes.

The majority's position is unreasonable because of the inadequate notice—indeed, the wholly false and misleading notice—provided by a preliminary permit under this interpretation, and the resulting failure to give potential competing applicants and other interested parties the statutory notice to which they are entitled. This is no mere academic point, as illustrated by the present proceeding. We should bear in mind that Nez Perce was a project which had already been separately identified as a desirable project by the Corps of Engineers and endorsed by many of the preference agencies in this proceeding at the time PNPC applied for the preliminary permit. It is beyond belief that the preference agencies would at that time willingly have acquiesced in the award of a preliminary permit for the Nez Perce Project or for the HMS Project for which they would have been entitled to a preference. Under the circumstances it must be assumed that the preference agencies would have objected to an award of a preliminary permit under Project No. 2173 if they had been aware that it covered a high dam—that is, if they had been fairly placed on notice that Nez Perce or

---

[7] See page 299, *infra.*

HMS was within the contemplation of the application as originally filed. Thus, to require specificity in the application, and thereupon to construe it as covering projects not specified, would result in depriving potential preference applicants of an opportunity to preserve the preference rights guaranteed by the statute. I cannot acquiesce in an interpretation of the statute so lacking in fairness. If the majority's view prevails, permittees may tieup the development of great stretches of our nation's waterways for a decade or more by a single permit, to the exclusion of applicants accorded an express preference by Congress.

There is a second and independent reason why PNPC may not claim a priority for the HMS project: its preliminary permit and the priority incidental thereto were by operation of law terminated upon the denial of the first license application for the MS–PV project for which the permit was granted.

A preliminary permit under the Federal Power Act is but a step in the licensing process, incidental and preliminary to the issuance or denial of a license. The permit is issued "for the sole purpose of maintaining priority of application for a license." (Sec. 5.) In legal terms, it merges in the license to which it is incidental. Once this sole purpose has been served by final Commission action on the license the preliminary permit ceases to exist.

The question of the maximum duration of the priority of a permit holder was raised early in the history of the Commission. Must the priority expire with the termination of the permit itself if the license application for the same project is still pending? This is the literal interpretation of section 5, which provides that the permit "shall be for the sole purpose of maintaining priority of application for a license * * * for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary * * *." However, since the total time for prosecuting an application for license may exceed three years from the date of the permit, this interpretation might afford the permit applicant little practical protection in some cases. Such considerations apparently moved the Chief Counsel for the Commission to advise the Commission in an opinion, formally approved by the Commission on April 30, 1923[8] that the priority attaches to the license application for which the permit was issued (if timely filed) and continues until the license is granted, denied or withdrawn. Under the opinion PNPC's permit expired six years ago. The majority chooses to stigmatize this as an "obscure opinion." The short answer is that the Commission adopted the opinion as its own and took the unusual step of publishing the opinion in its Third Annual Report to Congress. It was evidently regarded as a major exposition and clarification of the purposes of the statute.

The Chief Counsel's Opinion reads in part as follows:

> * * * The priority given by a preliminary permit attaches before use and before a definite application for use can be made, and subsists until application for license in proper form is filed in conformity with its requirements, or until the time which it grants for that purpose expires. When application for license, duly perfected, as required by the commission, is filed, the preliminary permit has served its purpose. The priority attaches to the application for a license and attends it until the application is withdrawn or is granted or rejected by the commission. It has no time limit, and can be lost only by withdrawal of the application having been filed by the permittee, when entitled to priority, such priority attached to the application and will continue for such time as may be used by the commission in granting or denying the application.

---

[8] Reported to Congress in the Commission's Third Annual Report to Congress (pp. 222–23).

The twofold aspect of the Chief Counsel's opinion should be emphasized; first, that once the license application is filed pursuant to a permit, the permit merges with the license application; and second, that the priority may live beyond the term of the permit, but that its continued existence hinges upon the disposition of the license application. That is, once the license is denied or granted, or the application for license withdrawn, the priority has served its purpose and is terminated.

The Commission's order granting PNPC's preliminary permit provided that the permit was "for the sole purpose of maintaining priority of application for a license for Project No. 2173 [Mountain Sheep-Pleasant Valley]." By the Commission's standard of the past four decades PNPC's preliminary permit was terminated by the denial of its license application for Mountain Sheep-Pleasant Valley Project No. 2173. The only other reasonable interpretation of the language of section 5 is less favorable to PNPC and would terminate the priority with the expiration of the permit or no later than three years after filing, as was the practice prior to adoption of the 1923 Opinion by the Commission.

Another controlling question, which the majority opinion ignores, is whether PNPC's preliminary permit, regardless of its scope, remained effective after its expiration date of March 31, 1958, to afford PNPC a priority with respect to the High Mountain Sheep Project. Section 5 of the Act provides that a preliminary permit maintains "priority of application for a license * * * for such a period * * * not exceeding a total of three years * * * as * * * may be necessary for making examinations and surveys, for preparing maps, plans, * * *" needed to support the license application. Section 9 expressly requires that "each applicant for a license hereunder shall submit to the Commission—such maps, plans, specifications, and estimates of cost as may be required *for a full understanding of the proposed project.*"

The 1923 opinion of its General Counsel which the Commission adopted held that "if a permittee within the time prescribed by his permit has filed an application for a license *in proper form and accompanied by the required data,* his priority will not expire with the expiration of the period of the permit but will continue for such time as may be used *by the Commission* in granting or denying the application." [Emphasis supplied.]

On March 31, 1958—the last day before the preliminary permit for Mountain Sheep-Pleasant Valley expired—PNPC filed what purported to be a license application for the High Mountain Sheep Project (or perhaps even Nez Perce since the application left this possibility open).

The PNPC filing of March 31, 1958, was not complete as an application for a license. In fact, on April 23, 1958, the Commission's Secretary wrote PNPC to request that it supply a variety of basic information required to be submitted with a license application, observing "that additional information and data are required for an understanding of the proposed project including the proposed project boundary." A copy of the Commission's letter of April 23, 1958, is attached hereto as Exhibit A.

The fact that PNPC's filing of March 31, 1958, for HMS did not contain sufficient information for an understanding of the project is not a mere technical deficiency in the circumstance of this case. A motion taking issue with PNPC's attempt to assert a priority for HMS or Nez Perce and moving to dismiss the application on the very ground of failure of the application to comply with the Commission's requirements was filed by the National Hells Canyon Association and the Northwest Public Power Association on April 18, 1958, a motion which the Commission has never acted upon. The motion correctly points out that the PNPC license application was incomplete and that by letter of March 11, 1958 (a copy of which is attached as Exhibit B hereto) PNPC itself had advised the Commission that it would need 10 more months in which to make a study of the High Mountain Sheep Project. Indeed it was not until after the expiration of the three-year period of the permit that PNPC made the studies to secure the information to complete its license application for HMS. It was over 10 months later on February 23, 1959, and again on September 28, 1959, before the license application for the HMS project was amended to provide sufficient detail to proceed with the licensing process.

As the Commission pointed out in *Robert P. Wilson, et al.*, Opinion No. 364, dated October 10, 1962: "The intent of the Federal Power Act is to have applicants act diligently and complete all the necessary investigations during the period of the preliminary permit." [28 FPC 571 at 573]

In my judgment, the facts of this case make it clear that PNPC did not "complete all the necessary investigations during the period of the permit." Its priority expired before PNPC obtained the data and filed the information that is a statutory requirement for perfecting a license application with the Commission.

The majority gives two other reasons in support of its position. First, it states that while the Commission's regulations require a precise rather than a generalized description of proposed projects in preliminary permits, the purpose is not to define the scope of the permit but merely to meet the requirements of section 24 of the Federal Power Act for reservation of proposed power sites from public entry. Second, that PNPC was led by actions of the Commission to believe that it would have been pointless and unnecessary to seek an amendment to its preliminary permit following the denial of the Mountain Sheep-Pleasant Valley license application. The reasoning of the majority is not persuasive on either of these counts.

The relevant regulation governing the filing of preliminary permits provides as follows:

> § 4.82 *Contents of Application*
>
> Each application for preliminary permit shall * * * set forth in appropriate detail the following information in the order indicated:
>
> * * * * * * *
>
> (e) The location of the project, the region of its location designated by adjacent cities and towns, the name of the stream on which the proposed project will be located, and a statement of the extent to which commerce is carried thereon.
>
> (f) The lands of the United States which will be affected by the proposed project.
>
> (g) A general description of the project and the proposed scheme of development including an estimate of the proposed installed capacity, and the average annual output.

The information requested is essential in determining whether a permit should be granted and to provide preference agencies with adequate notice of the scope of the application. I can read into these provisions no requirement that would have prevented PNPC from asking for a permit which would have included HMS or Nez Perce instead of limiting its request to the MS and PV sites. Certainly no such mandate can be found in such terms as "a general description of the project" and "the region of its location designated by adjacent cities and towns."

In addition to the provisions quoted above, § 4.82(k) of the Regulations requires that there be filed with the application as Exhibit H a "general map showing the nature of the proposed project, its principal features and their location, and the location of the project as a whole with reference to some well-known town or stream." Again, I am unable to find an unyielding requirement for a permit limited to the precise project description or designation which PNPC sought and received. Obviously the Commission would be free to allow an applicant to file a general description in the first instance to afford notice of the stretch of the river covered by the permit and later identify the project with greater specificity.[9]

The majority's assertion that the precise description of the project in this case relates only to the administration of § 24 of the Federal Power Act is far fetched indeed. It strains the imagination to accept the suggestion that the regulations were drafted exclusively to implement a routine function relating to land withdrawals, but serve no function in defining the scope of a priority which overcomes the rights of preference applicants that Congress took great pains to protect. Such an interpretation is in direct conflict with the overriding purpose of the Act to protect preference applicants and with the provisions of section 4(f) of the Act which require notice to States and municipalities and landowners in every county affected by a project before a permit is granted. That this reasoning will not hold up is borne out by the records of the Commission which show that no formal power site withdrawal was made in this proceeding, because the maps filed with the preliminary permit were not sufficiently accurate to serve as a basis for a formal withdrawal.[10] The specificity the majority insists is essential for power site withdrawals thus is lacking in this proceeding, and the asserted justification of the majority opinion vanishes.

The majority's other reason to support its position is that PNPC was led by actions of this Commission to proceed as it did in 1958 without seeking an amendment of its preliminary permit, relying primarily upon an order of the Commission in the *Montana Power Co.* case.[11] This citation is not a Commission opinion but is a brief formal order innocent of any explanation germane to this case of why the Commission rejected the proposed amendment. The majority's heavy reliance upon *Montana Power* is a clear indication that there is no precedent for the decision in this case. There was no competing preference or private applicant then before the Commission in that proceeding, there was no priority issue, no need for a preliminary permit, and certainly no need for an amendment. Moreover the rejected permit application was for a project at precisely the same site the applicant was already exploring under an existing permit for a smaller dam.

If PNPC wished to base its course of action on Commission precedents it should have relied on our action in the *Appalachian* case,[12] a contested case decided after *Montana Power* on January 24, 1958, where an amendment to a preliminary permit was requested and granted, making changes comparable to those involved in the applicant's switch in the present proceeding from one project to another.

Judging by the Commission's customary standards, the public and competing license applicants were entitled to believe that PNPC's priority of application expired with our denial of the license application of Mountain Sheep-Pleasant Valley in 1958. At any rate the fate of PNPC's priority certainly was put in doubt following the denial of a license in 1958, and it was therefore PNPC's responsibility to ask the Commission for clarification. This much PNPC itself appears to have recognized, for on June 27, 1958, before undertaking further investigations, it filed a motion for a declaratory order to ascertain the status of the permit and priority. This motion reflected PNPC's awareness of the position taken by the National Hells Canyon Association and Northwest Public Power

---

[9] By the terms of the regulation a permit broader in scope could be accommodated since a proviso to § 4.82(k) states: "That any exhibit not incorporated as a part of the application shall be certified in conformity with § 131.4 of this chapter," (§ 131.4 being merely a certification form).

[10] Considering the known deficiencies of topographic mapping in many sections of the country, we may safely assume that this defect is unlikely to be an isolated case.

[11] 17 FPC 834 (June 1957).

[12] 17 FPC 8, 19 FPC 169.

Association that the preliminary permit for the Mountain Sheep-Pleasant Valley project did not survive the denial of the license. On September 28, 1959, after having made further investigations at its own risk prior to a Commission ruling on its motion, PNPC sought and obtained leave to withdraw its motion. In deliberately postponing decision on the continuing validity of the permit and the extent of its priority rights, if any, PNPC took a calculated risk which did not improve its legal position.

While not reaching the issue of WPPSS's authority under state law to build the HMS or Nez Perce project, the majority indicates that there is a "serious question respecting the legal status of WPPSS." On this issue I need only say that in my opinion under section 9(b) of the Federal Power Act the authority of WPPSS is a matter for this Commission and not the courts to decide initially in the context of this license proceeding. I personally entertain no such doubts as my colleagues concerning the authority of WPPSS to build the project or its compliance with the requirements of section 9(b). *First Iowa Hydro-Electric Cooperative* vs. *Federal Power Commission*, 328 U.S. 152 (1946); *PUD No. 1 of Pend Oreille County* vs. *Federal Power Commission*, 308 F. 2nd 318 (CADC 1962), *cert. den.* 372 U.S. 908 (1963), *reh. den.* 372 U.S. 956 (1963). See also *City of Tacoma* vs. *Taxpayers of Tacoma*, 357 U.S. 320 (1958); *State of Washington Dept. of Game* vs. *Federal Power Commission*, 207 F. 2nd 391 (9th Cir. 1953) *cert. den.*, 347 U.S. 936 (1954).

This case represents the first direct legal contest concerning the construction of section 7(a) in relationship to sections 4(f) and 5. In this benchmark decision the majority of the Commission proposes to interpret sections 5 and 7(a) in a manner which gives the priority of a preliminary permit great and elastic reach while narrowly circumscribing the scope of the preference clause. They have done violence to the statute on both scores.

EXHIBIT A

FEDERAL POWER COMMISSION
WASHINGTON 25, D.C.

Project No. 2243—Oregon and Idaho

April 23, 1958

ROBERT D. YEOMANS, *Secretary,*
Pacific Northwest Power Company,
P.O. Drawer 1445, Spokane 10, Washington

DEAR MR. YEOMANS:

Reference is made to the application for license for the Middle Snake River project No. 2243 filed with the Commission on March 31, 1958. The Commission staff has made a preliminary examination of the application and the exhibits filed and finds that additional information and data are required for an understanding of the proposed project, including the proposed project boundary.

It is noted that Exhibits H and I are to be submitted at a later date. These exhibits should be supplemented by your power study and power market study for the proposed project. In this connection it is requested that you furnish a copy of your transmission study.

It is also noted that Exhibit L drawings filed with the application show area geology, a geologic section, and logs of drill holes taken from "Interim Report No. 4, Mountain Sheep Dam, Portland District Corps of Engineers" dated December 22, 1947. It is requested that you furnish a geology report for the Middle Snake River project. It is also requested that you advise the Commission of your plan for foundation exploration and when the exploration will be completed and submitted as a supplement to your application.

In connection with any dam which you propose to construct, it is requested that you furnish design criteria and analysis and information as to your plans for additional analysis of the structure prior to construction.

With reference to the Exhibit N which you advise will be furnished later, it is requested that an estimate of cost with breakdown by major items for the Middle Snake River project be submitted as soon as possible. This should be supplemented by a detailed estimate of cost showing quantities and unit costs, together with other related construction costs. It is also requested that you submit your report on economic feasibility of the proposed Middle Snake River project.

It is requested that you advise as to the date when the data outlined above may be expected. Page 4 of the application states that applicant proposed to prepare and present appropriate information on alternative developments. Please advise as to when such information will be submitted.

A copy of this letter is being furnished to Smith, Gray, Hill & Rodgers, and Leighton & Sherline.

Very truly yours,

[S] J. H. GUTRIDE,
Secretary.

EXHIBIT B

PACIFIC NORTHWEST POWER COMPANY
P.O. Drawer 1445
SPOKANE 10, WASHINGTON

March 11, 1958

MR. JOSEPH H. GUTRIDE, *Secretary,*
Federal Power Commission,
Washington 25, D.C.

DEAR SIR:

Applicant has received a copy of letter from the attorney for the intervenors, dated March 4, 1958 and addressed to Commissioner William R. Connole. Attorney for intervenors misapprehends the relief requested. This letter is in reply thereto.

In assignment of error number 7, applicant refers to the Nez Perce and High Mountain Sheep projects, the latter of which is located below the mouth of the Imnaha and above the mouth of the Salmon. Preliminary investigation indicates that High Mountain Sheep with subsequent development of Lower Canyon would have approximately 500,000 acre feet more storage and about 150,000 kilowatts more installed capacity than Nez Perce. Under paragraph 3 of its prayer, applicant proposes to study the High Mountain Sheep project on a comparative basis with Nez Perce. Such a study is necessary before a final determination can be made as to the project which will constitute comprehensive development under the provisions of Section 10(a) of the Federal Power Act.

Approximately ten months will be required to complete such study, depending upon the extent of drilling and engineering that may be necessary.

Specifically, in undertaking such comparative analysis, applicant will:

(a) Make geological investigations and studies;

(b) Do such engineering work, including preparation of maps, plans and specifications, as may be necessary, to determine problems of construction, quantities of earth and rock to be moved, materials and supplies required, type of structure to be built, and such other determinations as may be relevant to make comparable estimates of cost;

(c) Determine the amount of storage usable for flood control and power production;

(d) Carry out power routing studies and power capabilities;

(e) Determine flood control routing and effectiveness of flood control;

(f) Investigate the extent and cost of facilities required for the consideration of fishery resources and recreation opportunities.

Applicant will report the results of such study to the Commission and to all parties.

Applicant intends to prepare and file an amended application for a license for such project as appears as a result of such study to be economical and practical and meets the requirements of Section 10(a) of the Federal Power Act.

Applicant does not expect a license to be granted without a further hearing.

We are making the same distribution of this letter to the Commission as was made by counsel for intervenors, and are mailing copies to the parties as noted below.

Yours very truly,

PACIFIC NORTHWEST POWER COMPANY,
[s] John J. Burke,
By JOHN J. BURKE, *President.*

cc: EVELYN N. COOPER,
Hilmer & Cooper,
1025 Connecticut Avenue, NW.
Washington 6, D.C.
T. J. JONES III, ESQ.
Assistant Attorney General
State Capitol
Boise, Idaho
ROBERT Y. THORNTON, ESQ.
Attorney General
Salem, Oregon
JOHN C. MASON, ESQ.
Federal Power Commission
Washington, D.C.

BLACK, Commissioner, *dissenting:*

I concur with Chairman Swidler's dissent, but I did not participate in the Commission's decision on the selection of the site and, therefore, express no opinion as to the relative superiority of the Nez Perce or proposed High Mountain Sheep developments.

INITIAL DECISION

UPON COMPETING APPLICATIONS FOR A LICENSE UNDER SECTION 4(e) OF THE FEDERAL POWER ACT

(Issued October 8, 1962)

TABLE OF CONTENTS

Page No.

Preliminary Statement and Conclusions 306
  Intervening Parties 309
Prehearing Conferences and Hearing 310
  Jurisdiction 310
  The Issues 311
  Pending Motions 312
Description of Projects Proposed for Licensing 314
  PNPC-High Mountain Sheep Project 314
  WPPSS-Nez Perce Project 315
  WPPSS-High Mountain Sheep Project 316

TABLE OF CONTENTS—Continued

Page No.
Safety and Stability of Dam Sites and Structures 317
    High Mountain Sheep Dam Site 317
    Nez Perce Dam Site 317
    Lower Canyon Dam Site 321
Design of Project Structures 322
    Flood Control 323
    Recreation 324
    Navigation 324
    Power Output 324
        The Rival Projects 324
        The Comparative Plans 325
Loads and Resources 325
Economic Feasibility 327
Financial Feasibility 328
    PNPC 328
    WPPSS 329
Fishery Resources, Facilities and Passage 335
    WPPSS Upstream Fish Facilities at Nez Perce 337
    WPPSS Downstream Facilities at Nez Perce 337
    WPPSS Fish Facilities at High Mountain Sheep 338
    PNPC Fish Facilities at High Mountain Sheep 338
    Lower Canyon 338
Discussion of Fish Passage Facilities and Problems 338
The Rival Plans of Development 343
    Construction Costs 345
Applicability of Section 10(h) of the Act 349
Permits, Priority and Preference 351
    PNPC's Preliminary Permit 351
    WPPSS' Status Under Section 7(a) of the Act 355
Federal Development 359
Additional Findings 366
Order 374

PRELIMINARY STATEMENT AND CONCLUSIONS

Levy, *Presiding Examiner:* This proceeding involves rival applicants for licenses to build mutually exclusive hydroelectric projects at sites[1] just above (High Mountain Sheep) and below (Nez Perce) the confluence of the Snake and Salmon Rivers on the Idaho-Oregon border.

It is concluded, in summary, for all the reasons hereinafter set forth, that Pacific Northwest Power Company should be licensed to construct the High Mountain Sheep project. The High Mountain Sheep plan emerges from this record as the comprehensive plan of development for the common reach which provides for prompt and optimum multi-purpose development of the water resource under the standards of Section 10(a) of the Federal Power Act. Its major component, the High Mountain Sheep project, is best adapted to achieve such development.

In the prior proceeding on the proposed Low Mountain Sheep and Pleasant Valley developments (Project 2173) the Commission concluded "that any combination of projects for the comprehensive development of the Mountain Sheep river basin which includes Nez Perce project is consistently superior to any combination of projects which does not include Nez Perce project." (Opinion and Order on rehearing issued April 11, 1958). That conclusion was reached in a different proceeding involving a different application and record. Moreover, no one was then applying for a license to build the Nez Perce project; no specific Nez Perce application was pending. Consequently, the Commission's earlier statement of view is not *res judicata* in this subsequent comparative proceeding.[2] Administrative license proceedings look forward, not backward, and licensing policy must change with new facts and changing conditions. Pacific Northwest Power Company's investigations and studies since 1958, in support of its current High Mountain Sheep application, insofar as they are part of the record in this proceeding, demonstrate that the power potential of the High Mountain Sheep plan would have a greater value initially than the Nez Perce plan of $3,973,000 annually.[3] At approximately 1985 the High Mountain Sheep plan benefits would have a monetary value exceeding the Nez Perce plan benefits of $2,640,000 annually (High Mountain Sheep plan $49,644,000—Nez Perce plan $47,004,000). The High Mountain Sheep plan of development, fully installed, will have, at all times and under all conditions, greater annual power benefits and greater annual flood control benefits than the Nez Perce plan of development.

---

[1] See Location Map, PNPC Exh. 1. (Citations to the record are illustrative and for the purpose of aiding the Commission in any review. They are not intended to indicate the sole basis in the record for the statement or findings).

These additional benefits will involve greater capital costs ranging from $11,040,000 to $49,616,000, according to Staff estimates (See Appendix C). These costs are justified, however, by the greater power and flood control benefits of the High Mountain Sheep plan, and by its greater feasibility and flexibility. The High Mountain Sheep project, its major component, can be built safely now, without delay, without risk to the major fishery resource of the Salmon River, and without adding substantially to the existing problem of maintaining the run of the main Snake River. There is substantial doubt in the record as to whether the left abutment at the Nez Perce site will safely support the thrust of the proposed Washington Public Power Supply System arch dam; or whether the underground powerhouses and orifice spillway can be constructed as presently designed within WPPSS' current estimate ($391,080,000). Moreover, the Nez Perce project cannot be built now without constituting a major hazard to migrating fish, particularly the spring and summer chinook and steelhead in the Salmon River. The Lower Canyon project, which would also constitute a major hazard to migrating fish, can be deferred until after the completion and evaluation of current Department of Interior fish studies, further site exploration, and until its construction is required under the standards of the Federal Power Act.

Pacific Northwest Power Company, rather than WPPSS, is entitled to a license to build High Mountain Sheep because its timely efforts, expenditures, and investigations have produced the comprehensive plan and the project best adapted to that plan. These expenditures were made pursuant to a preliminary permit issued by the Commission on April 8, 1955, for this purpose, and its reasonable expectations should not be thwarted absent strong public policy considerations not present in this record. PNPC's organizing companies have executed firm commitments to purchase the entire output of the project and will need the power as of the earliest date that the High Mountain Sheep project can be expected to be in service. PNPC has demonstrated a need and a market for the output as well as its ability to finance the construction of the project.

WPPSS has failed to establish a need or a market for the output of either Nez Perce or High Mountain Sheep, or that it has the ability now to finance the construction of any project that might be licensed to it in this proceeding. WPPSS' market is based on the anticipated general demand for electric energy in the Pacific Northwest, principally from PNPC's sponsor companies, not on any contractual commitments entered into by specific customers. The record in this proceeding does not indicate that it has complied, or attempted to comply, with state laws concerning its right to construct the proposed projects within the States of Oregon and Idaho, or to carry on a public utility business in those states. Moreover, Section 7(a) of the Federal Power Act does not require the Commission to grant WPPSS' motion to amend its Nez Perce application so as to authorize a license for High Mountain Sheep, nor should it do so.

---

[2] "A Commission like a court, may, indeed should, change its finding and order if on rehearing it is of a different mind. *Cia Mexicana De Gas S.A.* v. *F.P.C.*, 167 F. 2d 804, 806 (C.C.A. 5. 1948). See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 289, 292 (3rd Cir. 1956). See also *F.T.C.* v. *Raladam Co.*, 316 U.S. 149 (1942).

[3] High Mountain Sheep plan $57,436,000—Nez Perce plan $53,463,000. See Applicants' Joint Statement, Part J, Annual Power Benefits.

The public benefits, and comprehensive development which will be achieved by the construction of the High Mountain Sheep project can be effectuated now, with the issuance of a license for non-Federal development. If Federal development is recommended, as requested by the Secretary of the Interior, it will probably result in the postponement of any development of this site for an indefinite period of time.

On March 31, 1958, PNPC filed an application for the High Mountain Sheep development, Project No. 2243, at about river mile 188.9, to be located on the Snake River above the mouth of the Salmon River.[4] On April 8, 1955, PNPC was granted a preliminary permit effective April 1, 1955, for a period of three years for Project No. 2173, consisting of two developments on the Middle Snake, namely, Mountain Sheep development at approximately river mile 192.8, and Pleasant Valley development at approximately river mile 212.8 (14 FPC 644), and on September 7, 1955, PNPC filed a license application covering the same reach of the river for a proposed hydroelectric project (Project No. 2173) known as the Mountain Sheep-Pleasant Valley Hydroelectric Project. Following some 54 days of hearing in 1956, an initial decision recommending licensing was issued by the Presiding Examiner on July 23, 1957. The application was denied by the Commission in a decision dated January 20, 1958 (19 FPC 127); and an application for rehearing denied in March 20, 1958 (19 FPC 353).

On March 15, 1960, WPPSS filed an application for a license for the Nez Perce Project No. 2273, a mutually exclusive project, located just below the mouth of the Salmon River in the same stretch of the Snake River at about river mile 186. Hearing on PNPC's application was originally fixed for March 21, 1960, by order of the Commission dated February 1, 1960. Following the filing of WPPSS' application for Nez Perce on March 15, 1960, proceedings on the two competing applications were consolidated by Commission order of March 30, 1960, and the consolidated hearing was postponed to July 18, 1960. Notice of both applications was duly published on October 26, 1959 (PNPC) and March 23, 1960 (WPPSS).

PNPC is an Oregon corporation qualified to do business under the laws of the States of Oregon, Idaho, Washington, and Montana. It is a wholly owned subsidiary of four sponsoring companies,[5] the Montana Power Company, Pacific Power and Light Company, Portland General Electric Company, and the Washington Water Power Company, and was formed in April of 1954 for the purpose of providing a supplemental source of power to meet the future requirements of these companies (Tr. 144–147, 1777–1779). PNPC does not itself own or operate any electrical facilities.

---

[4] A chronological list of written pleadings, filings, orders and rulings from March 31, 1958 to date is set forth in Appendix A.

[5] A detailed description of these companies is contained in the Presiding Examiner's initial decision, Project No. 2173, p. 12 *et seq.* [Unreported.]

WPPSS was created as a Joint Operating Agency, composed of 16 public utility districts of the State of Washington, pursuant to an order of the Department of Conservation and Development of the State of Washington dated January 31, 1957, and, under the laws of the State of Washington, is a municipal corporation. It was established for the purpose of acquiring, constructing, and operating electrical generating and transmission facilities (WPPSS Exh. 1, Tr. 406, 418-421). WPPSS does not own or operate any electric facilities.

Intervening Parties[6]

Pursuant to Section 1.8(a)(1) of the Commission's Rules of Practice and Procedure the PUBLIC UTILITY COMMISSIONER OF OREGON and the IDAHO PUBLIC UTILITIES COMMISSION gave notice of their intervention on December 1, 1959 and December 3, 1959, respectively in Project No. 2243. The IDAHO PUBLIC UTILITIES COMMISSION gave further notice of intervention in Project No. 2273 on April 18, 1960.

Other parties were granted intervention by the Commission's Orders of May 20, July 13, August 16 and September 16, 1960, respectively. These parties are listed below:

PROJECT No. 2243

NATIONAL HELLS CANYON ASSOCIATION AND
  NORTHWEST PUBLIC POWER ASSOCIATION[7]
IDAHO FISH AND GAME COMMISSION AND
  IDAHO FISH AND GAME DEPARTMENT
COLUMBIA RIVER SALMON & TUNA PACKERS ASSOCIATION
STATE WATER RESOURCES BOARD OF THE STATE OF OREGON
OREGON STATE GAME COMMISSION AND
  FISH COMMISSION OF THE STATE OF OREGON
DEPARTMENT OF FISHERIES OF THE STATE OF WASHINGTON AND
  DEPARTMENT OF GAME OF THE STATE OF WASHINGTON
WASHINGTON PUBLIC POWER SUPPLY SYSTEM
DEPARTMENT OF CONSERVATION OF THE STATE OF WASHINGTON
OREGON STATE GRANGE AND WASHINGTON STATE GRANGE

PROJECT No. 2273

OREGON STATE GAME COMMISSION AND
  FISH COMMISSION OF THE STATE OF OREGON
COLUMBIA RIVER SALMON & TUNA PACKERS ASSOCIATION
FISHERMEN'S COOPERATIVE ASSOCIATION, INC.
PACIFIC NORTHWEST POWER COMPANY
DEPARTMENT OF FISHERIES OF THE STATE OF WASHINGTON
DEPARTMENT OF GAME OF THE STATE OF WASHINGTON
NORTHWEST FISHERIES ASSOCIATION
MAKAH INDIAN TRIBE
WASHINGTON STATE SPORTSMEN'S COUNCIL, INC.

---

[6] The Examiner is indebted to the Applicants and Staff for a joint stipulation covering "Introductory Material," "Joint Exhibit," "Applicants' Joint Statement," and Appendix to "Introductory Material," all of which are adopted by the Examiner and made a part of the record.

[7] On the basis of a motion by these associations dated October 3, 1960 stating that their interests regarding both Project No. 2243 and No. 2273 would be adequately represented by WPPSS, the Commission, by Order of October 17, 1960, granted their request to have the Orders of March 3 and August 16, 1960 granting intervention vacated.

OREGON WILDLIFE FEDERATION
IDAHO WILDLIFE FEDERATION
ASSOCIATION OF PACIFIC FISHERIES AND
  PUGET SOUND SALMON CANNERS, INC.
IDAHO FISH AND GAME COMMISSION
PACIFIC FISH CONSERVATION LEAGUE, INC.
ALASKA FISHERMEN'S UNION
STATE WATER RESOURCES BOARD OF THE STATE OF OREGON
DEPARTMENT OF FISH AND GAME OF THE STATE OF ALASKA
CHINOOK AND COWLITZ INDIAN NATIONS
NATIONAL HELLS CANYON ASSOCIATION AND
  NORTHWEST PUBLIC POWER ASSOCIATION
CONFEDERATED BANDS AND TRIBES OF THE
  YAKIMA INDIAN NATION
DEPARTMENT OF CONSERVATION OF THE
  STATE OF WASHINGTON
OREGON STATE GRANGE AND
  WASHINGTON STATE GRANGE

Prehearing Conferences and Hearing

Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, prehearing conferences were held on May 16 and 17, June 15, and October 31, 1960, respectively. The results of these conferences are set forth in prehearing transcript No. 1, (Tr. 100–111) in 23 prehearing conference exhibits, and in the Presiding Examiner's Notice of September 28, 1960, covering procedural matters.

The hearing convened in Washington, D.C. on November 4, 1960, and was concluded on September 12, 1961.[8] There were approximately 97 days of hearing, including a 15-day session at Portland, Oregon, in March 1961, for hearing in the fisheries' phase during which period the Examiner inspected the sites accompanied by representatives of the Staff and Applicants. In all, some 77 witnesses testified, 14,327 pages of transcript, and 633 documentary exhibits (many of them consisting of voluminous charts, designs and statistics) were received in evidence. Initial briefs were filed by the Applicants on January 15, 1962, and by Staff and Interveners[9] on March 1, 1962. Reply briefs were filed by the Applicants on April 2, 1962. Supplemental briefs, in response to the Commission's order of July 6, 1962, reopening the record, were filed on or about July 30, 1962.[10]

Jurisdiction

In the prior proceeding (Project No. 2173) the Commission described the Snake River as follows:

---

[8] The hearing originally concluded on July 24, 1961, but was reopened on July 26 to comply with the Commission's Order of July 25, 1961, setting aside the Presiding Examiner's ruling that certain WPPSS proposed rebuttal testimony be excluded. This evidence was received in the record on September 12, 1961, at which time cross-examination was waived, and the hearing concluded.

[9] The following Interveners filed briefs: State of Washington Department of Conservation, Idaho Wild Life Federation, Fishing and Game Agencies for States of Idaho, Oregon and Washington, Washington State and Sportsmen's Council, Inc. Oregon Wildlife Federation, Fishermen's Cooperative Association, Inc., Northwest Fisheries Association, Alaska Fishermen's Union, Pacific Fish Conservation League, Makah Indian Tribe, Columbia River Salmon & Tuna Packers Association, Idaho Public Utilities Commission, Public Utilities Commissioner of Oregon.

[10] The briefs total approximately 2,008 pages.

> The Snake River is the largest tributary of the Columbia River. The Columbia River Basin is described by the United States Army Corps of Engineers (House Document No. 531, 81st Congress, 2nd Session) as the largest present producer and the largest potential source of hydroelectric power on this continent, as the primary salmon-producing stream in the United States and as carrying active barge navigation over 300 miles inland. *In the Matter of Pacific Northwest Power Company*, 1958, 19 FPC 127, 129.)

In its decision of August 4, 1956, *In the Matter of Idaho Power Company*,[11] 14 FPC 55, 72, the Commission found the Snake River, from its junction with the Columbia River up to the mouth of Henry's Fork (at about river mile 868), a navigable water of the United States. This includes the reach of the Snake River involved in this proceeding. Once found navigable, the waterway remains so. (*U.S.* v. *The Appalachian Power Company*, 311 U.S. 377, 408). Consequently, under Section 23(b) of the Federal Power Act, a license is required for the construction, operation, or maintenance by either applicant of the Nez Perce or the High Mountain Sheep projects, each of which would be located in the navigable reach of the Snake River. In addition, these proposed projects would occupy lands of the United States within the Wallowa, Nez Perce and Payette National Forests.

The term "Middle Snake River" as used in this proceeding includes the portion of the Snake River and its tributaries between Lewiston, Idaho and Weiser, Idaho. Going upstream from Lewiston, the major tributaries are the Grand Ronde, the Salmon, the Imnaha, the Powder and the Burnt Rivers. The Middle Snake Basin has extremely rough terrain and comparatively inaccessible and sparsely populated areas consisting of eroded canyons through mountainous country. A stretch of approximately 100 miles downstream from Weiser, Idaho is commonly referred to as "Hell's Canyon." The mean discharge at the Nez Perce site just below the confluence of the Snake and Salmon Rivers is estimated at 30,600 cfs with the maximum and minimum mean monthly flow being indicated at 115,000 cfs in May 1928 and 9,200 cfs in September 1924. The flow at this site for the greatest known flood in 1894 is estimated at 250,000 cfs (Division Engineer's Report, Vol. I p. 364).

The Issues

The basic issues in this proceeding are which of the proposed projects is best adapted to a comprehensive plan of development for all public purposes as required by Section 10(a) of the Act; which, if any, should be licensed, and to whom should the license be issued. This in turn depends upon a wide range of engineering, geologic, economic, financial, legal, and policy considerations of varying importance, including the safety and stability of the proposed dam sites and project structures, the impact of the proposed projects on the fishery resource, comparative economic and financial feasibility, the needs and market for the power output of the proposed projects, the relative qualifications and legal status of the competing applicants, and an overall comparison of the proposed plans and projects in terms of design, costs, benefits, and other relevant factors.

An additional issue raised by the Secretary of Interior's letter of June 28, 1962 (Exh. 43-A) is whether the Commission should recommend Federal development of the High Mountain Sheep project pursuant to Section 7(b) of the Act.

---

[11] See *National Hells Canyon Association* v. *F.P.C.*, 237 F. 2d 277 (CADC), cert. den. 353 U.S. 924.

Pending Motions

The following pending motions require disposition:

1. A motion filed by WPPSS on July 24, 1961, to amend its Nez Perce application to conform to the exhibits and testimony submitted on rebuttal in support of revised Nez Perce designs and cost estimates. This proposed amendment is consistent with WPPSS' timely filed Nez Perce application. The project and site remain the same (See *City of Seattle and Pend Oreille PUD No. 1, Project No. 2144*).

The motion is granted.

2. A motion filed by WPPSS on September 12, 1961, for leave to amend its Nez Perce application, Project No. 2242, to include a project at High Mountain Sheep, described in rebuttal exhibits and testimony, as an alternative in the event the Commission denies its Nez Perce application and decides to license a project at High Mountain Sheep.

This motion is denied. The proposed amendment is inconsistent with WPPSS' pending Nez Perce application, contrary to the Commission's Order of Consolidation of March 30, 1960, its Rules of Practice, and contrary to the public interest. A similar motion filed April 24, 1961, for leave to file an amendment to its pending Nez Perce application for a license to construct an alternative High Mountain Sheep Project was denied by the Presiding Examiner on May 2, 1961, and affirmed by the Commission by order dated May 19, 1961.[12] The Presiding Examiner's ruling reviewed the prior chronology of the hearing and found that the proposed amendment was untimely under the Commission's Order of Consolidation of March 30, 1960, and that no explanation or justification for the failure to amend prior to the commencement of the hearing in November 1960 had been presented.

This is all the more true of the pending motion filed on September 12, 1961, after the conclusion of the hearing. The sole justification is that the amendment is now offered to conform WPPSS' license application to the evidence, including its alternate proposal for High Mountain Sheep presented as part of its rebuttal attack on PNPC's High Mountain Sheep Project. The motion, however, seeks a WPPSS license for the rival High Mountain Sheep Project. This goes far beyond the proper scope of a motion to conform the pleadings in the Nez Perce application to the evidence.

The merits of the rival plans and projects have been an issue raised by the competing applications from the very beginning. Nez Perce and High Mountain Sheep are mutually exclusive projects; the licensing of one excludes the other. Since WPPSS is maintaining and not withdrawing its application for Nez Perce, the motion to amend is in essence an application for a license to build any project the Commission is willing to license. If the Commission is persuaded that High Mountain Sheep should be built, PNPC, the principal proponent, rather than WPPSS, the opponent, should be licensed for the project its investigations, expenditures, and advocacy have brought to fruition. The granting of WPPSS' motion is not in the public interest and will not advance the objectives of the Federal Power Act—to promote water resource development.

At the opening of the hearing, Counsel for WPPSS explained that the decision of WPPSS to file on the Nez Perce site was not based on a desire to prevent PNPC from getting a license for this reach of the river, but because of their belief in the superiority of the Nez Perce Project.

---

[12] A petition for rehearing filed June 20, 1961, was denied by the Commission on July 20, 1961. The Commission's order stated that the motion, if considered as one to amend the pleadings to conform with the evidence, would be premature and should be denied without prejudice to its renewal at the appropriate time.

> We are in here to see to it that the Nez Perce Project is licensed, and we intend to take every step that is necessary to that end, including whatever procedural steps we feel in all good faith and honesty are necessary to protect our position. This is our one and only motivation and objective. (1 Tr. 38.)

The managing director for WPPSS testified to the same effect:

> We recognized the need and obligation of the companies to provide a future power supply. It was with no intent to prevent them from obtaining a future power supply, but rather insurance of full development of this reach of the river that we were primarily concerned with, and the production of the added benefits in low cost power and flood control that would result. And in view of all the circumstances the existence of this legislation, the fact that hearings had been scheduled on the Mountain Sheep project, brought us to the conclusion the time had arrived for the public agencies to make application for a license on Nez Perce.
>
> * * * * * * *
>
> I am sure had (PNPC) * * * seen fit to make a filing on the Nez Perce project, in my opinion the public agencies wouldn't have made a filing on the Nez Perce project. (23 Tr. 4448.)

The applications were consolidated for hearing and the hearing proceeded on the theory that the issue before the Commission was the respective merits of the rival plans of development—WPPSS' Nez Perce or PNPC's High Mountain Sheep. PNPC allegedly has made total expenditures, including the prior proceeding, approaching $5,000,000; WPPSS has spent $1,250,000. If WPPSS intended applying for a license to build High Mountain Sheep as well as Nez Perce, it should have given notice thereof "* * * within five days next preceding the commencement of or during a hearing * * *" (Rule 1.11(a)). No justification or extraordinary circumstances have been set forth in WPPSS' motion to explain its delay in notifying the Commission and PNPC prior to the conclusion of the hearing that it was now an applicant for the High Mountain Sheep project. Moreover, WPPSS' inferior showing, discussed elsewhere, in terms of its market needs, ability to finance, and compliance with local law all apply equally to WPPSS' ability and capacity to build High Mountain Sheep as well as Nez Perce. The argument that WPPSS' preference rights under Section 7(a) of the Act require the granting of the motion is without merit as pointed out in the discussion of WPPSS' status under Section 7(a) of the Act.

Accordingly, the motion to amend WPPSS' license application to add the High Mountain Sheep project is denied. Section 7(a) does not require this amendment and the public interest would not be served by it. On the contrary, the Commission would have great difficulty in encouraging future investigation of the nation's water resources by private nonpreference utilities. Moreover, the fair and orderly conduct of comparative proceedings under rules designed to achieve procedural due process with minimum delays requires that the parties be bound by the pleadings and positions on which the hearing has been conducted and has proceeded to a conclusion. If at the end of a long and expensive hearing an applicant can adopt his rival's plan without abandoning his own, the fairness of the procedure itself becomes suspect. This principle antedates the common law. "Drink waters out of thine own cistern, and running waters out of thine own well" (Proverbs 5:15). Rather than functioning as an aid to the Commission in promoting prompt, optimum development of our water resources and in selecting the best applicant to insure successful development, the hearing becomes a trap for the unwary. Nor does the public interest require the contrary. I am persuaded by the entire record that High Mountain Sheep, if licensed, will be built sooner by PNPC than by WPPSS, which still maintains that it is an inferior project and should not be constructed by anyone.

3. PNPC's motion filed April 11, 1962, to Strike Certain Material from WPPSS' initial brief.

This motion is denied. The material referred to is discussed in the briefs and is a part of the argumentation contained therein. The record is not expanded by references in the brief to material which is not in evidence.

4. PNPC's motion filed June 11, 1962 (as amended June 15, 1962) to Strike the Reply Brief of WPPSS on the ground that "on not less than 49 pages of the said Reply Brief there are references to factual and opinion evidence that is not in the record." (WPPSS' Answer filed June 28, 1962).

The motion is granted to the extent that the reply brief purports to discuss the results of a field investigation of the Nez Perce site conducted by two unidentified WPPSS geologists after the filing of the initial briefs in this proceeding. The results of this post-hearing field investigation are not in evidence and no petition to reopen the proceeding for its admission was made or granted. WPPSS had ample opportunity to present rebuttal testimony on this issue and cross-examined PNPC's geologic witnesses at great length. No new facts are cited justifying the use of this extra-record evidence and none appears.

5. The following motions are granted:

(a) WPPSS' motion filed January 4, 1962 for Leave to Substitute Complete Copy of Order of Director of Conservation, State of Washington.

(b) Applicants' joint motion filed January 15, 1962 To Admit Joint Exhibit (Part D through Part K).

(c) PNPC's motion filed January 15 To Reopen Record and Admit Additional Evidence (PNPC's Exhs. 132 and 133).

(d) Joint motion filed January 29, 1962 To Reopen Record and Admit Additional Evidence (1961 Corps Report).

Description of Projects Proposed for Licensing

PNPC's High Mountain Sheep Project No. 2243

The PNPC design as described by Witness Bonin provides for a variable radius, variable thickness concrete arch dam approximately 670 feet high above the riverbed having a crest length of about 1460 feet at elevation 1520 m.s.l. terminating at a thrust block and spillway on the right bank and a combination gravity dam and thrust block on the left bank (Tr. 182, PNPC Exhs. 13 and 16).

The dam would create a reservoir extending approximately 58 miles upstream on the Snake River to the Hells Canyon tailwater and 10 miles upstream on the Imnaha River. The reservoir would have a normal water surface of about 17,300 acres and a gross storage capacity of 3,600,000 acre-feet at normal water surface elevation 1510 m.s.l., of which 2,250,000 acre-feet would be usable with a normal drawdown of 173 feet to elevation 1337 m.s.l. Drawdown to 1212 m.s.l. (a drawdown of 298 feet) would provide a total usable volume of 3,100,000 acre-feet (Tr. 228–9). The spillway located on the right bank would be a chute-type design controlled by three 50-foot wide by 50-foot high tainter gates mounted over an ogee section with a flip type bucket at the end to direct discharge into the river. Additional discharge capacity of 65,000 cfs at elevation 1382 m.s.l. would be provided by eight low level discharge valves. The combined discharge capacity of the spillway and sluices would be 300,000 cfs at maximum pool elevation of 1517.5 m.s.l. (Tr. 230, PNPC Exhs. 13 and 16.)

The penstocks (18' inside diameter) are of steel and pass through the dam at approximately elevation 1160, then travel from the downstream face of the dam with intermediate supports as required through open cut excavation to the powerhouses.

Two outdoor-type powerhouses would be located one on each side of the river near the base of the dam. The Oregon side powerhouse would initially have three units installed with provisions for two future units. The Idaho side powerhouse would initially have two units installed with provisions for three future units. The initial installation would consist of five generating units with each turbine rated at 285,000 horsepower at a 550-foot net head with full gate opening (PNPC Exh. 13). The turbine would be directly coupled to a generator rated at 175,000 kilowatts (184,000 kilovolt-amperes at 0.95 power factor) making a total turbine capacity of 1,425,000 horsepower and a total generator capacity of 875,000 kilowatts. (For purposes of the comparative plans of comprehensive development, seven generating units are assumed in operation (Tr. 234, PNPC Exh. 16)). Ultimate installation is to consist of ten generating units with a total turbine capacity of 2,850,000 horsepower and a total generator capacity of 1,750,000 kilowatts. The initial and ultimate capabilities will be 1,000,000 kilowatts and 2,000,000 kilowatts, respectively. Fifteen single-phase, 70,000 kva main power transformers would be located on the powerhouse roof connecting to a switchyard located on the Oregon side adjacent to the left abutment of the dam at elevation 1720 m.s.l.[13] The switchyard would be connected to the Applicant's proposed interconnected primary transmission system by ties at the Middle Snake Project Substation.[14] The access road would extend 25 miles from Imnaha, Oregon, to the project site (Tr. 202, 231–34, PNPC Exh. 13, Joint Exh. Part G).

WPPSS Nez Perce Project No. 2273

The Nez Perce Project proposed for licensing by WPPSS in its supplemental direct testimony[15] consists of a double curvature concrete arch dam approximately 715 feet high having a crest length of about 1570 feet at elevation 1520 m.s.l. terminating at a thrust block on the right bank and the canyon wall on the left bank. The dam would create a reservoir extending approximately 63 miles upstream on the Salmon River, 61 miles upstream on the Snake River to Hells Canyon tailwater, and 10 miles upstream on the Imnaha River. The reservoir would have a normal water surface of about 31,000 acres and a gross storage capacity of 6,600,000 acre-feet at normal water surface elevation 1510 m.s.l. of which 3,130,000 acre-feet would be usable with a normal drawdown of 122 feet to elevation 1388 with provision for additional drawdown to elevation 1296.5 for flood control, providing a total usable storage of 4,700,000 acre-feet (Tr. 661–64). The spillway with an approximate capacity of 480,000 cfs would be provided by an orifice-type design consisting of nine orifices each controlled by a 16-foot wide by 30-foot high tainter gate. The downstream lip of these orifices would be at elevation 1230 m.s.l. Additional discharge capacity of about 120,000 cfs would be provided by twelve low level valves (Tr. 10,099; 10,102; 10,114–6; WPPSS Exhs. 142, 143).

---

[13] See Joint Exhibit, Part G, for compilation of physical data.

[14] Suggested transmission lines are as follows: Three lines to Lewiston, Idaho—230 kv—approximately 43 miles; line from Lewiston to Walla Walla, Washington—230 kv—approximately 71 miles; line from Lewiston to Spokane, Washington—230 kv—approximately 106 miles; line from Lewiston to Anaconda, Montana—230 kv—approximately 234 miles, line from project to Imnaha, Oregon—230 kv—approximately 21 miles; line from project to Portland, Oregon—345 kv—approximately 297 miles (Tr. 3722–23, PNPC Exc. 20).

[15] The project as described above and proposed by WPPSS in suplemental direct testimony differs from the project as described in the application for license as amended and presented in WPPSS' direct testimony (Tr. 10,096–10,118). The principal differences are a change in arch dam geometry, a change in spillway design from a side channel-type to an orifice-type with orifices located near the center of the dam, and a change in type and location of the powerhouse from an indoor-type located across the river just downstream from the toe of the dam to an underground-type located in the left bank.

An underground powerhouse requiring an excavation of about 85 feet wide by 175 feet high and about 820 feet long located on the Oregon side of the river would house ten generating units. The generator floor would be at elevation 902 m.s.l. Five banks of three single-phase transformers each rated at 155,000 kilovolt amperes would be housed in a transformer hall requiring an excavation approximately 50 feet wide by 43 feet high and 700 feet long. This hall would run parallel to the powerhouse with its floor at elevation 919 m.s.l. Another excavation about 33 feet wide by 40 feet high by 700 feet long with its floor at about elevation 977 m.s.l. would be required for operation of draft tube gates, and would be connected to the draft tubes by shafts approximately 40 feet by 20 feet extending vertically to the bottom of the draft tubes at about elevation 831 m.s.l. (Tr. 10,070; 10,104–107; WPPSS Exhs. 142, 144.)

Initial installation would consist of ten generating units with turbines rated at 290,000 horsepower each at 570-foot head at full gate, directly connected to generators rated 200,000 kilowatts each (210,000 kilovolt-amperes at 0.95 power factor) for a total installed turbine capacity of 2,900,000 horsepower and generator capacity of 2,000,000 kilowatts. Maximum initial capability would be 2,235,000 kilowatts. (Tr. 10,069; 10,022; WPPSS Exhs. 144, 145). Another underground powerhouse is planned for the Idaho side of the river (Tr. 10,160, WPPSS Exh. 142) which would house six more turbines and generators ultimately making the ultimate turbine capacity 4,640,000 horsepower with a total generator capacity of 3,200,000 kilowatts (Joint Exh. Part G). A 345-kilovolt cable will be used to connect the transformers in the transformer hall to the overhead lines at the surface. These overhead lines will then carry the power to a switchyard on the Idaho side of the river approximately one and one-half miles downstream from the dam (Tr. 462, 10,070; 10,093; WPPSS Exh. 15).

The proposed access road to the project would extend southwesterly from Winchester, Idaho, to the operator's camp and then to the project (Tr. 468, 10,117; 10,234).

WPPSS' transmission system proposes to integrate the Nez Perce Project with the Bonneville Power Administration grid, and assumes construction and wheeling by BPA. (WPPSS' br. pp. 29, 159, Tr. 583, 5820). Four basic 345 kv steel tower lines are proposed, extending from Nez Perce to Santiam, Oregon, to McNary, Oregon, to Lewiston, Idaho, and to Spokane, Washington, for a total distance of 634 miles, plus a possible line to Pocatello, Idaho, for an additional distance of 338 miles (Tr. 5,788). At the terminus of each of the lines a 600 mva 345/230 kv step-down substation with auto transformers is proposed (Tr. 586).

WPPSS' High Mountain Sheep Project No. 2273

WPPSS presented a High Mountain Sheep Project in its rebuttal testimony (WPPSS Exhs. 264–267) at the same site as PNPC's project, river mile 189.2 on the Snake River. The project, for which WPPSS seeks a license, if its Nez Perce application is denied, consists of a double curvature concrete arch dam approximately 670 feet high having a thrust block and spillway on the right abutment and a thrust block on the left abutment with an overall crest length of 2040 feet at elevation 1520 m.s.l. The dam would create a reservoir extending about 58 miles upstream to Hells Canyon tailwater on the Snake River and 10 miles upstream on the Imnaha River. The reservoir would have a normal water surface of about 17,300 acres and gross storage capacity of 3,600,000 acre-feet at normal water surface elevation 1510 m.s.l. of which 2,250,000 acre-feet would be usable with a normal drawdown of 173 feet to elevation 1337. The spillway would be of the chute-type design controlled by three 50-foot wide by 60-foot high tainter gates. Additional discharge capacity would be provided by seven low level outlets. An indoor-type powerhouse would be located on the Idaho side of the river near the base of the dam with an initial installation of six units (Tr. 12,940). Provisions would be made to house four similar units in a future underground powerhouse on the Oregon side (Tr. 12,942, WPPSS Exh. 264). The initial installation would consist of six generating units with each turbine rated 290,000 hp at 550-foot head and each generator rated 200,000 kw (210,000 kva at 0.95 power factor), for a total installed turbine capacity of 1,740,000 hp and generator capacity of 1,200,000 kw with 2,900,000 hp and 2,000,000 kw ultimately (Tr. 13,054). Maximum initial capability would be 1,377,000 kw. Nine single-phase, 155,000-kilovolt-ampere, power transformers would be located on a transformer deck adjacent to the powerhouse (Tr. 13,055). Location of the switchyard facilities has not been defined.

Access to WPPSS' High Mountain Sheep site will be by road which would go downstream on the right side of the river and cross the Salmon River at about mile 0.5 and then to Winchester, Idaho (Tr. 12,940).

Safety and Stability of Dam Sites and Structures

High Mountain Sheep Dam Site

Both applicants agree that the High Mountain Sheep site, located on river mile 189.2, is safe and adequate for a thin arch dam (PNPC br. 106, WPPSS br. 63, Tr. 12, 134, 12,317). The canyon walls consist of metavolcanic rock, about 200 feet apart at normal river level, rising steeply above the river. Crest length to height ratio is estimated to be 2.2 to 1 (Tr. 179–181). However, WPPSS witnesses Schultz and Thompson believe that considerably more exploratory work must be done before designs are finalized and that the PNPC's estimate of $90,000 for this work is inadequate. Additional exploration will, of course, be necessary before construction can proceed to establish foundation lines, the extent of foundation treatment, and other details required for final design. The Staff recommends that the result of additional geological exploration "should be passed on by an independent board of qualified experts before any construction can be started." This recommendation is incorporated in Article 32 of the Staff's proposed order. (p. 244 of brief)

Obviously, the Commission will need technical assistance to fix foundation lines and other details for final design purposes. To this extent, the advice of qualified consultants is necessary and desirable. It is the Commission's responsibility, however, to determine the safety and adequacy of the dam site and to approve the final design of the arch dam. This responsibility cannot be shared with a so-called "independent board." The record establishes, and I find, that the High Mountain Sheep dam site is safe and adequate to support the proposed arch dam and related structures.

Nez Perce Dam Site

The adequacy and safety of the Nez Perce Dam site, a critical issue in this proceeding, produced over 2000 pages of conflicting expert testimony. WPPSS witness Schultz testified that the foundation rocks are "favorably oriented with respect to the direction of thrust from the arch dam loads" (Tr. 560) and that the site is geologically adequate for the revised WPPSS designs, including the proposed powerhouse (Tr. 9870). WPPSS witnesses Geuss and Willey of the Harza Engineering Company agree that the site is suitable for a thin arch dam.

Another witness for WPPSS, geologist Thompson, testified that it would be impossible for the huge mass of rock on the right abutment to be moved by the thrust of the dam (Tr. 12,385).

All three PNPC witnesses concluded that the Nez Perce Dam site was not suitable for the proposed thin arch dam and related structures. No Staff[16] witnesses testified on the adequacy and safety of the various dam sites. PNPC witness Fox made the most thorough investigation, spending eight days in the mapping of the Nez Perce site (Tr. 11,526-11,561, PNPC Exh. 89), and walking over all significant faults and areas inaccessible from the river, after transportation to such areas by helicopter. He testified that

> * * * Of the 121 faults and fractures I have mapped as representative of geologic conditions at Nez Perce, and the many more I have observed and not mapped, there is not one that is "favorably oriented" from the point of view of thrust from arch dam loads. [Tr. 11,554-5.]

When asked his opinion as to the geological feasibility of a Nez Perce arch dam, Fox stated that "* * * a stable abutment cannot be found in the left part of the canyon wall, in the general area of the proposed axis" (Tr. 11,558). After reviewing the proposed left abutment outline on the overlays (PNPC Exhs. 93 and 106) he concluded that

> * * * no further consideration should be given to an arch type of dam for the Nez Perce site. I am certain that further exploration cannot possibly overcome the impossible and unsatisfactory conditions now apparent at the Nez Perce site [Tr. 11,559.]

Fox testified that movement has already taken place in the left abutment down the dip of flow plane L35 (Tr. 11,697-700), that the probability of movement in the future is greater (Tr. 11,722), and that the fractures are probably open for a depth of 150 to 200 feet (Tr. 11,702).

PNPC witness Livingston, an expert in rock mechanics[17]—the behavior of rocks under stress—spent five days in a detailed exploration of the Nez Perce site (Tr. 11,853-5). He interpreted and analyzed the principal faults, fractures and geological features, mapped most extensively by Fox on PNPC Exh. 89, determining the actual planes of rock as indicated by surface measurements of their strikes and dips and the projection of their planes underground. He concluded that the slabs of rock resting on L35 and L17 in the left abutment show definite evidence of movement and have already failed at point F in picture No. 2 of PNPC Exh. 106 (Tr. 11,830, PNPC Exh. 93, Field Picture Nos. 4, 7, 8, 9, 10). The forces of gravity plus the thrust of the arch dam will tend to move the slabs of rock resting on L35 downstream along L35 as a sliding surface. He then made a stability analysis assuming no shear resistance along fault L35 on the basis of the evidence of vertical movement[18] along fault L35 (Tr. 11,827, PNPC Exh. 129). If shear resistance (C) becomes zero (Tr. 13,868), the ratio between stabilizing and sliding forces, utilizing the shear friction formula (WPPSS Exh. 21),

---

[16] The Staff concluded, however, that "In the light of the evidence in the record, the Nez Perce site cannot be accepted as safe and adequate, regardless of the condition of the right abutment, until a stability analysis has been completed with actual subsurface information." (Staff br. pp. 32-33.)

[17] "It is obvious that the immediate future will witness a great emphasis on further development of the science of rock mechanics" (Engineering News-Record p. 26, July 13, 1961).

[18] Livingston testified with regard to L35: "I have observed a relative displacement near river level of eight inches, and I am of the opinion that the absolute displacement already is in excess of two feet * * *" (Tr. 11,827; see PNPC Exh. 129).

$$Q=\frac{FV+CA}{H}$$

is 0.65–1 (Tr. 12,095, 13,853). Since the forces which tend to make the mass slide are larger than the forces which tend to stabilize, this analysis indicates that the left abutment will fail.

WPPSS witness Veltrop made a similar stability analysis assuming shear resistance in faults L35 and L17 (Tr. 13,155). His favorable geological assumptions produced a favorable stability analysis—5.1 at the left abutment (Tr. 13,125)—a shear-friction factor above 4.0, normally regarded as an adequate factor of safety against sliding along the joints (Tr. 13,132). Veltrop, a highly skilled arch dam designer, concluded that "the foundation rock at Nez Perce is very adequate indeed to support the loads imposed on it by the arch dam" (Tr. 9,987).

The difficulty lies in Veltrop's favorable geological assumptions. An arch dam is no safer than the subsurface on which it rests.[19] There is substantial evidence in the record that shear has already taken place in the fractures at the left abutment. Consequently, adequate shear resistance cannot be assumed with safety.

The evidence of movement in the left abutment comes from experienced, thorough and qualified geological witnesses (Fox and Livingston) who made the most detailed analysis in the proceeding. While the results of subsurface exploration leave a wide margin for interpretation, the Commission cannot assume the existence of favorable subsurface conditions in the face of specific evidence of instability. On the contrary, it should assume the worst foundation conditions compatible with the available data of probative value. On this basis, there is substantial doubt in the record as to whether the left abutment at the Nez Perce site will safely support the thrust of the proposed arch dam.

WPPSS supports the geological adequacy and safety of the Nez Perce site with the results of its unconfined compression tests, water pressure tests, abutment stability analysis, and the geological appraisals of Schultz and Thompson. The issue raised, however, is not the compressive strength of individual rock specimens but of the abutment as a structural unit. If, as has been testified, the left abutment is already parted by major faults and fractures which provide natural sliding planes dipping downstream and riverward, and movement has already taken place, these tests do not establish stability. No water pressure tests or drill holes were made by WPPSS in the critical area of the left abutment where PNPC witnesses testified movement has taken place.

WPPSS witness Thompson testified:

> * * * None of the holes on the left side of the canyon, *i.e.*, Holes NP–6, NP–1 or NP–2, encountered what I would classify as unsound rock below comparatively shallow depths. Therefore, there is no valid justification for assuming that unsound rock is present in the left abutment area at the depth to which abutment excavation would be made. [Tr. 12,424.]

WPPSS Exhibits 24–A, 135 and 136 reveal, however, that drill holes NP–1 and NP–2 are located at the river's edge slightly upstream from the left abutment area and at an elevation below this area, and that drill hole NP–6 is so located that the bottom of that hole is more than 20 feet above the point where the crest of the arch dam would contact the abutment. (See PNPC Exh. 93 field pictures 19 and 20; and PNPC Exh. 106, picture No. 1.)

---

[19] See Bonin's testimony (Tr. 3072–3): "the real problem is in the foundation rather than in any fear of buckling." The Malpasset Dam collapse has been attributed to movement in the left abutment due to sliding along a seam of weak material (Engineering News-Record, February 15, 1962, p. 58, Karl Terzaghi).

WPPSS witness Schultz testified:

> Q. Dr. Schultz, the hole NP-6 was drilled to an elevation of 1546, according to WPPSS Exhibit 24-A, approximately 26 feet above the top of the dam, and holes NP-1 and NP-2 started respectively at elevations 905 and 900.
>
> Now, it appears therefore that you do not have any drill hole at all in the left abutment of the proposed arch dam, is that correct?
>
> A. That is essentially correct. [Tr. 5640.]

Schultz's explorations were confined to the abutment area below elevation 1300 m.s.l. on the left abutment and between elevations 1300 m.s.l. and 1400 m.s.l. on the right abutment.

Similarly, there are no water pressure tests from the left abutment area of the proposed arch dam. Moreover Schultz acknowledged that the left abutment contained unstable areas. Thompson spent less time at the site and made no calculations to support his optimistic interpretation of conditions at Nez Perce or his pessimistic evaluation at Lower Canyon. Consequently I find the testimony of Fox and Livingston more persuasive with respect to the instability of the left abutment at Nez Perce, and geological conditions at Lower Canyon.

The evidence as to the instability of the left abutment has produced post hearing developments. WPPSS' reply brief (IV-33) states that after the filing of the initial briefs it had two unidentified geologists visit the site and examine L-35 and L-17. This "new" evidence is then discussed at some length to refute the testimony of Livingston and Fox.[20] WPPSS then suggests (p. IV-35) "that the record be reopened if the Examiner or the Commission should have any doubt as to the stability of the left abutment." WPPSS had every opportunity to rebut the geologic testimony of PNPC's witnesses Fox and Livingston during the hearing. The Commission's Rules of Practice and Procedure provide an orderly method by which WPPSS may file a petition to reopen the proceeding for the purpose of taking additional evidence. No such motion or petition has been filed nor have any facts been set forth requiring or justifying reopening of the extended and voluminous record in this proceeding. Obviously, the suggestion that the record be reopened to satisfy any doubts the Examiner or the Commission may have with regard to the stability of the left abutment may be made equally with regard to any doubts adverse to WPPSS' contentions.

If the sole bar to licensing Nez Perce were doubts as to the stability of the left abutment it could be argued that the record should be reopened not for the admission of the unspecified "evidence" of unidentified geologists, but for additional testimony of designated geologists after further extensive geological exploration and investigation. But as indicated elsewhere throughout this decision, the public interest does not require the licensing of Nez Perce, and the prompt optimum development of the Middle Snake would best be served by licensing High Mountain Sheep.

---

[20] On June 11, 1962, PNPC filed a motion to strike WPPSS' reply brief on the basis of its "references to factual and opinion evidence that is not in the record." The motion states in part (p. 14) "we could counter the purported new geological testimony by introducing the results of our own further investigation, necessarily undertaken after the reply brief of WPPSS was received, which shows the alleged geological features do not exist as claimed in the WPPSS brief. But such a riposte would only add error to error."

Lower Canyon Dam Site

No one is applying for a license to build Lower Canyon at this time. Its geology is relevant, however, since it is an essential part of the High Mountain Sheep plan for the comprehensive development of the Middle Snake River, recommended by both PNPC and the Staff.

WPPSS contends that the Lower Canyon site at mile 3.7 is geologically infeasible as a site for a dam of any type and suggests a more expensive rockfill dam at mile 0.5 as feasible. It relies on the alleged conclusions of the Corps of Engineers, citing its 1958 study of the Middle Snake River as follows:

> Investigation shows that the joint or fracture systems occur throughout the area and where their strikes parallel the course of the stream, the valley walls are unstable even though of hard durable rock. Between river mile 3 and 5, the river parallels these fracture trends, and recent and ancient rock falls and slides of large magnitude can be observed. Consequently, this reach is not considered suitable for a dam of the height proposed. (Vol. 1, [p. 272.) WPPSS br. p. 69.]

This 308 report was preliminary with no indication of any detailed foundation investigation. It does not reflect the later study of Bonin, Fox, and Livingston in this record or the more recent report of the Chief of Engineers dated March 31, 1961, which contains the following comment: (p. 8)

> * * * Since the preparation of the Division Engineer's report the results of additional investigations at the High Mountain Sheep and Lower Canyon sites have become available, which indicate rather conclusively that a concrete arch dam is feasible at the High Mountain Sheep site. This dam, built to provide a full pool at elevation 1510, would cost roughly $44 million less than the concrete gravity section dam proposed by the Division Engineer, but raised to the same elevation ($198 million vs. $242 million). *There is some chance that an arch dam also might be substituted for the more expensive rock fill dam at the Lower Canyon site, but a conclusion cannot be reached until further borings are made. This additional study can wait until the advance engineering and design stage immediately prior to initiating construction.* [Emphasis supplied.]

WPPSS also relies on the testimony of Schultz and Thompson: Schultz spent one day at the mile 3.7 site and inspected the 0.5 site by boat and not from the ground. He did not testify that an arch dam could not be built at the Lower Canyon site, but rather that the amount of excavation required to insure stability would make construction uneconomical (Tr. 12,115). Thompson was more affirmative. He concluded that the thrust of an arch dam would cause failure at the abutments of the mile 3.7 site (Tr. 12,728).

The Staff takes the position that more extensive geological exploration is necessary "before it can be said that the Lower Canyon site can or cannot be used as a site for an arch dam." (Staff br. p. 36.)

The feasibility of this site was supported by PNPC witnesses Bonin, Fox and Livingston. Fox spent about three weeks examining this site (Tr. 11,744). Bonin testified that he examined the fault system mentioned in the Division Engineer's report very carefully before he concluded that the site was suitable for an arch dam (Tr. 204). Exploratory work included three core borings in the right abutment and eleven test pits (PNPC Exh. 16, p. 101). The three diamond drill holes were pressure tested with satisfactory results. Livingston made a stability analysis of the Lower Canyon right abutment against the thrust of the PNPC arch dam using the same assumptions at critical points that he used at Nez Perce—no shear resistance along fault R12. He found it to be stable with a safety factor of 2.44 (Tr. 12,042).

I am persuaded that the geological adequacy of Lower Canyon is sufficiently established to justify its inclusion in proposed plans for the comprehensive development of the Middle Snake River. Its significant geological features have been extensively identified, measured and mapped. Thompson's contrary testimony is based on insufficient site investigation, an absence of precise measurements and calculations, and the application of different assumptions as to the depth or extension of faults and fractures at Nez Perce and Lower Canyon (Tr. 12,710-1, 12,736, 12,756).

More extensive geological exploration will be necessary, however, to support any license application for a thin arch dam at Lower Canyon.

Designs of Project Structures

There are many different designs in the record and many hearing days were spent in cross-examination on hundreds of design details (See PNPC br. 133-240). These differences do not significantly affect the operation or power benefits of the various projects. They do affect substantially the capital cost estimates and the economic evaluation of the rival projects and alternative plans.

Moreover, these designs are not construction designs or plans. They are preliminary designs provided for the purpose of Federal Power Commission license proceedings. Neither the applicants nor their witnesses assume any obligation to maintain construction costs within the amounts estimated for these preliminary designs.

The designs proposed for High Mountain Sheep by PNPC and WPPSS raise no important problems provided the licensee proceeds with the more refined analysis and study necessary for final, detailed construction designs. The adequacy and safety of the revised Nez Perce designs[21] (WPPSS Exhs. 139-145), however, are contingent upon the geology of the site. WPPSS witness Willey explained that the greatest single reduction in cost in the latest revised Nez Perce design is achieved by the use of an underground powerhouse which permits placing the spillway and outlet works in the middle of the dam, thus eliminating considerable excavation and concrete (Tr. 10,098, 10,124-7, 10,130).

On the basis of the geological testimony of Fox and Livingston there is considerable doubt as to whether an underground powerhouse is feasible. Fox testified he could not recommend an underground powerhouse until extensive further underground exploration was completed (Tr. 11,556). Livingston testified that construction of these underground powerhouses, even if possible, would be very costly (Tr. 11,826). If the underground powerhouse design is abandoned, the cost of the necessary design revisions will radically affect the total project cost and the comparative economics of the rival plans.

The Staff recommends that, "since neither proposed project has been finally designed nor foundation fully explored * * *, the following general conditions should apply to either Nez Perce or the High Mountain Sheep Project, whichever is licensed for construction:" (Staff br. p. 47.)

(1) The final design of the arch dam shall be verified by an acceptable method of analysis (such as the trial-load method) (Tr. 1498) using design criteria mutually agreeable to the Licensee and the Commission staff;

(2) The final design of the arch dam shall also be reviewed by the use of structural models (Tr. 1498, 2215, 2219, 2220);

---

[21] The last change in designs produced a $32,900,000 reduction in the cost estimates—$340,900,000 to $308,000,000.

(3) The spillway for the project shall be reviewed and modified, if necessary, by the use of hydraulic models which demonstrate the flow capacities and characteristics for the various reservoir water surface levels, operation of various combinations of gates, and for effect of discharge on other project structures (Tr. 2143, 2215, 3147–8) including vibration studies;

(4) The final design of the dam and other project structures shall be reviewed by an independent Board of Consulting Engineers;

(5) Consideration shall be given to prestressing the joints of the dam with grout pressure in order to improve the stress distribution in the dam (Tr. 2193, 3074–A);

(6) Consideration shall be given to the effect of spray from spillway operation in locating transmission lines leading from the dam (Tr. 2518-19); and

(7) The method of foundation treatment shall be approved by the Board of Consulting Engineers mentioned in (4) above (Tr. 4762).

Flood Control

The initial flood control goal of the Corps of Engineers in its Main Control Plan (H.D. 531)—limiting the 1894 flood flow from 1,240,000 cfs at the Dalles to a peak flow of 800,000 cfs—can be achieved by construction of Canadian storage (8.45 million acre-feet) and the Libby Project (5 million acre-feet). The further goal, reduction to 600,000 cfs, will require additional storage of 7.6 million acre-feet, or a total of 325 million acre-feet of usable storage.[22] Projects now in being or under construction will provide 8.3 million acre-feet. The flood flows of the Snake and Salmon Rivers amount to 6,180,000 acre-feet (Tr. 712).

Flood control storage is provided for at Nez Perce, High Mountain Sheep and Lower Canyon. China Gardens and Whitebird provide only pondage. Applicants have agreed that the annual flood control values as shown on page 10 of PNPC Exh. 19 may be used for purposes of comparison.[23] While flood control

---

[22] (Corps Report, March 31, p. 5.)

Storage conditions	1894 Flood at The Dalles, cubic feet per second	Usable Storage, millions of acre-feet	
		Total required	Available from projects existing or under construction
a. 1894 conditions	1,240,000		
b. Existing, and under construction	1,030,000	8.3	8.3
c. Initial flood control objective	800,000	17.3	10.8
d. Canadian and Libby storage added to existing and under construction	720,000	24.6	11.2
e. Ultimate flood control objective at The Dalles	600,000	32.5	11.5

(Footnotes omitted.)

[23]

	Usable storage, acre-feet	Without Canadian storage		With Canadian storage
		1968	1985	
High Mountain Sheep	2,250,000	$1,840,000	$2,260,000	$240,000
Lower Canyon (mile 3.7, Elev. 1595)	3,265,000	3,500,000	4,300,000	370,000
	5,515,000	5,340,000	6,560,000	610,000
Nez Perce	5,015,000	$5,300,000	$6,500,000	$560,000
Difference HMS Plan over NP Plan	500,000	40,000	60,000	50,000

storage for the High Mountain Sheep Plan exceeds that of the Nez Perce Plan by about 10 percent, the annual value differential is about one percent. This analysis indicates that the flood control benefits of the two plans are substantially equal for comparative purposes (Staff br. p. 186).

Recreation

WPPSS witness Yoemans, a landscape architect, expressed the belief that the recreational potential of the Nez Perce project "would exceed Grand Coulee * * * within about five years after its completion" (Tr. 724). PNPC witness Robinson, Chairman of its Board of Directors, described extensive picnic and boating facilities planned for High Mountain Sheep at an estimated cost of $500,000 (Tr. 149–151; 1781, 1866–67, 1958).

The Staff considers the recreational benefits of the two plans similar—"what can be said for one can be said for the other" (Staff br. p. 144). If the comparison is limited to the two projects, construction of the High Mountain Sheep dam would leave undisturbed stream side fishing on the Salmon River and the sports fishery in the Idaho area. An estimated 811,350 juvenile steelhead were caught by angling in Idaho waters in 1958 (INT. Exh. 10) in an estimated 113,898 fishing trips. The letter reports of the Department of Agriculture (FPC Exhs. 39, 40) recommend license provisions to insure adequate recreational use of the reservoir areas.

Navigation

The proposed projects and plans of development will open large areas to transportation by boat now virtually inaccessible. The Corps of Engineers has recommended the same license conditions for both projects (FPC Exhs. 37, 38) to insure maintenance of downstream navigation channels.

Power Output

(1) The Rival Projects

The proposed Nez Perce project would develop the head on the Snake River between the Nez Perce site at river mile 186.2 and the Low Hells Canyon site at river mile 247.3 and the head on the Salmon River from its mouth to river mile 63.0. The proposed High Mountain Sheep project would develop the head on the Snake River between the High Mountain Sheep site at river mile 189.2 and the Low Hells Canyon site. Power output is based on streamflow available at the Nez Perce and High Mountain Sheep sites from historical flows for the 1928–1948 period modified by upstream irrigation depletions (Prehearing Conference Exhs. 15 through 20).

Both the High Mountain Sheep project and the Nez Perce project would have an overlap on the Low Hells Canyon development tailwater of about 35 feet. An agreement will be required between the Idaho Power Company and a licensee for a project in the Middle Snake River to compensate the former for losses resulting from the effects of the overlap (Tr. 193–4).

The Chief of Engineers in his letter report dated March 31, 1961, transmitting the Division Engineer's Report to the Secretary of the Army, stated that during detailed study and design it may be found advantageous to construct the High Mountain Sheep dam to provide a reservoir pool a small amount higher than elevation 1510.

To determine power output, operation of both projects has been coordinated with the Northwest Power Pool[24] (Tr. 276, 278, 641). The system power development was assumed to be approximately 16,000,000 kilowatts when either the High Mountain Sheep project or the Nez Perce project comes into service.[25] Reservoir drawdown for either project would normally begin September 15, continuing until April 15, with drawdown depending upon forecast operation.

Witness Alspaugh (PNPC Exh. 17) estimated the dependable capacity of High Mountain Sheep to be 930,000 kilowatts with an initial installed capacity of 875,000 kilowatts and average annual energy generation to be 5,483,000,000 kilowatt-hours (626,000 average kilowatts). The Staff estimates a dependable capacity of 930,000 kilowatts and an average annual energy generation of 5,195,000,000 kilowatt-hours (593,000 average kilowatts) (FPC Exh. 21).

The initial installed capacity proposed by WPPSS for the High Mountain Sheep project is 1,200,000 kilowatts. With this capacity and assuming coordinated operation, WPPSS estimated the dependable capacity to be 1,218,000 kilowatts and the average annual at-site generation to be 5,720,000,000 kilowatt-hours or 653,000 average kilowatts.

WPPSS estimated the dependable capacity of the Nez Perce project to be 1,850,000 kilowatts with an installed capacity of 2,000,000 kilowatts and average annual at-site generation of 9,417,000,000 kilowatt-hours or 1,075,000 average kilowatts. The Staff estimate of the power output for the Nez Perce project is a dependable capacity of 1,867,000 kilowatts and an average annual energy generation of 8,532,000,000 kilowatts or 974,000 average kilowatts (FPC Exh. 22).

The Comparative Plans

The power potentials of the rival plans[26] of development are set forth in Tables 2 through 5 of Part I, Applicant's Joint Statement, for the four different levels of development assumed by the applicants during the initial and subsequent period. The initial period assumes a system power development of approximately 16,000,000 kilowatts when either High Mountain Sheep or Nez Perce comes into service. The subsequent period assumes a system power development of approximately 30,000,000 kilowatts. The prehearing conference report (p. 6) established the 1968 and 1985 systems for the comparative studies.

Loads and Resources

In the prior (1956–57) proceeding, Project No. 2173, the Presiding Examiner concluded that by 1965 PNPC's four organizing companies will have serious deficiencies in dependable power capacities.[27] This conclusion is equally valid in

---

[24] See Joint Exhibit Part F. The Northwest Power Pool is a voluntary arrangement among thirteen utilities of the Pacific Northwest area for the coordination of the operation of the affected systems. Participating utilities include all utilities that have major hydroelectric facilities in the Northwest.

[25] Output data at the project sites are estimated by PNPC and WPPSS in Tables 1 and 1A of Joint Exhibit Part I.

[26] High Mountain Sheep Plan includes High Mountain Sheep, Lower Canyon, China Gardens; Nez Perce Plan includes Nez Perce, Whitebird, and China Gardens.

[27] (Initial Decision p. 17) It is clear from the foregoing that the production from all present plants and all plants proposed as above described will fall short of meeting the power requirements of the four organizing companies. It is estimated that after 1964, there will be substantially no firm power available to these companies from any of the federal projects because of requirement contracts between Bonneville and its preferential customers. Consequently, it is incumbent upon these public utilities to take prompt action to provide additional supplies of power." [unreported]

1962. PNPC's witness Porter presented an estimate of electric loads and resources for each of the four organizing companies and totals for the four companies on a fiscal year basis, 1961–70.[28]

These resources include all presently owned hydro facilities plus resources under firm purchase contracts covering the Priest Rapids, Wanapum, and Rocky Reach Projects. They do not include power available under 20-year BPA contracts since power is not assured to the PNPC sponsor companies after August 31, 1964.

The estimates of area load requirements and resources presented by the applicants and staff for the Pacific Northwest are substantially similar.[29]

---

[28] Estimates of Electric Loads (PNPC Exh. 28):

Operating year	Peak load megawatts	Energy load in megawatts	
		Average annual	Average storage control period
1960–61	3,215	1,947	2,030
1964–65	4,137	2,490	2,599
1969–70	5,650	3,373	3,526

Estimates of Electric Resources (1936–37 Water Conditions):

Operating year	Firm resources in megawatts	
	Average annual energy	Average energy storage control period
1960–61	1,530	1,595
1964–65	1,996	2,084
1969–70	2,103	2,198

[29] Estimates of Electric Loads:

Operating year	PNPC exhibit 30		WPPSS exhibits 63 and 160A		Staff exhibits 28 and 29	
	Peak load	Energy load	Peak load	Energy load	Peak load	Energy load
1960–61	10,215	6,885	NA	NA	9,680	6,450
1964–65	12,819	8,407	12,910	8,890	12,118	8,390
1969–70	17,004	10,751	18,009	12,430	16,430	11,505

NOTE: Peak load is in terms of megawatts; energy load is in terms of average annual energy in megawatts; staff energy load converted from kwh.

Estimates of Electric Resources (1936–1937 water conditions):

	PNPC exhibit 30	WPPSS exhibit 63
1960	6,863	N. A.
1964–65	8,319	8,473
1969–70	9,248	9,525

WPPSS has no electric facilities and its loads[20] will be those acquired by contract.

All three forecasts indicate deficiency beginning by 1965, and increasing substantially in each year thereafter. Even if High Mountain Sheep was in service in 1966–1967, PNPC's organizing companies would still have a power deficiency (PNPC Exhs. 28, 30). BPA power under the 20-year contract cannot be relied upon as a firm resource since the four companies have been given notice by BPA that there is no assurance that power will be available for them after 1963–1964 (Tr. 2307, 2328–30, PNPC Exh. 29). PNPC's organizing companies, therefore, will require the entire output of High Mountain Sheep as soon as it can be expected to come into operation. Absent High Mountain Sheep, the four sponsor companies may be forced to build alternative high cost thermal plants (Tr. 397–398). The availability of Canadian storage would delay the need for either project about one and one-half years (PNPC Exh. 42–A, Tr. 2391).

BPA has assured all public agencies that it can take care of their electrical requirements until 1970 (Tr. 4320, 10574). WPPSS estimates that the total load of the[21] public agencies that have signed options to purchase Nez Perce power will be 1324 average annual megawatts in 1971; it estimates the total output of Nez Perce at 1,166 average annual megawatts (WPPSS Exh. 40 Rev.). Clearly, therefore, Nez Perce will not be needed to meet the load of public agencies in the Pacific Northwest, including WPPSS until after 1970. The basic market for Nez Perce power before 1971, therefore, is that furnished principally by the deficiency of the PNPC organizing companies (PNPC Exhs. 28, 30, 42, and 42–A).

Economic Feasibility

While they dispute each other's cost estimates, PNPC and WPPSS are agreed that both the Nez Perce and High Mountain Sheep projects are economically feasible for construction under license within the range of interest and discount rates of record and within such fluctuations thereof as are reasonably predictable.

---

[20] These are estimated by witness Hurd for public agency participants and public agencies in the BPA service area as follows (WPPSS Exh. 112):

Estimates of Electric Loads of Nez Perce Public Agency Participants

Operating year	Peak load megawatts	Average annual energy load in megawatts
		(*)
1966	1,900	1,016
1971	2,600	1,324

Estimates of Electric Loads of Public Agencies in BPA Service Area

Operating year	Peak load megawatts	Average annual energy load in megawatts
		(*)
1966	4,800	2,626
1971	6,200	3,379

*Converted from kwh.

[21] These utilities are assured of all federally generated power, in excess of that sold for industrial purposes, by virtue of the preference clauses in the several federal marketing acts (See Section 4(a) of the Bonneville Act).

The economic feasibility of both projects is graphically illustrated in Table 2 of the Staff's brief (p. 78) which shows in tabular form the installed capacity, output, annual value, annual cost and excess of value over cost for each project, as found in the record. This table, however, does not contain an estimate of the output of the High Mountain Sheep project with an installed capacity of 1,200,000 kilowatts. With this adjustment[32], the estimates of annual costs and values in Table 2 are adopted as reasonable and proper for the limited purpose of demonstrating the economic feasibility of both projects.

Financial Feasibility

The requirements for financial feasibility include adequate statutory authority, a satisfactory tax situation, long-term power sales and wheeling contracts, construction bids at prices comparable with estimates, reasonable net interest costs, and bonds to be delivered with the unqualified approval of a nationally recognized firm of municipal bond attorneys (Tr. 842–3, 851–2).

The basic requirement, however, is an assured market for the power to be generated. A sufficient percentage of the output of the project must be sold under firm long-term power contracts to responsible utilities or other major responsible users at rates adequate to pay all costs. *City of Seattle, Washington*, 26 FPC 54 (July 10, 1961, pet. for rehearing den. Sept. 6, 1961). The more firm the anticipated revenues, the more favorable the relationship between anticipated revenues and costs, the greater is the applicant's ability to finance the project.

Pacific Northwest Power Company

PNPC's plan of financing was described by witnesses Robinson, Chairman of the Board of Directors of PNPC, and Gordon, a senior partner in Kidder, Peabody & Co., a leading investment banking firm. The four organizing companies, whose financial standing and credit are not questioned, have committed themselves to execute "take-or-pay" power purchase contracts covering the entire project output at annual payments equal to financing, operating, maintenance, and other annual charges (PNPC Exhs. 32–35). The organizing companies intend purchasing the 15 percent equity proposed for PNPC, then to secure a revolving bank loan of 60–70 million dollars to minimize interest charges during construction, and finally to float a public bond issue of about 222 million dollars secured by a first mortgage on the property (Tr. 1738, 1741, 1755–6, 4177). Gordon testified that the bonds would be readily saleable at interest rates ranging from 4.80 to 5 percent at any debt-equity ratio from 65 percent to 90 percent (Tr. 402–3, 4127). The equity, if sold to the public, would be readily marketable (Tr. 4160).

Both WPPSS and the Staff question the alleged absence of a plan of financing and the "controversial 85–15 percent debt-equity ratio." The Staff agrees that there are special circumstances where a higher debt-equity ratio than the conventional 60–40 is justified citing *In the Matter of Ohio Valley Electric Corporation et al.*, 36 S.E.C. 304, where an eventual debt-equity ratio of 97½ to 2½ percent was approved on the basis of a contract by the Atomic Energy Commission for the entire output.

The combined equity ratio of PNPC and its sponsor companies as of December 31, 1960, using a capitalization of $257,100,000 for PNPC, would be as follows: Long term debt, 65.48 percent ($821,409,000), Preferred Stock 4.35 percent ($54,621,000), Common Equity 26.86 percent ($336,983,000), Deferred federal income taxes 3.31 percent ($41,583,000). See Annual report for 1960, Item D by reference. The ability of the sponsor companies to finance their participation in the proposed project has not been questioned.

---

[32] See Appendix C.

Moreover, as noted by the Staff (p. 90) the proposed ratio is flexible and will be set at the time of financing "at the ratio producing the lowest cost to the consumer, with adequate security to the investor, and subject to approval of regulatory agencies having jurisdiction" (PNPC br. p. 54). The Staff recommends that any PNPC license be conditioned so as to require submission of a complete plan of financing prior to the beginning of construction and execution of appropriate long term power contracts. Whether or not, as argued by WPPSS, PNPC and its organizing companies will be subject to the Public Utility Holding Company Act is not now before this Commission and is outside the scope of this proceeding. This issue was raised in the prior proceeding, Project No. 2173, where the Presiding Examiner commented as follows (p. 34): [unreported]

> Section 204(f) of the Act states that the provisions thereof shall not extend to a public utility organized and operating in a state under the laws of which its security issues are regulated by a state commission. It appears that the regulatory agencies of the States of Washington, Oregon and Montana do exercise regulation over the securities of the organizing companies.
>
> The fact remains, and it is a fact which is recognized by all of the parties to this proceeding, that the Applicant's capital structure, its debt-equity ratio, and the sale and disposition of its securities will be subject to the supervision and authority of the Securities & Exchange Commission, and that the approval of that Commission must be procured before the financing can be accomplished.
>
> Section 318 of the Act specifically excludes from the jurisdiction of this Commission those who are with respect to the issue, sale, or guarantee of securities or the acquisition or disposition of any securities subject in those respects to the jurisdiction of the Securities & Exchange Commission. There is implicit in every license the requirement and the expectation that the licensee will act in accordance with the laws of the United States. It will not be assumed here, therefore, that the Applicant will not comply with such laws or the regulations of the Securities & Exchange Commission or any other Governmental agency established in accordance therewith.

Washington Public Power Supply System

William R. McGill of Wainwright and Ramsey, John T. Monzani of Kuhn, Loeb & Co., and E. Barron Rockwell of Halsey, Stuart & Co. testified as financial witnesses on behalf of WPPSS.

Under the original plan of financing drafted by Wainwright and Ramsey, consultants in municipal financing, a total of $463,000,000 was to be raised by revenue bonds (Tr. 822–3, WPPSS Exh. 77) as compared to $391,080,000 for the revised Nez Perce design[38] (WPPSS Exh. 161) submitted by WPPSS in its supplemental direct testimony (Tr. 1017 *et seq.*, WPPSS Exhs. 142–147). The proposed bond issue approximates 140 percent of the estimated construction cost of the project.

WPPSS' plan of financing does not cover tax costs allegedly because a realistic figure was not available (Tr. 6537). No studies were made, however, to determine or estimate tax costs (Tr. 6510, 6680); nor is any cost included for transmission to load centers or customers (Tr. 6509, 6534–5). These costs

---

See footnote on next page.

were estimated by WPPSS consultants R. W. Beck & Associates at an additional $138,000,000, with estimated annual costs of $9,346,752 (Tr. 840–2).

Any sound plan of financing must provide for the contingency that WPPSS might have to build its own transmission lines.[34] As stated by WPPSS witness McGill:

> * * * I have been advised by R. W. Beck and Associates that transmission facilities do not now exist that would enable Washington Public Power Supply System to transmit the power generated to potential users in southern Idaho, or in Washington, Oregon and northern Idaho. To accomplish the delivery of Nez Perce power to the points where potential users can take it, it was necessary to consider the possibility that, in the event the U.S. Government or others did not or, for some reason, could not build the necessary transmission lines, they might have to be built by the Washington Public Power Supply System. [Tr. 840.]

The original plan of financing contemplated the borrowing of six years' interest as protection against construction delays (Tr. 6560–1). The revised plan eliminates capitalization of one year's interest or $21,992,500, and assumes accelerated construction plus net revenue of $3,000,000 by operating six units during the fifth year. The existence of net revenues also assumes that transmission lines have been built and the execution of "take or pay power" sales contracts at rates adequate to pay for all costs (Tr. 10,732–4, 10,745). The bond reserve fund at the beginning of construction is eliminated and deferred to the end of the fifth year by using the sixth years' interest (Tr. 10,732–3).

Other WPPSS revisions include using investment earnings to retire bonds instead of using such earnings to offset operating expenses, calculating interest earned during construction on a "cash flow" rather than an arithmetic average method, changes in the estimated construction schedule, power supply, engineering etc. (Tr. 6657, 6678, 6681).

These changes, and the assumptions on which they are based, make the revised plan less attractive to prospective lenders and more difficult of realization. The basic missing element, however, is the essential requirement for financial feasibility—an assured market. To carry out any financial plan, WPPSS must demonstrate the existence or probability of firm long-term power contracts for the output of Nez Perce at rates sufficient to meet all its costs. As pointed out by the Staff, WPPSS has no independent resources or credit (Staff br.

---

[33] The proceeds under the two plans would be applied as follows (Staff br. p. 92):

Item	WPPSS Exh. 77	WPPSS Exh. 161 Rev.
Construction Costs (including costs of engineering and contingencies)	$340,900,000	$308,000,000
Working Capital (recommended by Harza Engineering (Tr 830))	2,000,000	2,000,000
Bond Reserve (equivalent to one year's interest @ 4¾% and to be maintained as long as any bonds are outstanding (Tr. 830, 6558–9))	21,992,500	----------
Bond Discount and Finance Expense (approximately $25 per $1000 or 2½% (Tr. 830))	11,575,000	9,777,000
Interest (six years' interest during construction amounting to $131,959,000 less interest earned during construction amounting to $45,422,000 (WPPSS Exh. 77 revised))	86,532,500	*71,303,800
Total bond issue	463,000,000	391,080,000

*Total interest of $111,457,800 less investment earnings of $37,154,800 and estimated net revenues from partial operation in 5th year in the amount of $3,000,000 (Tr. 10,691-3, 10,734–45.)

[34] There is no evidence in this record, contrary to WPPSS' assertion (WPPSS br. p. 200) that these transmission lines will be built by BPA. Nor did any BPA official testify as to the "likelihood" of such construction.

p. 106). It does not now own or operate any electric generating facilities; it has no customers or loads. WPPSS' "assured market" is based on the anticipated general demand for electric energy in the Pacific Northwest, not on any contractual commitment entered into by specific customers (WPPSS br. p. 179).

WPPSS relies on power reservation agreements whereby each utility furnishing financial support (24 non-member Public Utility Districts, municipalities and cooperatives in addition to its 14 member PUD's) has an option on a portion of the Nez Perce project output proportionate to the amount of its advances (WPPSS Exh. 107, PNPC Exhs. 51–54). While WPPSS is bound to sell should any of the 40 participants execute their options, they are not obligated to buy.[28] Nor is there any demonstration in this record that they will need Nez Perce power when it comes on the line.

The load growth of the public agencies that have signed options to purchase Nez Perce power is estimated by WPPSS to average about 65 megawatts of average annual energy per year during the seven-year period 1960–66, and about 60 megawatts per year during 1967–71 (WPPSS Exh. 112). In 1971, the total load of these public agencies is estimated at 1324 megawatts.

The record indicates that the public agencies, including all of the option signers, will have an assured supply of power from the Bonneville Administration until some time after 1970, and for an indefinite period in the future depending upon Bonneville's situation and their own generation (Tr. 4593). BPA states in its current load and resource forecast entitled "Power Outlook 1960–1970", dated October 1960: (Item E by Reference, Tr. 2697–9).

> * * * On the basis of present load estimates and resources schedules Bonneville Power Administration can supply the energy requirements of the public agencies through 1970–71 under the most adverse streamflow conditions of record, and under these same conditions the indicated requirements of the private utilities in excess of their own resources can be served through 1963–64. However, if non-Federal hydro resources now under construction are used for the supply of utility loads these requirements of the private utilities can be supplied through 1964–65 (FPC Exh. 42, p. 1).
>
> * * * Public agency requirements are somewhat less than a year ago as a result of both slightly lower load estimates and an increase in their own resources. For example, the City of Tacoma's Mayfield plant is now allocated to serve utility load and will reduce Tacoma's purchase of Federal power. Nevertheless, total public agency requirements on the Federal system will nearly double from 1,679,000 average kilowatts in 1960–61 to 3,137,000 average kilowatts in 1970–71. It is estimated these requirements will be served in full throughout the period of this Power Outlook. [p. 5.]

In BPA's annual report for 1960 (p. 2) the statement is made that "for the first time in nearly 15 years, BPA finds it is in a period of surplus power instead of power scarcity." Clearly, Nez Perce will not be needed to meet the total loads of all the public agencies in the Pacific Northwest until some time after 1970, without reference to the growth in their own generation. WPPSS witnesses Hurd and Gallup testified that it will be necessary for the option signers to replace Bonneville power with Nez Perce power, and suggested that the option signers would be willing to pay for higher cost Nez Perce power to assure an ample power supply in the future (Tr. 20, 43, 45, 61, 85). It is unrealistic, and I find no basis in the record, to assume that the option signers would voluntarily give up priority BPA power costing approximately three mills to purchase Nez Perce power costing a minimum of 20 to 30 percent higher than the present wholesale cost of BPA power (Tr. 4530, 4532). Nor is there any evidence in the record that the 40 option signers have the intention or the financial resources to take or pay for higher cost surplus Nez Perce power for an indefinite period until their load growth requires its utilization.

---

[28] See "Agreement for Reservation of Certain Output of Nez Perce Project," par. 5, WPPSS Exh. 107.

WPPSS policy witness Hurd conceded that "for a few years at least" there would be available power and energy in excess of requirements (Tr. 4406, 4320, 4321). He suggested that industry and private utilities would pick up the slack.

The major markets for this slack, as indicated by the Bonneville Power Outlook report, are the private utilities consisting primarily of the sponsoring companies making up PNPC, namely, the Montana Power Company, Pacific Power and Light Company, Portland General Electric Company, and the Washington Water Power Company.

As recognized by the Staff (Staff br. p. 66) the four sponsor companies will have a deficiency of 695 megawatts of average annual energy in 1966–67. Without High Mountain Sheep, they may be forced to build alternative high-cost thermal plants. BPA power is not a firm resource for the future since the four companies have been given notice that there is no assurance that BPA power will be available for them after 1963–64 (Tr. 2307–2308–2330, PNPC Exh. 29). The public agencies have that assurance, plus increased generation from Priest Rapids, Wanapum, and Rocky Reach (Tr. 2301). Nor would the availability of Canadian storage significantly change the urgent need of the sponsor companies for additional firm hydro generation.

Realistically, therefore, the basic markets for Nez Perce or High Mountain Sheep power are the companies making up PNPC. There is nothing in the record to indicate that these companies have any interest in purchasing this power from WPPSS, or that any other companies are presently willing to do so. As stated by PNPC witness Warren:

> While I would hesitate to hazard any guess as to the probable trends of prices in the decade from 1970 to 1980, I would point out that if a license is denied to us for High Mountain Sheep for immediate construction on the theory that our needs would be taken care of by juggling of power supplies just as I have described it, the result is to expose our customers to whatever hazard of price movements which may occur in a period of 20 years from this date which increases the capital costs of power supplies. We consider that our customers are entitled to have low cost hydroelectric power to serve their own needs. We will need the power by the time High Mountain Sheep can be built. WPPSS, its members and associates will not need any power before 1970, and probably not before 1975. [Tr. 10,575.]

The result of this comparison is that Washington Public Power Supply System in 1970 will have approximately 14.2 percent of the total customers in the area and 14.4 percent of the resources. On the other hand, Pacific Northwest Power Company will have 41.4 percent of the total customers and only 21.5 percent of the resources.

Expressed in another way, the preference group as a whole and the Washington Public Power Supply System specifically are now assured that they will be able to serve their entire loads in 1970 through hydroelectric power, but the Pacific Northwest Power Company will have a substantial portion of its load that must be served from other sources of energy. This will be

> true even with a license for High Mountain Sheep granted by this Commission. [Tr. 10,579, 10, 580.]
>
> The Nez Perce Project is entirely disproportionate to the needs [or] of ability of the Washington Public Power Supply System. It represents more than ten years' load growth for the Washington Public Power Supply System. The System, therefore, would require that other utilities undertake the financial responsibility of maintaining the availability of Nez Perce for the System until the System needed Nez Perce. Sound utility management would indicate that the System should undertake (as it has in the Packwood Project) projects commensurate with its needs. [Tr. 10,581.]

WPPSS obviously anticipates the sale of Nez Perce power to private utilities, even though these companies have made it clear that they are not willing to enter into any such commitments (WPPSS br. p. 185). The Staff agrees (br. p. 106) that WPPSS has not demonstrated that it is able to carry out its proposed plan of financing citing the absence of firm power contracts, assured market, and the failure to take into account transmission costs, taxes, or wheeling charges. It proposes, however, that WPPSS be given two years to obtain binding power contracts (presumably from the companies making up PNPC) and otherwise demonstrate its ability to finance the Nez Perce or the High Mountain Sheep Project.

Since the public agencies have first call on WPPSS power (whether generated at Nez Perce or High Mountain Sheep) the substitution of WPPSS for Bonneville[56] as a wholesaler of power brings the PNPC group no closer to the solution of their basic problem—a long-term, firm assurance of generation adequate for their own growing needs. The PNPC group are already committed to purchasing surplus non-Federal power from public agencies at Priest Rapids, Wanapum, and Rocky Reach.[57] I know of no public policy designed to encourage the shift of market from BPA to WPPSS, or to compel the private utilities to meet their increasing needs from non-federal public agencies on a short-term pullback basis.

WPPSS has failed to establish the existence of firm power contracts for the power output of Nez Perce or High Mountain Sheep. In lieu of firm contracts, WPPSS has listed its members, potential buyers, the results of market surveys, and ultimate regional needs. Its own financial witnesses, however, testified that prior to the issuance of its revenue bonds it would have to have under firm contract sufficient customers to cover all its costs. But even more basic is its failure to demonstrate an assured market for the power when it comes on the line in 1968. It may be some time after 1970, and probably not before 1975, before WPPSS and its members will need power above and beyond their own resources, plus federally generated power. Accordingly, WPPSS has demonstrated no real need for the output of Nez Perce or High Mountain Sheep within any reasonably close period of time.

An assured market is particularly essential to WPPSS since only the revenues from the proposed project itself are available to meet its financing costs. WPPSS has no other revenues or available source of funds, no take or pay contracts, to tide it over while it seeks to develop markets.

---

[56] BPA 1960 annual report states (p. 16) that: "Increased non-Federal generation, most of which was transferred over the Bonneville Power Administration transmission system, resulted in reduction in BPA sales to privately owned utilities and to Cities of Seattle and Tacoma, Washington.

[57] The group's long-term purchase arrangements helped provide the financing for these projects licensed to Grant County and Chelan PUD's (Tr. 146).

Nevertheless, the Staff suggests, citing the Commission's decision in the matter of *First Iowa Hydroelectric Cooperative*, 6 FPC 227, 230,[38] that WPPSS be granted a hunting license for two years to round up the reluctant private utility and industrial customers that will be needed to demonstrate the existence of firm power sales contracts.

The Commission's understandable desire in the First Iowa case not to prevent construction of a desirable project[39] obviously has little application to evaluating the comparative merits of financial plans presented by competing applicants. The issue here is which of the two applicants has made the more persuasive demonstration of financial feasibility for its proposed project. PNPC has established the existence of an assured market for the entire output of High Mountain Sheep on the part of its four organizing companies. The organizing companies, with assets of $1,467,746,072,[40] agree to obligate themselves to take or pay for the entire output of the project at annual payments equal to total costs. PNPC's equity and first mortgage bonds will be readily saleable.

WPPSS, on the contrary, relies on the potential regional need for the output of its proposed project. The Commission recently indicated, however, that the regional need[41] for hydro generation alone is not enough to justify a finding of financial feasibility where a competing applicant has demonstrated its own need for the power to be generated and the superior financial feasibility of its project.

In the matter of *City of Seattle, Washington*, 26 FPC 54 (July 10, 1961)*, the PUD had shown no firm commitments for the purchase of its Z-Canyon power; whereas the City of Seattle, the competing applicant, had established that it needed all the power to be produced by its Boundary Project. The Presiding Examiner found that the absence of power purchase commitments rendered PUD's showing of financial feasibility inadequate, and that this inadequacy was not cured by adopting Seattle's need or the regional need for additional power in the Pacific Northwest. The Commission, in denying a Petition for Rehearing, stated in pertinent part:

---

[38] The Staff relies on the following language: * * * Obviously, no independent concern such as the Cooperative could hope to obtain firm commitments on any proposed bond issue in advance of Commission authorization of a license. While we do not regard the mere license authorization to construct a water power project subject to Federal jurisdiction as being any guarantee of economic feasibility, it does not seem to be our function under the Act to prohibit construction of a desirable project which an applicant appears to be able to finance merely because complete financial arrangements have not been made, when as a matter of business practice such arrangements depend upon the license authorization initially. On the other hand, if only superficial showing of financial ability had been made by the applicant, or no financial house had indicated any interest, and it appeared that the license authorization was being sought merely for trading purposes, we would not be justified in authorizing a license no matter how desirable the development might be economically. In addition to these considerations, we noted that the Cooperative and its predecessors have already reported large expenditures in furtherance of the development.

[39] A project, apparently, that was never constructed because the licensee could not make the necessary financial arrangements (PNPC reply br. p. 46).

[40] See 1961 stockholders' report (Form 2) on file with the Commission:

PPL—$663,247,000
MPC—280,667,638
WWP—265,783,857
PGE—258,047,577 $1,467,746,072

[41] Regional needs may be so pressing and so well established that it is unnecessary to determine the precise market before issuing a license. This was the case in *Power Authority of the State of New York*, 12 F.P.C. 172, where demand was so great potential customers were seeking priorities for the applicant's output. That situation has no application to the present problem of choosing between competing applicants or to the facts in this case.

*Aff. Aug. 30, 1962 (C.A.D.C.) sub. nom. *PUD No. 1 of Pend Oreille County* v. *F.P.C.*, 308 F. 2d 318; cert. den. 372 U.S. 908.

> PUD contends that the Commission erred in concluding that Z Canyon is financially unfeasible because of lack of market for its power. The Examiner devoted eighteen pages of his decision to a showing of PUD's failure to prove the financial feasibility of its proposals. PUD has not demonstrated an existing and potential market for Z Canyon power and the record shows that such a demonstration is necessary before PUD could successfully negotiate its contemplated bond issue. [pp. 2, 3.]

I conclude, therefore, that WPPSS has failed to establish its ability to finance the proposed Nez Perce or High Mountain Sheep projects. PNPC has demonstrated the financibility of its High Mountain Sheep project. Assuming, as Staff does, that WPPSS could, if given two years, come up with an acceptable plan of financing, PNPC's project is presently more attractive to lenders and offers a greater assurance of financial feasibility and early construction. No public interest or policy has been suggested for licensing WPPSS to wholesale power to the PNPC group, able and anxious to supply their own urgent needs, where the financial feasibility of the WPPSS project depends derivatively on the needs of the competing applicants' organizing companies. On the contrary, it is, and has been the policy of the Commission to encourage public utilities under its jurisdiction to anticipate future loads and to expand to meet their own needs. See *City of Seattle, Washington*, cited *supra*, and *Pacific Power & Light Co.* Op. 354, issued April 17, 1962 [27 FPC 623 at 625 and 628]

Fishery Resources, Facilities and Passage

Section 18 of the Federal Power Act, as amended, provides in substance that the Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such fishways as may be prescribed by the Secretary of the Interior. No recommendation of proposed facilities has been made by the Secretary of Interior for either project. However, the Department of Interior, in a letter dated November 21, 1960 (FPC Exh. No. 42) taking the position that "initiation of a project in the Middle Snake area is not requisite at this time", reports that advice may be transmitted at a later date—presumably after the Commission has decided which project, if any, to license. The Department's position was reaffirmed by Secretary Udall in a letter to the Chairman dated March 15, 1961, urging delay in licensing any Middle Snake project "pending completion of accelerated fish studies" (FPC Exh. 42B).

Finally, on June 28, 1962, the Secretary stated that "Our Studies to date show little promise of a sudden major breakthrough which could produce a satisfactory solution to the fish problem at the Nez Perce site by the end of 1964." The Secretary recommended construction of High Mountain Sheep by the United States "Taking all resources into account, we believe that the Mountain Sheep Dam on the Snake River represents the optimum development."

Undoubtedly, as in other cases involving fishways, final design and approval of fishways and fish programs will be made after licensing but before construction is authorized. Both applicants concede the importance of the fishery resource and have submitted cost estimates for proposed fish facilities.

1. At the outset, it is necessary to evaluate the magnitude of the fishery resource which would be affected if either Nez Perce or High Mountain Sheep is constructed. We can then consider which of the competing plans is best

adapted to permit the preservation and development of the fishery resource involved. The fishery resource at these projects includes spring and summer chinook salmon, fall chinook salmon, blue back salmon, and steelhead. According to the best available estimate,[48] approximately 264,200 adult salmonoids will present themselves annually at the Nez Perce Dam site, more than one-third of the total [619,750] of the entire Columbia River anadromous fishery resource that passes McNary Dam. Of these, roughly 200,000, or 75 percent, enter the Salmon River for spawning, and the remaining 64,200, or approximately 25 percent, pass the High Mountain Sheep site. Of 152,700 spring-summer chinook passing the Nez Perce site, 136,000 will enter the Salmon River, while the remainder of 16,700, or 10.9 percent, will proceed up the Snake River past the High Mountain Sheep site. Of 35,000 fall chinook passing Nez Perce, 5,000 will proceed up the Salmon River while the remainder of 30,000, or 85.7 percent will proceed up the Snake River past the High Mountain Sheep site. Of 9,000 blue-back passing Nez Perce, all will enter the Salmon River, and of 67,500 steelhead at Nez Perce, 50,000 will enter the Salmon, while the remainder of 17,500 or 25.9 percent, will proceed up the Snake past the High Mountain Sheep site.

This estimate indicates, and I find, that the greater portion of the sports and commercial fishery resource involved in these proceedings is to be found in the Salmon River. "The Salmon River is by far the most important fish producing tributary in the entire Columbia River Basin" (FPC Exh. 42 letter from Secretary of Interior to Chairman, FPC dated 11-21-60, p. 4).

It has been estimated that over $200,000,000 has already been invested in fish preservation facilities on the Columbia River.[49] The cost of fish facilities at eight federal dams on the main stem of the Columbia River alone has been estimated at $156,000,000. The cost of such facilities at Priest Rapids will be about $10,000,000, and at Rocky Reach about $9,000,000. This does not include the proposed cost of fish facilities at Nez Perce (31-43 million) or High Mountain Sheep (11-15 million), or costs of operating and maintaining the facilities and costs of research. The commercial catch of the Columbia River is estimated to be worth around $12,000,000 annually (CRSTPA Exh. 4), and the sport fishery attributable to the Salmon River alone as much as $8,000,000 (Tr. 978). While WPPSS does not consider the fish count estimates presented as reliable, it does concede significant monetary, cultural, aesthetic, and recreational value to the commercial and sport fishery attributable to the spawning areas above the proposed projects.

In any event, it is established federal policy to maintain the Columbia River fishery resource (including the Salmon and Snake River contribution) and to pay a high price, if necessary, to insure salmon preservation. This does not mean that the Commission will, or should, refuse a license solely because a proposed project may be detrimental to the conservation of migratory fish. As the Chairman recently observed, "We cannot allow the fish problem to paralyze the Commission in acting on hydroelectric license applications." (Address before the American Public Power Association, San Juan, Puerto Rico, May 15, 1962). The fundamental standard is "The public interest." See *F.P.C.* v. *Sierra Pacific Power Co.* 350 U.S. 348, 355. The harmful effect of a proposed project on the conservation of anadromous fish is only one—however important—of various public interest factors which must be considered in determining which plan is best adapted to water resource development for power, navigation and flood control, as well as fish maintenance. *In the Matter of City of Tacoma*, 10 FPC 424 (1951). The goal is optimum use of the river under a plan which permits maximum development of all water resources, including power and fish, involved in comprehensive river development. Fish are not "the sole controlling resource" (WPPSS reply br. p. X-7). If that goal cannot be achieved, the Commission must balance any adverse effects of the proposed projects on fish against the overall benefits to power, flood control, navigation, and other beneficial water uses.

---

[48] A three-year study conducted by the Idaho Fish and Game Department and the Oregon Fish Commission for the U.S. Corps of Engineers (Fisheries Exh. 6, Tr. 8987-91) representing maximum counts arrived at by statistical methods.

[49] Salmon of the Pacific Northwest—Anthony Netboy (1958), pp. 111, 112.

2.

a. *WPPSS Upstream Fish Facilities at Nez Perce*

The upstream fish passage facilities proposed by WPPSS for the Nez Perce project include a picketed lead barrier downstream across the power plant discharges. The barrier is angled downstream across the river and designed to move migrants towards the right bank to the area of the fishway entrance, thus preventing the fish from approaching the powerhouse tailrace tunnels, or from being trapped at the base of the dam. The applicants' joint statement agrees that a picketed barrier of the type proposed can be physically erected and maintained in the river. However, it does not agree that such picketed barrier would function for the purpose intended, or that the cost estimate is adequate.

Two slotted entrances are provided into a 16-foot wide fish ladder having its low-water entrance at elevation 874. The ladder extends into a tunnel in the left bank up to the fish locks at elevation 1147, a maximum climb in one-foot steps of 273 feet.

There are two pressure lock chambers at the head of the ladder where the fish will be subjected gradually to water pressures equal to those existing at the same elevation in the reservoir. The fish are then expected to leave the lock and enter the reservoir guided by attraction flows through the turbine intakes and further induced by means of a brail sweep located in the lock chamber.

After the fish have presumably swum through the reservoir, they will pass through upstream migrant fish ladder facilities provided at the Whitebird fish barrier on the Salmon River, or a similar facility at the head water of the Nez Perce reservoir on the Imnaha River. The Whitebird ladder is 16 feet wide, whereas the Imnaha ladder is 10 feet wide (WPPSS Exhs. 155 and 156). Both have a slope of one on ten.

b. *WPPSS Downstream Facilities at Nez Perce*

The most important features of the Nez Perce downstream fish passage facilities are the louver by-pass installations proposed at both the Whitebird barrier on the Salmon River and the Imnaha barrier on the Imnaha River at the head of the Nez Perce reservoir. At these barriers the fingerlings which have been spawned upstream will be screened, sorted, and gathered for barging to the Nez Perce dam. The louver structure (WPPSS Exhs. 155 and 157) is made up of closely spaced vertical metal bars arranged in the form of a "V" with the opened end at the upstream of the structure. At the apex of the "V" there is a full depth of vertical slot that connects with a by-pass pipe. The fish are directed to the by-pass slot, which they presumably enter with the flow of water, where they are carried to a second screening device, the secondary louver, in which louvers are again employed to divert the fish from the bulk of the flowing water with which they enter the structure. The fish are then graded and passed to holding tanks at loading areas for transportation to Nez Perce dam by barge.

A floating skimmer device is also provided in the forebay of the dam to collect those fingerlings that have entered the reservoir forebay, and collect them for passage through the dam in a vertical chute and flume where they will be discharged into the Snake River downstream to the picketed lead barrier structure at elevation 920 (WPPSS Exhs. 151, 152, and 153).

c. *WPPSS Fish Facilities at High Mountain Sheep*

The fish passage facilities proposed by WPPSS for the High Mountain Sheep project are basically the same as those proposed for Nez Perce except for changes necessitated by the fact that a conventional powerhouse is proposed for High Mountain Sheep, and an underground powerhouse is proposed at Nez Perce (WPPSS Exhs. 313–320). The upstream facilities proposed by WPPSS at the High Mountain Sheep dam include a standard attraction and powerhouse upstream collection system, a fish ladder extending from the powerhouse along the downstream face of the dam to the area of the power intakes, and two pressure fishlocks extending through the dam and discharging at elevation 1152 (WPPSS Exhs. 314, 316). Downstream migrant facilities include a louver at the Imnaha barrier for transfer of downstream migrants by tank to the High Mountain Sheep dam. At the dam itself, a downstream migrant floating skimmer and unloading facilities will be located where the fish will be transported through a helical chute and exit flume and discharged downstream into the Snake River (WPPSS Exhs. 317 and 318). An upstream migrant fish ladder is located at the Imnaha fish barrier.

3. *PNPC Fish Facilities at High Mountain Sheep*

Upstream migrant facilities for Snake River fish at High Mountain Sheep dam include an attraction, collection, and transportation system at the powerhouse (PNPC Exh. 65); two fish ladders, one extending to the Imnaha Canal for a height of about 585 feet and the other from the powerhouse collection system to the tramway structure at elevation 955 (PNPC Exh. 66). The fish are carried in hoppers over the dam and into the reservoir.

Upstream facilities for Imnaha fish include a ladder entrance discharging Imnaha River water, a fish ladder 6000 feet long, and a 17-mile canal extending to the pool of the Imnaha fish barrier. A fish ladder is also located at the Imnaha fish barrier to permit fish to ascend the Imnaha from the reservoir itself.

Downstream Snake River migrants will be delivered at the proposed Hells Canyon loading station for transfer to barge or boat and released below the High Mountain Sheep dam. Downstream Imnaha migrants will be diverted at the Imnaha fish barrier by a concrete gated dam, screening and trashrack structure, and by-passed into the canal to be discharged below the dam (PNPC Exhs. 66 and 67).

Lower Canyon

Lower Canyon, whether located on the Salmon at mile 0.5 or mile 3.7, poses fish passage problems similar to Nez Perce. No license application is pending for this site and no one is proposing development with specifically designed fish facilities. The Staff points out, and I agree, that the Lower Canyon reservoir presents simpler passage problems than Nez Perce since it does not have multiple runs of Salmon, Snake, and Imnaha fish, multiple tributaries, reverse flows, and the problems associated with these additional obstacles to successful migration (Staff br. p. 192).

a. *Discussion of Fish Passage Facilities and Problems*

The reservoirs that will be formed behind the proposed Nez Perce and High Mountain Sheep dams constitute a major hazard to migrating fish. The Nez Perce reservoir will extend up the Snake River 61 miles to the tailwater of the Low Hells Canyon dam, 63 miles up the Salmon to the Whitebird fish barrier, and 10 miles up the Imnaha to the Imnaha fish barrier. All upstream migrants must pass through the reservoirs to reach up-river spawning beds above the proposed dams. Migratory salmon are basically river fish, and large reservoirs of the size and depth proposed change their natural environment with complex and adverse biological consequences. The change from the river to large and deep reservoirs produces changes in temperature, velocities of flow, stratification, oxygen content, and migratory patterns. There is substantial testimony that these changes will seriously impede maintenance of the fishery resource.

During the winter season, the reservoirs will be relatively homogeneous with no regular variation in temperature or stratification either vertically or along the length of the reservoir. In the spring the temperature of the surface layers will begin to increase, as will the temperature of the inflowing waters, but at a less rapid rate. The inflowing volume will sink below the reservoir surface seeking its own density level at some intermediate depth. As the water warms through the summer, vertical stratification will strengthen, reaching maximum intensity in August when the temperature difference approaches 40° F (PNPC Exh. 100). Temperature differentials affect fish migration and mortality.

WPPSS proposed to exit adult migrants into the Nez Perce reservoir at elevation 1147, 363 feet below the normal water surface (1510) in the vicinity of the turbine intakes. The power intake at Nez Perce is at elevation 1110 feet, or 400 feet below the normal water surface.

Dr. Pritchard, a PNPC witness, testified that the deeper layers in all thermally-stratified reservoirs exhibited oxygen deficiency during the period of thermal stratification. He testified that the dissolved oxygen content of the waters between 250 and 350 feet would begin to decrease in March to less than four parts per million in July and less than three parts per million in August and September. Wendell Smith, a fisheries biologist, testified that the Washington State Pollution Commission uses a standard of five parts per million, "below which salmon are believed to be in jeopardy" (Tr. 14,087).

Another hazard present in these reservoirs is "Residualism"—the failure of downstream migrants to pass through the reservoir to the ocean. Ralph W. Larson, a fisheries biologist employed by the Washington State Department of Game, testified that the normal pattern for a downstream migrant is to move downstream with the current at river speed, its head facing the current, its tail pointed downstream (Tr. 1399). Large reservoirs with deep currents and low velocities increase the time spent in the reservoir—a critical factor. The fish may decide not to leave. They are then lost forever as perpetuators of the anadromous species, since residual fish do not spawn successfully (Tr. 1400, 1458).

Forrest Hauck, fisheries biologist for the Idaho Department of Fish and Game, testified that five times the amount of residualism on the average might be expected in the Nez Perce pool as would be found in the High Mountain Sheep pool based upon the numbers of fish affected (Tr. 1458–9). He indicated that temperature, timing and water quality all may contribute to residualism. Seaward bound salmon and steelhead undergo a change in physiological functions in which they become adjusted to saline waters. Dissolved salts in the reservoir may be adequate in amount to satisfy their migratory instinct and induce residualism. Evaluation studies are underway at Brownlee to show the effect of the reservoir on residualism and related factors (Tr. 9108, 9282–3).

The applicants are agreed that the in-reservoir conditions of velocity, temperature, stratification, and oxygen content will be substantially the same in the Nez Perce and High Mountain Sheep reservoirs. However, Nez Perce, in addition to affecting the greater fishery resource of the Salmon River (unaffected by High Mountain Sheep) presents reservoir passage problems of much greater complexity and under conditions substantially more adverse than those presented at High Mountain Sheep reservoir. At Nez Perce, upstream Salmon, Snake, and Imnaha River migrants will be discharged 363 feet below the surface of the reservoir in the vicinity of the power intakes under pressures of 145 pounds psi. The effect of this pressure on the fish, at depths below their normal migration level in fresh water in an area where oxygen deficiencies may prevail is unknown.

Hauck suggested that the failure of migration at Brownlee was due to the changes in environment from river to reservoir—current conditions, stratification, temperature changes, oxygen deficiencies, salt content and other ecological factors. At Nez Perce, three different runs of fish, Salmon, Snake, and Imnaha, will have to find their way through the reservoir to the appropriate natal stream and their respective spawning grounds. The Chinook migration season coincides with the period of thermal stratification with multiple vertical layers of Snake and Salmon River water extending up both the Snake, Salmon, and Imnaha arms of the reservoir. These reverse flows, with Snake River water in the Salmon arm and Salmon water in the Snake arm, may confuse the fish and lead them away from their natal stream (8171–8179, 11,138). Water quality problems are minimized at High Mountain Sheep which leaves open the migratory route of the major salmon runs.

WPPSS' facilities are designed to exclude downstream Salmon River migrants from entering the reservoir by means of a louver barrier at Whitebird. Small louver type fish diverters are in use at various installations—the largest at Tracy in an irrigation canal with a capacity of 5000 cfs. The percentage of salmon passing down the river that are successfully diverted into the by-pass by these louvers ranges between 13.4 and 80 percent (Tr. 1433).

The proposed Whitebird installation dwarfs existing louvers and is considered experimental by the fishery agencies. It would handle variable flows from 2500 cfs to a maximum of 120,000 cfs, or up to 24 times as much water in volume as Tracy. Each louver bay will be 60 feet deep—a depth at which turbidity would have the greatest effect on visual reaction. The Staff concludes that many problems remain to be solved before the louver barrier can be adapted for use at Whitebird, including turbulence, control of velocity of approach, icing conditions, trash accumulation and removal, and handling of stream flows up to 120,000 cfs (Staff br. p. 119).

WPPSS' proposed floating skimmer some 60 miles downstream in the forebay of the Nez Perce reservoir is similar to the skimmer at Brownlee and is designed to attract downstreams migrants that evade the louver system. The fishery agencies consider the Brownlee skimmer a failure (Tr. 1411, 1444, 8228) and attach little value to the proposed Nez Perce skimmer.

The fishery agencies also object to WPPSS' pressure locks, an essential part of the upstream passage facilities, on the ground that it has never operated successfully at any dam and has too many untested mechanical features. The Staff emphasizes uncertainties in the operation of the fish lock, including its mechanical features, the effects of pressure on adult salmon and steelhead (Tr. 8854, 8484), the possibility of impingement of fish on trashracks after release from the lock (Tr. 8959), exiting of fish from the lock (Tr. 8407), and the actual capacity of the lock (Tr. 8483).

WPPSS offers to subject all aspects of its proposed fish facilities to intensive study, experimentation, and pre-construction testing. This would include the response of adult fish to pressures encountered in the proposed lock chambers, the sufficiency of the oxygen content Nez Perce reservoir, the lower barrier etc. If these tests should prove the facilities inadequate, WPPSS contends that alternatives are available.

Definitive tests, however, cannot be made and evaluated until after the Nez Perce dam is constructed and it will then be too late to make changes without great risk to the fishery resource and greater project costs. The suggested WPPSS alternatives—trapping and hauling of upstream migrants past the dam, aeration at the turbines, a full height fish ladder, transporting the adults by barge through the reservoir, and the relocation of the Snake and Imnaha runs to the headwaters of the Salmon—offer no greater promise of sustaining the runs than WPPSS' primary proposals. The increase in mechanical handling and the confinement of the fish during transportation will increase disease problems and mortalities. The break in the continuity of water quality and the migration route of the juvenile fish and the returning adults introduce elements that have not been tested or evaluated and are deemed unsatisfactory by the fishery agencies (Fish Agency br. p. 20, Fish br. 8-11). Relocation of the Snake and Imnaha runs to the headwaters of the Salmon may in fact mean abandonment of all the Snake River runs above the mouth of the Salmon. Edward M. Mains, fisheries biologist, testified for the Washington State Department of Fisheries that, while fall chinook have been raised by artificial spawning channels, fish farms and hatcheries, results with regard to spring and summer chinook—the major Salmon River fishery resource—have not been satisfactory (Tr. 1372-1373). Accordingly, artificial spawning does not appear likely to alleviate the adverse effects of blocking the Salmon River insofar as the evidence of record is concerned.

WPPSS emphasizes the accelerated research program of the Department of Interior announced in the Secretary's letter to the Chairman, March 15, 1961 (FPC Exh. 42B). Secretary Udall stated in part: "We have set the end of 1964 as the target date by which time to learn as much as possible the direction in which a sound development program should go." The letter urges no license to any applicant "* * * pending completion of the accelerated fish studies * * *" and states

> * * * In discussions with our fish biologists, we have concluded that a solution to the problem of downstream fish passage has not yet been found either for the proposed High Mountain Sheep Project nor the proposed Nez Perce Project.

An earlier Department of Interior letter dated November 21, 1960, stated in pertinent part " * * * There are at present no known means for protecting the fishery resources of the Salmon River if either the Lower Canyon or Nez Perce Project were constructed (FPC Exh. 42)."

The fishery interveners support experimentation but urge that it be kept above the mouth of the Salmon. As stated by the Idaho Wildlife Federation

> To continue experimentation to solve anadromous fish passage problems at high dams with large long reservoirs is important, and the Snake River with its three Idaho Power Company licenses already above the mouth of the Salmon is the place this should be done. The failure of successful fish passage at Brownlee is supplying now some of the negative answers from experimentation. To keep the experiments above the mouth of the Salmon for many years is paramount, and that is why the High Mountain Sheep Project of the Pacific Northwest Power Company is the proper development for the middle Snake. [Br. of the Idaho Wildlife Federation, pp. 4-5.]

Licensing policy must be based on evidence currently available and capable of evaluation. The Department of Interior holds out no promise or expectation that its "accelerated fish studies" will be successful at the end of 1964, or by any other date; nor has any other fishery agency,[44] local, state or federal. None of the ten fishery biologists that appeared in this proceeding [including WPPSS biologist Dr. Holmes] testified [45] that the proposed Nez Perce fish facilities which from an engineering point of view are designed with great boldness, technical skill, and imagination, would successfully pass and preserve the existing runs. Achievement of successful passage is a biological as well as an engineering problem. Biologists simply do not now know what conditions must be created to provide successful fish passage through large and deep reservoirs and around high dams. As summarized by the fishery agencies:

> The proposed fish passage plan of WPPSS is based upon a combination of untried, untested, unsatisfactory and controversial elements, piling risk upon risk to the extent that no biologist, including that of WPPSS will predict that it will work. [Br. p. 22.]

The High Mountain Sheep dam above the mouth of the Salmon, however, creates new problems only with regard to the minor fishery resource [less than 6 percent] of the Imnaha. Upstream the main Snake River run is already jeopardized by Brownlee, Oxbow, and, soon, the Hells Canyon dam.

In its most recent report to the Secretary of the Army dated March 31, 1961, the Corps of Engineers evaluates the possible impact of fishery research on Nez Perce as follows: (p. 8)

> However, the problem of passing migratory fish at high dams, in the opinion of authoritative sources, cannot be resolved in less than 8 to 10 years, and, because of the unique fisheries problem presented, they state that at least 15 to 20 years might be necessary to resolve the problem that would be created by the Nez Perce project * * *
>
> The High Mountain Sheep project could be constructed now without being a serious hazard to the anadromous fishery, since it would affect less than 3 percent of the fish passing McNary Dam in addition to that already affected by existing projects on the Middle Snake River.

The current position of the Department of Interior on the prospects for succesfully passing fish at the Nez Perce site is contained in the Secretary's letter of June 28, 1962 (Exh. 43–A) requesting that the Commission recommend Federal construction of the High Mountain Sheep Dam.

> 2. The fishery resources are vitally involved. The Fish and Wildlife Service of this Department is studying intensively the passage of fish, both upstream and downstream, over large structures and through long storage reservoirs. *Our studies to date show little promise of a sudden major breakthrough which "could produce a satisfactory solution to the fish problem at the Nez Perce site by the end of 1964,"* which was the tentative date for completion of the accelerated research program. *A calculated risk that by that time, or within a few years thereafter, Nez Perce could*

---

[44] Extracts from their testimony are contained in PNPC's brief p. 67 *et seq.*

[45] The fishery agencies comment on the research program as follows:

There is no question in anyone's mind that the passage of fish at high dams has not been solved. Congress has recently appropriated funds in the amount of several million dollars for the initiation of research to attempt to solve the problems related to fish passage at high dams. The *research program has been outlined to cover the next seven or eight years with a critical review of the findings at the end of 1964 to determine what steps might be taken in the comprehensive development projects in the Northwest at that time.* Both Nez Perce and High Mountain Sheep are high dams. Both applicants offer features in their fish passage facilities which are experimental in nature. In other words, these particular features of fish passage at high dams have not been worked out or evaluated at high dams anywhere in the world. [Emphasis supplied.]

> *be accommodated to the anadromous fish runs representing 75 percent of the anadromous fish resources of the Snake River basin would not be warranted on the basis of what these studies are showing. The Mountain Sheep project represents less hazard to the fishery resource than the Nez Perce project.* We hope the research program will develop effective means for fish passage which can be incorporated into new and existing projects, including the Mountain Sheep project. Additional study and research during the operation of a middle Snake River project may disclose improvements which can and should be made to protect still further the fish runs. Construction and operation of the project by the United States will assure that every effort will be made promptly to preserve and improve this important fishery resource in the light of experience and changing technology. The flexibility and relative ease with which facilities for effective fish passage could be incorporated in a multiple-purpose Federal project should be compared with the difficulties that would be encountered in a project constructed and operated by a non-Federal entity. Particularly acute problems involving extensive readjustments for additional costs would be certain to arise. [Emphasis supplied.]

Finally, WPPSS adverts to the Commission's comments in its 1958 decision to the effect that "the biological problem at Nez Perce is generally similar to that at other high dams." (*Matter of Pacific Northwest Power Co.*, cited *supra*, p. 135). The "promising outlook" at Brownlee has not materialized and the record in this proceeding does not support an optimistic outlook for the success of the proposed Nez Perce fish passage facilities. The Staff concludes (Staff br. p. 193), "This record no longer justifies that conclusion", referring to its belief in the earlier proceeding that "there was some basis for believing that the problem could be solved with a reasonable degree of success."

The Rival Plans of Development

Section 10(a) of the Federal Power Act provides in pertinent part that all licenses issued shall be subject to the following conditions:

> That the project adopted * * * shall be such that in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial uses, including recreational purposes; * * *

A comprehensive plan provides for prompt and optimum multipurpose development of the water resource.[46] The proposed project to be licensed must be "best adapted" to achieve such development.

Both plans develop all the available head, and both are comprehensive in that they provide for all practical uses of the river.[47] The High Mountain Sheep project is the major component of PNPC's plan of development and the Nez Perce project is the major component of WPPSS' plan. Their relative merits turn on a comparison of the costs and benefits of component developments and on which project is best adapted to attain optimum development at the earliest time with the smallest sacrifice of natural values.[48]

---

[46] The Federal Power Act looks to prompt development of water resources where such development is feasible and in the public interest, and it gives to the Commission discretionary power to delay utilization only where such delay is found to be imperative. (*In the Matter of Virginia Electric Power Company*, 10 FPC 1.)

[47] The "common reach" includes the Snake River from the Low Hells Canyon normal pool elevation of 1683 to the China Gardens elevation of 845, and the Solomon and Snake Rivers from the Freedom normal pool elevation of 1.780 to the China Gardens tailwater elevation (Prehearing conf. Report p. 5).

The Commission must consider the component developments and plans not only from the point of view of power costs and benefits but also flood control, navigation, irrigation, recreation, fish and wildlife, and "other beneficial public uses" as that phrase is employed in Section 10(a). Accordingly, we proceed to an analysis of the rival plans and their component projects to determine which will more readily achieve prompt and optimum development of the resources involved. It should be noted that, other than the competing projects proposed for licensing, neither applicant is proposing the construction of any other projects or developments in either plan. The superiority or inferiority, however, of alternative plans of development does not depend on the pendency of applications to construct all of the component projects. The Commission has the power, once it adopts a particular plan, to require an applicant to conform his proposed project to the Commission's plan of development even though it may mean changing sites, locations, structures, capacity, or timing.

PNPC's High Mountain Sheep plan includes an arch dam at High Mountain Sheep, Snake River mile 189.2, elevation 1510, with an initial installation of seven units (1,400,000 kw) and an ultimate installation of ten units (maximum capability—2,000,000 kw). An arch dam is included at Lower Canyon Salmon River, elevation 1595, mile 3.7 with an initial installation of four units (800,000 kw) and an ultimate installation of seven units (1,400,000 kw) in a single powerhouse. The China Gardens site is a gravity dam, elevation 945, with an initial installation of three units (300,000 kw), an ultimate installation of five units (500,000 kw) at normal pool elevation of 945.

PNPC's Nez Perce plan includes a gravity dam at the Nez Perce site with an initial installation in two powerhouses of eleven units (2,090,000 kw) an ultimate installation of seventeen units (3,230,000 kw) (PNPC Exhs. 16 and 19). The Whitebird development is omitted from PNPC's plans as uneconomic. While PNPC's plan develops all the available head, its Nez Perce plan has a smaller capability both initially and ultimately,[49] because of more efficient use of storage in its High Mountain Sheep plan.

WPPSS' Nez Perce plan includes the Nez Perce project as proposed in its amended license application, a Whitebird project consisting of three generating units, rated 23,000 kva, each installed in a skeleton powerhouse built as part of the Whitebird fish barrier dam, and the China Gardens project, as explained in the testimony of WPPSS' witness Willey, based on Corps of Engineers estimates (Tr. 489, WPPSS Exh. 271).

WPPSS' High Mountain Sheep development is identical with the project for which WPPSS has alternatively applied for a license except that the flood discharge capacity has been reduced (Tr. 106). Its Lower Canyon development consists of a rock fill dam about 700 feet high located at mile 0.5 on the Salmon (Tr. 12,932).

---

[48] When there is a choice to be made among several development plans, the plan which achieves greatest utilization of the water at the earliest time, thus serving the people to the greatest extent, is the plan given prime attention. (*Grand River Dam Authority, Project No. 2183*, 25 FPC 646, (1961).)

[49] PNPC Exh. 16:

	Initial	Ultimate
	Kw	*Kw*
High Mountain Sheep plan	2,500,000	3,900,000
Nez Perce plan (without Whitebird)	2,315,000	3,605,000

The Staff originally presented comparative plans similar to PNPC's plans, except that the Whitebird development was considered in its Nez Perce plan. On rebuttal, however, the Staff plans were similar to those presented by WPPSS with certain adjustments, including an arch dam layout at Lower Canyon mile 3.7, at elevation 1588 (Tr. 13,589). The Staff's High Mountain Sheep plan is designated as Plan A-1 and its Nez Perce plan as B-1.[60]

Construction Costs

Cost estimates for all projects in the common reach were presented by PNPC, WPPSS, the Staff, and the Department of Conservation, State of Washington.[61] WPPSS presented completely revised designs and cost estimates in its supplemental and rebuttal presentations, except for China Gardens. In addition, WPPSS witness Bleifuss submitted three revised designs for Nez Perce (WPPSS Exhs. 275-281), two for Lower Canyon, (WPPSS Exhs. 283-284) and two for Whitebird (WPPSS Exhs. 285 and 286). Each modification in design produced a different cost estimate. The record contains cost estimates from six different sources—the Corps of Engineers, obtained from the 1958 Division Engineer report, Ebasco, Harza, Bleifuss, Thomas, and Staff. For the Nez Perce development alone there are fourteen different estimates[62] in the record ranging from $288,709,000 in WPPSS Exh. 278 to $403,400,000 in WPPSS' original presentation in Exh. 19-A. These differences in cost are due to different overall project layouts—reservoir elevations, installed capacity, geological analysis, foundation lines, length of spillways, powerhouse locations, powerhouse designs, and major items of equipment (Joint Statement, Designs and Costs, Part H).

PNPC comparative analysis using its Green Book design (PNPC Exh. 16) shows construction costs of the alternative plans as $368,600,000 for High Mountain Sheep plan and $397,000,000 for the Nez Perce plan, including Whitebird. Without Whitebird, the cost drops to $361,000,000. If as recommended by Staff in its direct case (FPC Exhs. 44 and 57), an Ebasco type arch dam is substituted for the gravity design at Nez Perce, the Nez Perce plan costs $390,600,000 with Whitebird and $354,600,000 without.

This demonstrates, asserts PNPC, that for the initial[63] period the High Mountain Sheep plan would have 177,000 kw more nominal prime, 74,000 kw more average energy generation, and 147,000 kw more peaking capability (Applicants' Joint Statement, Part I, Table 2).

> The High Mountain Sheep Plan would have an annual power value of $57,436,000—$3,973,000 more than the Nez Perce Plan (Applicants' Joint Statement, Part J). Under the subsequent period, without Crevice storage, the High Mountain Sheep Plan has a superiority of 85,000 kilowatts of nominal prime energy, 64,000 kilowatts of average annual energy and 139,000 kilowatts of peaking capability (Applicants' Joint Statement, Part I, Table 5) and would have an annual power value of $49,644,000—$2,640,000 more than the Nez Perce Plan (Applicants' Joint Statement, Part J). The High

---

[60] Detailed data for developments of PNPC's and WPPSS' comparative plans are shown in Tables of Physical Data, Projects of Alternative Plans, Joint Exhibit, Part G. Project physical data for Staff plans are shown in FPC Exhibit 61.

[61] PNPC Exhs. 16, 19; WPPSS Exh. 20-A; Department of Conservation DCW Exh. 7; FPC Exhs. 17, 32, 80, and 83.

[62] Staff points out that these costs are not comparable "since some include fish facilities, some do not, some include interest during construction, some do not" (Staff br. p. 172).

[63] *Initial Period*—System power development of approximately 16,000,000 kw assumed prevailing when either High Mountain Sheep or Nez Perce comes into service (See Joint Statement, Part I).

> Mountain Sheep Plan of Development also provides greater flood control benefits than would the Nez Perce Plan of Development, approximately $50,000 annually 'PNPC Exh. 19, page 6). [PNPC br. p. 7.]

Consequently, argues PNPC, the additional benefits of the High Mountain Sheep plan over the Nez Perce plan justify an additional capital investment of $68,000,000.

WPPSS argues that you can build one dam (Nez Perce) cheaper than two dams (High Mountain Sheep and Lower Canyon) and that PNPC understates the cost of the High Mountain Sheep plan and overstates the cost of the Nez Perce plan (WPPSS br. p. 85 *et seq.*) (Tr. 12,807, WPPSS Exh. 254). It disputes PNPC's use of a gravity dam design at Nez Perce and its assumed foundation lines at High Mountain Sheep and Lower Canyon. It refers to comparisons by WPPSS witness Bleifuss and the Corps of Engineers. In Bleifuss' "Truest Comparison" (WPPSS Exh. 290), the Nez Perce plan is cheaper than the High Mountain Sheep plan by $50,174,000 ($312,693,000 vs. $362,867,000) (WPPSS br. p. 115). The latest report of the Chief of Engineers, March 31, 1961, comments as follows (p. 8):

> The water resource potential of the lower Middle Snake Basin can also be realized through construction of the High Mountain Sheep Dam on the Snake River and the Lower Canyon Dam on the Salmon River. This combination will produce greater benefits than the Nez Perce project but at a greater cost and a lower justification ratio. Since the preparation of the Division Engineer's report, the results of additional investigations at the High Mountain Sheep and Lower Canyon sites have become available, which indicate rather conclusively that a concrete arch dam is feasible at the High Mountain Sheep site. This dam, built to provide a full pool at elevation 1510, would cost roughly $44 million less than the concrete gravity section dam proposed by the Division Engineer, but raised to the same elevation ($198 million vs. $242 million). There is some chance that an arch dam also might be substituted for the more expensive rock fill dam at the Lower Canyon site, but a conclusion cannot be reached until further borings are made. This additional study can wait until the advance engineering and design stage immediately prior to initiating construction. Even with the reduced cost of High Mountain Sheep Dam, the combination of that dam with Lower Canyon Dam would still cost more than Nez Perce Dam ($384 million vs. $296 million, with the Snake River reservoirs at elevation 1510). The combination also would have a lower justification ratio than Nez Perce (2.23 to 1 vs. 2.91 to 1) if we assume that either of the two alternative developments would be built in the near future.

WPPSS concludes that while the two plans, when completed develop substantially the same power and flood control benefits a truly comparative study of capital costs shows a differential of $90,000,000 to $93,000,000 in favor of the Nez Perce plan of development. "The single most serious mistake is the assumption that an arch dam can be constructed at the mile 3.7 Lower Canyon site, which is geologically impossible for this purpose" (WPPSS br. p. 147).

Comparison of the alternative plans of development is of little value unless comparable and consistent project layouts, designs, cost estimates, and installations are utilized. Each applicant's estimates favor its own plan of which its proposed project is a major part. In large part this results from the selection of the most expensive site and layout for the opponent's projects. WPPSS' use of a rock fill dam at mile 0.5 adds about $49,000,000 to the cost of High Mountain Sheep plan.

Staff witness Shepley testified that his final quantity estimates were based on the consistent use of the independent elastic arch method so that a truly comparative economic study of the two plans could be made. The arch dam is the most economic design. Its consistent use in both plans facilitates a genuinely comparative analysis and comparison of the quantities of construction materials (Tr. 7255, 7274, 7275, 13,569).

The Staff use of an arch dam at the High Mountain Sheep, Nez Perce, and Lower Canyon (mile 3.7) sites for the purpose of making a comparative analysis of the rival plans is reasonable and proper. If an arch dam is used at Nez Perce, the use of an arch at Lower Canyon mile 3.5 is equally justified on the basis of the geologic evidence in this record to determine the relative economic merits of the two plans.

The Staff used two different project layouts for its comparative analysis. Comparision I used a Harza design and located all power plants across the river (FPC Exhs. 64–66). Comparison II, the more economic design, located the power plants on the banks parallel to the river (FPC Exhs. 67–69). The amount of concrete and excavation from Staff project layouts for Nez Perce was 66 percent and 43 percent, respectively, of the total for High Mountain Sheep and Lower Canyon.[54]

The Staff's estimates in Comparison II are about halfway[55] between that of PNPC and WPPSS and are used in Tables 8 and 9 to compare the annual costs and benefits of the rival plans for the four levels of development (Staff br. pp. 177–188). This "broad brush" approach is adopted by WPPSS in its reply brief (p. VI–I).

The Staff estimates represent the maximum reasonable cost differential for comparative purposes (see tables 8 and 9,[56] and chart 1, Staff br. p. 187). However, as pointed out in PNPC's reply brief (p. 156), the Staff approved PNPC's original comparative cost estimates (Tr. 1521), and has never repudiated the validity of its earlier direct presentation. WPPSS at Nez Perce has gone from an initial estimate of $403,400,000 (WPPSS Exh. 19–A) to $307,500,000 (WPPSS Exh. 258) for the Harza arch dam and underground powerhouse—a figure within two percent of the original Ebasco estimate presented by PNPC (PNPC Exh. 16). The Staff Comparison II figures include the lowest of the three Staff estimates for Nez Perce, but not the lowest Staff estimates for High Mountain Sheep and Lower Canyon. Consequently, these Staff figures are most adverse to the High Mountain Sheep plan. It is appropriate to compare the least expensive Staff estimate for the Nez Perce plan with its least expensive

---

[54] (Staff br. p. 169.)

Cubic yards	Nez Perce plan—Nez Perce	High Mountain Sheep plan		Total	Nez Perce; HMS L.C.
		High Mt. Sheep	Lower Canyon		
Dam concrete	2,552,000	2,050,000	1,834,000	3,884,000	0.66
Dam excavation	485,000	300,000	820,000	1,120,000	.43

[55] *Construction Cost:* Difference between High Mountain Sheep plan and Nez Perce plan (without Whitebird and fish facilities):

PNPC	$2,575,000	
WPPSS	93,036,000	
(Mid-point)	47,806,000	
FPC (Comp. II)	43,316,000	(Lower Canyon with 800,000 kw)
FPC (Comp. II)	49,616,000	(Lower Canyon with 910,000 kw)

[56] Staff tables 8 (Sheet 1) and 9 are attached as Appendix D and E.

estimate for High Mountain Sheep. If the lowest Staff estimate for the High Mountain Sheep plan ($406,933,000) is chosen, the differential adverse to High Mountain Sheep is reduced from $49,616,000 to $13,460,000,[87] (Table 8, Staff br. 187). This latter figure is adopted as the *minimum* reasonable cost differential for comparative purposes.

The Staff used annual values stipulated by the parties in Part J of applicants' Joint Statement for annual power benefits, flood control benefits, and annual operation and maintenance costs. These were calculated using the same cost of money, amortization, interest replacement, and insurance rate. The Staff used a 4½ percent cost of money, although PNPC argues that a rate of 2½ percent should be used since this is the basis employed by the federal government in determining the economic feasibility of water resource projects. The use of a 4½ percent rather than a 2½ percent cost of money adds between $700,000 and $800,000 annually to the cost of the High Mountain Sheep project as estimated in the Staff's Comparison II figures. PNPC protests that a 2½ percent rate was used by the Staff in the earlier Mountain Sheep-Pleasant Valley proceeding where the lower rate was to the disadvantage of PNPC (PNPC reply br. p. 166). Nevertheless, the use of a 4½ percent cost of money for comparative purposes is more realistic, in terms of the actual market cost of money, and consequently superior for a true economic comparison. No one is proposing federal development.

The differences in annual costs[88] between the two plans, as might be expected, vary consistently with the differences in capital cost estimates. Using Staff Comparison II (see Table 9, Appendix E) the High Mountain Sheep plan is superior to the Nez Perce plan in the initial or most important period. The Nez Perce plan is superior to the High Mountain Sheep plan in the subsequent periods (Part I, Joint Statement).

Using the High Mountain Sheep plan estimates originally presented by the Staff in its direct case (FPC Exhs. 49–52) with a construction cost differential of $13,460,000 in favor of the Nez Perce plan; the annual cost differential is reduced to approximately $937,000.[89] On these cost assumptions, the High Mountain Sheep plan is superior to the Nez Perce plan at all stages of development except the final period when all common reach developments are in with Crevice Storage (Appendix E).

In evaluating the significance of these cost estimates it must be emphasized that there are hundreds of differences in detail in the many different designs in the record, and that a minor change in any detail of design, foundation lines, or location, may produce a major change in costs. Thus, if geological conditions

---

[87] $406,933,000 less $393,473,000=$13,460,000.

[88] Annual cost:

	Difference between High Mountain Sheep Plan and Nez Perce Plan Using O&M and A&G determined by each party	Using Stipulated O&M and A&G
PNPC	$283,000	$805,000
WPPSS	6,376,000	5,653,000
Mid-point	3,330,000	3,229,000
FPC (Comp. II, Lower Canyon with 800,000 kw)	2,947,000	3,007,000
FPC (Comp. II, Lower Canyon with 910,000 kw)	3,454,000	3,345,000

[89] $\frac{13,460\ (3454)}{49,616} = 937,013$

preclude underground powerhouses at Nez Perce, costs would increase from $391,080,000 to $463,000,000, the original estimate. The difference in details, however, between the engineering of the two plans does not affect substantially the operation of the several projects in the alternative plans or the annual power benefits agreed to in the applicants' Joint Statements, Parts I and J. All the designs are preliminary and were prepared for administrative proceedings and not as construction designs. Neither of the proposed projects in the license applications has been finally designed. Certainly, the projects in the comparative plans, for which no license application is pending, have been studied in only the most preliminary manner. Consequently, these capital cost estimates are not precise and are subject to considerable variation in costs between the preliminary designs provided for the purpose of FPC license applications and final construction designs (Tr. 2059–60 and 3140–48).

The inevitable differences in estimating techniques[60] render any construction cost estimate for comparative purposes contingent, variable, and tentative within at least a 10 percent range,[61] or roughly forty million dollars on the basis of the total cost of the two plans. The range in variation of construction cost estimates (without fish facilities) for High Mountain Sheep is about 20 percent for Nez Perce, and about 33 percent for the Lower Canyon project. Confining ourselves to Staff estimates, the cost of the High Mountain Sheep plan ranges from $406,933,000 to $443,089,000; the Nez Perce plan from $393,473,000 to $433,514,000. Consequently, the total construction costs of the rival plans are quite close for purposes of a general economic comparison under Section 10(a) of the Act. Moreover, it should be emphasized that the geological conditions at Nez Perce may not permit the construction of underground powerhouses and an orifice spillway as presently estimated and designed ($391,080,000). If these conditions require a return to WPPSS' original design, total costs could rise as high as $463,000,000, the amount to be raised by revenue bonds in WPPSS' original finance plan (WPPSS Exhs. 77, 161, Rev.)

Applicability of Section 10(h) of the Act

WPPSS argues (br. pp. 321–336) that PNPC is ineligible for a license because it is a combination in restraint of trade—a monopoly, prohibited by Section 10(h) of the Act.[62] WPPSS alleges that "the four dominant utilities [PNPC's sponsor companies] in the Northwest have combined to gain exclusive control of the last important source of hydroelectric power in the Northwest and to deny access to such power to all other users critically dependent upon that source to help meet their potential needs." WPPSS also asserts that licensing PNPC will violate the provisions of the Sherman Act by providing PNPC and "its four member companies an unlimited opportunity to join together and fix prices for power." (WPPSS br. pp. 326, 327.)

---

[60] "The estimating technique of the cost estimator, of course, influences the range in estimates in all instances." (Staff br. p. 173.) For example, Harza allows a flat 15 percent for contingencies on *all* projects. Ebasco allowed 14.2 percent (N.P.) 14.5 percent (L.C.) and 10.8 percent (HMS) on the theory that the unknowns are less at High Mountain Sheep (PNPC br. p. 247).

[61] The differences in the three Staff estimates of capital costs between High Mountain Sheep and Lower Canyon vs. Nez Perce range from 1.8 percent ($4,095,000) to 13.8 percent ($29,734,000). See Table I, PNPC br. p. 16, Sheet 2 of 2.

[62] Section 10(h) provides in pertinent part: "That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited."

WPPSS cities *U.S.* v. *Terminal Railroad Association,* 224 U.S. 383 (1912), the Associated Press case, 326 U.S. 1, and related decisions under the Antitrust laws for the undeniable proposition that a combination or conspiracy to obtain exclusive control of a vital service, facility or commodity violates the Sherman Act.

The difficulty here is that the facts in the instant proceeding bear no discernible relationship to the facts in the classic monopoly cases cited by WPPSS. WPPSS states that the peak loads served by these companies as forecast for 1970-71 will be 5,894,000 kw as against its estimate of 2,669,400 kw for the 38 WPPSS participating utilities (br. p. 325). PNPC is seeking a license under the Federal Power Act to meet the concededly urgent needs of its member companies for additional generation to serve their own customers. There is no evidence whatsoever that PNPC or its member companies are seeking to obtain exclusive control over hydroelectric power generation in the Pacific Northwest generally or in the stretch of the Middle Snake involved in this proceeding. Many electric companies operate on an integrated basis, producing and transmitting most, sometimes all, of the power they distribute at retail. The 1960 annual report of the Bonneville Power Administration indicates that 59.2 percent of the energy generated by the major utilities of the region was provided by federal agencies, that 35.7 percent of this energy went to publicly owned utilities, 35.5 percent to industries and federal agencies, and only 18.8 percent to privately owned utilities. The power generated by the PNPC member companies for the period covered by the report was as follows: Montana Power Company 5.7 percent, Washington Water Power Company 5.5 percent, Pacific Power and Light 4.9 percent, and Portland General Electric Company 2.8 percent. The report further indicates that the member companies are substantial purchasers of excess capacity from the non-federal public utilities. (See Table 2, p. 11.)

The Staff points out that the issuance of a license by the Commission for either of the two projects applied for automatically excludes any conflicting project[63] (Staff br. p. 217). However, it should be noted that the grant to PNPC of a license for the High Mountain Sheep project does not exclude WPPSS, or any other applicant, from access to the power resources of the Middle Snake. Lower Canyon, an essential component of the High Mountain Sheep plan, remains open for development by any qualified applicant who can meet the requirements of the Federal Power Act. And the Board of Directors of WPPSS have authorized the filing of an application to construct Lower Canyon upon the completion of High Mountain Sheep (WPPSS' motion for leave to file amendment, April 24, 1961).

Moreover, as pointed out by both PNPC and the Staff, Section 10(h) of the Act deals with conditions to be imposed upon the grant of a license and not with prequalifications for the issuance of a license. Its legislative history indicates it was designed to protect the public against the misuse of an FPC license by authorizing Commission sanctions for anti-trust violations (Senate Committee Report No. 180, 66 Cong. 1st Sess. p. 4 (1919)).

WPPSS' price-fixing contention is equally fallacious. If licensed, PNPC would be subject to Part II of the Federal Power Act which regulates rates and charges to protect consumers against excessive prices.[64]

Similar contentions of monopoly were made in the prior proceeding on Project No. 2173, and the evidence therein reviewed in considerable detail by the

---

[63] Citing *Ashbacker Radio Corp.* v. *F.C.C.,* 326 U.S. 327, 332.

[64] "A major purpose of the whole Act is to protect power consumers against excessive prices." *Pennsylvania Water Power Co.* v. *F.P.C.,* 343 U.S. 414, 428 (1952).

Presiding Examiner (pp. 67-74). He concluded that there was no basis for the allegations.[65]

There is no evidence in this proceeding of an illegal combination to restrain trade, excessive price-fixing, or an intent by PNPC to use High Mountain Sheep for such purposes. The record clearly shows the urgent need of the sponsor companies for low cost hydro-generation to avoid the necessity for higher cost thermal power. The purpose of PNPC's license application is to expand, not limit, the output of electrical energy. The cooperation of PNPC's sponsor companies is required because the size of the project, and its capital requirements, justify a joint undertaking in which several companies share the costs and risks involved.

In short, PNPC is seeking to do no more than WPPSS-to obtain a license to construct the proposed project as provided by the Federal Power Act.

Permits, Priority and Preference

(a) *PNPC's Preliminary Permit*

On April 8, 1955, a preliminary permit was issued to PNPC under Section 4(f) of the Act, for a period of three years, effective as of April 1, 1955, "for the sole purpose of maintaining priority of application for a license for Project No. 2173" (14 FPC 644). PNPC's application for High Mountain Sheep Project No. 2243 was filed on March 31, 1958, prior to the expiration of the permit, and states that it was filed pursuant to the preliminary permit.

PNPC claims priority for its High Mountain Sheep application by virtue of the permit under Section 5 of the Act. WPPSS and the Staff assert that the priority granted by the permit is limited to a specific project for a specified site and terminated when the license for Project No. 2173 was denied by the Commission on January 20, 1958.[66] (Pacific Northwest Power Company (19 FPC 127, 353).) I find no basis for this contention. If, as I believe, the PNPC permit was not terminated by the Commission's denial of Project No. 2173, PNPC's current application is entitled to priority under Section 5 of the Act even as against a preference claimant under Section 7.[67]

Section 5 authorizes the issuance of preliminary permits:

> * * * for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be

---

[65] (Initial Decision p. 74.) [unreported]

Upon consideration of all of the evidence on this subject in this record it is concluded that there is no basis for the inference either that (1) Ebasco Services exercises any control over the policies of the four organizing companies or that (2) the agreement between the four organizing companies each to supply one-fourth of the equity financing for the proposed project and each to purchase and pay for, at cost, one-fourth of the entire output thereof now constitutes ,or will hereafter constitute a combination, agreement, arrangement or understanding express or implied, to limit the output of electrical energy to restrain trade, or to fix, maintain or increase prices for electrical energy or service within the meaning of Section 10(h) of the Act.

[66] See *In the Matter of Warrior River Electric Cooperative Assn.*, 11 FPC 693 (p. 694) "The investigations, explorations, studies, and financial arrangements to be made by the holder of a preliminary permit enable the permittee to consider and determine the definite form and character of the project it may desire to propose in an application for license."

[67] See text of Section 7(a) quoted below and hearings before the Committee on Water Power of the House of Representatives, 65th Cong., 2d Sess. ((1918), p. 55) in which Congressman Merrill stated in part: "It is hardly a reasonable situation for a municipality to wait until the private individual or corporation has gone in and spent $100,000 or $200,000 and then come in and push them out."

> necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements.

WPPSS claims [and the Staff agrees] that it is a municipality under Section 3(7) of the Act and that, as such, its application is entitled to "preference" over PNPC under Section 7(a) of the Act which provides that the Commission:

> In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

PNPC denies that WPPSS is a "municipality" as defined in the Act, and argues that, even if it is, it may not assert such preference "because of laches, and because of failure to follow the Rules of the Commission provided for filing of applications" (PNPC br. p. 320).

PNPC's claim of priority for its High Mountain Sheep application turns on the scope of the preliminary permit and the effect of the Commission's denial of PNPC's application for Project No. 2173. The text of the statutory provisions dealing with permits, and the few available administrative interpretations, suggest that the scope of a preliminary permit is not confined to "a specific project for a specified site" but extends to any development in the particular stretch of the river covered by the application which the Commission finds, after investigation,* * * "will be best adapted to a comprehensive plan" under Section 10(a) of the Act.

PNPC's application to the Federal Power Commission includes the resolution of its Board authorizing its officers "to apply * * * for a Preliminary Permit * * * to make studies, surveys, and investigations of the feasibility of hydroelectric power developments *in the vicinity of the* Mountain Sheep and Pleasant Valley Hydroelectric sites on the Snake River, in the States of Idaho and Oregon, for the purpose of enabling the company to secure the data and perform the acts required by law for *filing an Application or Applications* for the issuance of a license or licenses;" (emphasis supplied.) See Exhibit B of the application on file with the Commission.

The permit is issued to encourage the permit holder to make the advance engineering, geological, and economic studies necessary in determining the best site and project design for developing the reach of the river covered by the permit. As stated by the Commission in a recent "Order Denying Application For Preliminary Permit," issued April 2, 1962: (*Georgia Power Company*, Project No. 2303)

> The purpose of a preliminary permit is to grant the permittee priority for filing an application for a license, but this priority is not available merely for the asking. *It is granted in a situation where the feasibility of a project in a particular stretch of a river has not as yet been demonstrated. It gives the permittee a priority over other non-Federal parties in order to encourage the investigations of projects which otherwise might never be investigated or built.* In the instant case, the engineering and economic studies for developing the reach of the Flint River for which the

> Applicant seeks a permit have just been completed by the District and Division Engineers who recommend that these three projects be constructed by the United States as the first phase of the comprehensive plan described in the report. The studies which a preliminary permit are designed to encourage have thus already been made at public expense and should therefore be available on an equal basis to any party which may wish to develop these water resources in the event Federal development is not authorized. Applicant like all other potential developers has access to these studies and may of course file an application for a license without a prior preliminary permit. We conclude Applicant has not demonstrated a justification for a proposed preliminary permit. [Emphasis supplied.]

Sections 4(f), 5, 7(a), and 10(a) provide in substance that if a permittee makes the necessary investigation to determine which project is best adapted to a comprehensive plan for development of the "particular stretch of a river", any application for a license by the permit holder will have priority, provided it is filed before the permit has expired, or been terminated, and covers the project which the Commission ultimately determines is best adapted for the development of the particular reach of the river. Of course, "There is no assurance that in issuing a preliminary permit the Commission will ever issue a license for a particular project covered by the permit." *In the Matter of Linoma Power Co.*, 8 FPC 999. But obviously, neither the Commission, nor an applicant for a preliminary permit, nor permittee, is required to guess at their peril, before the completion of the studies and investigations which project ultimately will be best adapted within the meaning of Section 10(a) of the Act for licensing. Nor does the statute impose this hazard.

The protection of the permit is not confined to the licensing of the specific project at the specific site described in the application for the permit. The description in the application (in the vicinity of the Mountain Sheep and Pleasant Valley sites) is merely to identify the stretch of the river within which the feasibility of a project for licensing will be investigated and the project or projects to be initially investigated.[68] The protection of the permit extends to any project which has been investigated by the permittee within the sites and areas of that reach[69] for which a timely license application has been filed and which the Commission finally determines to license.

The Staff agrees that "the permit has for its purpose the protection of time and funds invested by a prospective applicant for a license in establishing the best site and project design to be included in an application for license provided such application is filed by the permittee within the period of the permit" (Staff br. p. 222). Nevertheless, continues the Staff brief, "This * * * does not relieve the permittee of the responsibility of so designing its project that it will be best adapted to a comprehensive plan of development, nor of the consequences of a denial of the application for license on its own merits should such application be filed within the period of the permit.

If the Commission licenses High Mountain Sheep, as recommended by the Staff, the permittee here (PNPC) will have met its responsibility of designing and filing a timely application for the licensed project. And it will have made "a total expenditure approaching $5,000,000"[70] in reliance on the preliminary permit and the invitation of the Commission in its decision denying a license for Mountain Sheep and Pleasant Valley, Project No. 2173.

---

[68] High Mountain Sheep is located at river mile 189.2; Low Mountain Sheep at river mile 192.6.

[69] "* * * The Nez Perce and High Mountain Sheep sites are alternate locations for a hydroelectric project which will develop a common reach of the Snake River in Oregon and Idaho." *In the Matter of the Application of WPPSS,* etc. No. 33275, Superior Court of the State of Washington, p. 2. (February 13, 1962)

In the earlier proceeding, Project No. 2173, PNPC was the sole applicant seeking a license for Mountain Sheep-Pleasant Valley. The Staff recommended, both before the Examiner[71] and the Commission[72] that PNPC file an application for a license to build Nez Perce. Implicit in this invitation was the assumption that any new application, if filed before the expiration or cancellation of the preliminary permit, would not result in the loss of PNPC's statutory priority. Certainly the Staff was not seeking to entrap PNPC or to deprive it of its priority under the permit. The Commission, in its decision denying the application for Project No. 2173, agreed with the Staff and invited, without requiring, PNPC to file an application for Nez Perce (19 FPC 127, 135, 353).

The Commission did not terminate or cancel the permit as it was authorized to do under the Order issuing the permit. Article 3 of "Terms and Conditions of Preliminary Permit (16 FPC 1303) provides in pertinent part: (p. 1304)

> The priority granted under the permit will be lost if the permittee fails to fulfill the requirements of the permit, if the permit is cancelled by order of the Commission, or if in course of consideration by the Commission of said application for license, the permittee shall not on or before the date of expiration of the permit, or such later date as may be fixed by the Commission: [A, B, C, D].

Article 8 provides that the permit may be canceled by order of the Commission upon failure of the permittee in good faith to begin or diligently to prosecute the investigations, examinations, and surveys contemplated under the permit "or for any other good cause shown after notice and opportunity for hearing". This authority has been exercised on numerous occasions.[73]

Article 8 is based on Section 5 of the Act which provides that a permittee's priority of application for a license continues for the stated term, not exceeding three years, and may be "canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing." It is not contended that PNPC's permit was canceled. The Staff does contend that "A preliminary permit grants only one priority and that priority attaches" * * * or merges with the application in the prior proceeding which terminated in denial (Staff br. p. 222). The statutory priority, however, is not a ticket good for one ride. It extends its protection during the entire period of the preliminary permit and covers any timely filed application. The opinion of the Chief Counsel dated March 5, 1923, cited by the Staff (p. 222) holds only that the Act extends the protection of the priority under the permit *beyond* the three years where an application for license has been timely filed and is pending.[74] Neither the Act nor the Regulations (Sec. 480–486) limit permittees to one application or one priority absent cancellation by the Commission as provided in Article 3 or 8 of "Terms and Conditions of Preliminary Permit" (16 FPC 1303), or failure to file a timely license application in conformity with Commission rules. The common law doctrine of merger has no application to the scope or duration of a preliminary permit under the Federal Power Act. I conclude, therefore, that PNPC's High Mountain Sheep application is entitled to priority by virtue of the preliminary permit issued on April 8, 1955.

---

[70] PNPC reply br. p. 109.

[71] (Initial Decision, p. 83.) "This Examiner is sympathetic toward the Staff's suggestion that the applicant review its application to request a license for the Nez Perce Project."

[72] (Exceptions p. 2.) " * * * Applicant should construct Nez Perce if it is to construct any project in the Nez Perce stretch of the River."

[73] Most recently (April 16, 1962) in WPPSS Project No. 2257, where the Commission issued an order denying application for extension of Preliminary Permit on the ground generally of inadequate study and investigation of the proposed project.

[74] The issue posed to the Chief Counsel by the Executive Secretary was whether the priority expired with the expiration of the permit. The Chief Counsel ruled in substance that it continued so long as a properly filed application for license was pending. (Third Annual Report of the Federal Power Commission (p. 222–223).)

(b) *WPPSS Status under Section 7(a) of the Act*

Section 7(a) provides in substance that, where no preliminary permit has been issued, preference be given to municipalities in the issuance of licenses provided the plans are equally well adapted to developing the resource in the public interest, or can be made so within a reasonable time. WPPSS asserts that, as a municipality, it is entitled to preferential treatment "to construct whichever project the Commission decides to license for the development of the river reach involved by the filing of its Nez Perce application" (WPPSS br. p. 304). The scope of the statutory preference, where applicable, under Section 7(a) is as broad as the scope of a preliminary permit under Section 4(f) of the Act, and covers any license for the river reach involved provided the other requirements of the Act and the Regulations are satisfied.

WPPSS filed a timely license application urging that Nez Perce, rather than High Mountain Sheep, was best adapted to a comprehensive plan of development for this reach of the river. It still maintains this position. However, on September 12, 1961, after the close of the hearing WPPSS moved to amend its application to include a High Mountain Sheep Project, the plans, designs, and cost estimates for which were presented as part of its rebuttal attack on PNPC's High Mountain Sheep Project at the same site, while still maintaining the superiority of Nez Perce. WPPSS claims, in short, that it is entitled to a license, as a matter of statutory preference for "whatever project the Commission deems best in accordance with Section 10(a)" (WPPSS br. p. 311).

The Staff, although rejecting Nez Perce in favor of High Mountain Sheep as "the most adaptable to a plan of comprehensive development of this stretch of the Snake River," agrees that "the effect of Section 7(a) requires the granting of WPPSS' motion to amend its application so as to include its plans for a High Mountain Sheep Development." (Staff br. p. 224)

PNPC argues that WPPSS is not a municipality and may not assert any statutory preference to either Nez Perce or High Mountain Sheep because of laches and failure to comply with Commission Rules for the filing of license applications.

Section 3(7) of the Act defines a municipality as a "city, county, * * * or other political subdivision *or agency* of a state competent * * * to carry on the business of developing, transmitting, utilizing or distributing power." WPPSS was created by virtue of a Washington statute which permits "any two or more cities as public utility districts * * * to form *an operating agency* * * *" and declares each "*such agency* * * * a *municipal corporation of the State of Washington* * * *" (RCW 43.52.360 (emp. supp.)). PNPC argues that since Nez Perce is outside of the State of Washington on the boundary line between Oregon and Idaho, it is not a "municipality" but a private corporation as to out of state activities.

WPPSS is a state agency authorized to carry on the business of developing and distributing power. As such, it is a municipality within the State of Washington under Section 3(7) of the Act. See *Washington Public Power Supply*

System, 23 FPC 109, 24 FPC 21. Nevertheless, its authority under State law to carry on proposed projects on the Snake River outside the State of Washington is in doubt, and remains unresolved. *In the Matter of the Application of Washington Public Power Supply System for an Order relating to Additional Projects*[75]. Judge Murray of The Superior Court of the State of Washington for Thurston County observed;[76]

> There is in my mind a very serious doubt as to the legal competency of the Supply System to carry on construction projects beyond the State of Washington, but I do not believe the question can be properly raised or determined before the Director in this proceeding or before the Court on this Appeal. [Opinion, p. 9.]

The problem is further complicated by doubts as to WPPSS' legal capacity to construct and operate hydroelectric facilities in Idaho and Oregon where the proposed projects are located. This is not to say that WPPSS must obtain a state permit or authorization before a federal license can be issued. *First Iowa Hydro-Electric Cooperative* v. *F.P.C.*, 328 U.S. 152 (1945) clearly holds that compliance with state law is not a condition precedent to a federal license. It does mean that in a comparative proceeding a claim of preference as a municipality under Section 7(a) should be supported by some affirmative proof[77] of WPPSS' authority and ability under the laws of Washington, Idaho, and Oregon to undertake and complete the project for which it seeks preference. WPPSS has submitted no evidence of its legal power to operate as a municipality outside Washington and in the States of Idaho and Oregon. In those states it will be treated as a foreign—not a municipal—corporation. (See briefs of Oregon and Idaho Public Utilities Commissions, Interveners). While the Commission still has power under the Act to license WPPSS, should it decide to do so, sound regulatory policy suggests that a claim of preference in a comparative proceeding requires an affirmative showing of why one applicant is to be preferred. Here WPPSS has studiously avoided giving the Oregon and Idaho[78] authorities an opportunity to express their views on its proposal or its power to operate where the project will be located. The relative abilities and capacities of the applicants to carry out their plans under local law is a relevant consideration in a comparative proceeding. In this area, WPPSS has failed to support adequately its entitlement to preference over PNPC.

---

[75] An appeal from an order of the Director of Conservation authorizing WPPSS to construct Nez Perce or High Mountain Sheep if licensed by the Commission.

[76] See also *State ex rel. P.U.D. No. 1 of Skagit County* vs. *Wylie*, 28 Wash. 2d, 113, 182 P. 2d 706 (1947) and *Jewett* vs. *PUD No. 1 of Stevens County*, Wash. No. 13782 (April 1951) holding that a public utility district is not authorized to own and operate hydroelectric properties outside Washington State.

[77] The entire section [9b] is devoted to securing adequate information for the Commission as to pending applications for licenses. Where 9(a) calls for engineering and financial information, 9(b) calls for legal information." *First Iowa et al., supra* (p. 177).

[78] The brief of the Idaho Public Utilities Commission, Intervenor, concludes (p. 20): "* * * the admission of WPPSS that it does not intend to comply with the laws and regulations of the State of Idaho raises serious doubts as to the fitness, character and qualifications of WPPSS as a licensee. WPPSS does not possess the ability to perform the duties of a licensee of the Federal Power Commission and should be denied a license for any project to be constructed within the borders of the State of Idaho." The Oregon brief states: "It is argued by WPPSS that proof of these matters is not necessary, that compliance therewith has been superseded by Federal law and that in any event they can be resolved later. In a license proceeding by one party this may be a satisfactory procedure; however in a situation where the FPC is confronted by *competing applicants*, one of which endeavors to comply with State requirements and the other's ability to comply is doubtful, the 'duality of control' between 'cooperating agencies of government' requires in the public interest that the license be granted to the former. Failure to require and consider such compliance or absence of it would be indicative of arbitrary and capricious action on the part of the Commission."

Section 9(b) of the Act requiries the submission of "Satisfactory evidence that the applicant has complied with the requirement of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act."

WPPSS' failure to submit such evidence in this proceeding is no bar to an FPC license as a matter of Commission power and jurisdiction. See *First Iowa*, cited *supra*. Nevertheless, due regard for local laws and sensibilities requiries the Commission, as a matter of its own policy, to consider information as to the comparative status of rival applicants in the areas involved. Moreover, Section 7(a) of the Act provides in substance that the Commission be satisfied as to the ability of the applicant to carry out its plans. The Commission has a legitimate interest in knowing which applicant is more likely to complete the proposed project on schedule without a long drawn-out contest with hostile local authorities before construction can commence. The experience in the *City of Takoma* case is instructive. Project No. 2016 covering the Mossyrock and Mayfield developments on the Cowlitz River in Washington was licensed in 1951 (10 FPC 432). The determined opposition of State agencies[79] delayed completion of Mayfield, the smaller project, and the construction of Mossyrock has not yet been started.

The Supreme Court has approved the Commission's view that delay is a relevant consideration in whether to recommend federal construction under Section 7(b) of the Act. It is equally relevant in whether to prefer one applicant over another under the public interest standard of Section 7(a) of the Act. (See *U.S. ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153, 1953). PNPC has made a superior showing of its status under local laws and its ability to carry out its plans under such laws.

Nor do I agree that Section 7(a) requires the Commission to license WPPSS for whatever project the Commission deems best. The statutory preference does not come into play until and unless a proper application has been filed for a specific plan of development as well adapted as the plan of other applicants.[80] WPPSS filed for Nez Perce, PNPC for High Mountain Sheep. If, as recommended by Staff, High Mountain Sheep should be licensed, PNPC is the only applicant for this project unless, and until WPPSS' motion to amend its Nez

---

[79] See *State of Washington Department of Game* v. *F.P.C.*, 207 F. 2d 391 (9 Cir. 1953), cert. den. 347 U.S. 936, *City of Takoma* v. *Taxpayers of Takoma*, 357 U.S. 20 (1958).

[80] Hearings before House Committee on Water Power, March 18 to May 15, 1918 (65th Cong., 2d sess.), fn. 4, at p. 816. In the debate in the Senate on S. 1419, a predecessor to the Federal Water Power Act of 1920, Mr. Doremus (Michigan), offered an amendment to Section 7: "That in issuing preliminary permits or licenses hereunder the Commission *shall* give preference to applications therefor by States and municipalities provided the plans for the same are deemed by the Commission *as well* adapted to conserve and utilize in the public interest the navigation and water resources of the region *as the plans of other applicants*; * * *." In explaining this amendment he said, at 56 Cong. Rec. 9804: "Mr. Chairman, section 7 as it is now written would place States and municipalities at a disadvantage in the event they desired to file applications under this bill. It would require them to show to the Commission that the plans they submitted were better plans than those submitted by private applicants. The effect would be to work a discrimination against States and municipalities that desire to compete with private applicants for the privileges extended under this act. *The sole purpose of this amendment is to place States, municipalities, and other political subdivisions upon an equality with private applicants.* Hence the amendment." (Emphasis supplied)

Perce application to include a High Mountain Sheep project, filed after the close of the hearing, is granted. For reasons detailed earlier, this motion should be denied.

The Staff reads Section 7(a) of the Act as requiring, as a matter of law, the granting of WPPSS' motion to amend its Nez Perce application so as to include its plans for a High Mountain Sheep development.

Section 7(a) does not require the Commission in a comparative hearing to afford a municipality, whose plan of development has been rejected as inferior, an opportunity to adopt the superior plan presented by a rival non-preference applicant as a matter of right. The preference is not absolute (see *City of Holyoke Gas and Electric Department*, 8 FPC 471 (1949). Such an interpretation would discourage, if not eliminate entirely, contrary to the objectives of the Federal Power Act, the investigation of prospective hydroelectric projects by private non-preference interests.[81] Section 7(a) permits modification of a plan properly submitted by a preference applicant so as to achieve equality; not its discard, in the event of rejection, in favor of a rival's mutually exclusive and inconsistent project merely because it is the one that will be licensed. The WPPSS and Staff proposal converts a preference where plans are equal,[82] into a permanent statutory priority available at any stage of the proceeding prior to licensing.

The Commission has held from the beginning that a preference applicant must defer to the holder of a temporary permit [Niagara Falls Power Co.] where there is a conflict of applications (*City of Lockport*, 1 FPC 7, 11 (1942)):

> The Commission clearly recognizes and is in accord with the purpose and intent of the statute to give preference to States and municipalities if and when there is a conflict of applications before any priority has attached, but is of the opinion that the city of Lockport has not, under the facts now before the Commission, initiated any right to the statutory preference and therefore the Commission is unable to entertain or consider such application at this time.

A contrary interpretation would stultify the basic objective of the Act—to encourage non federal development while safeguarding the public interest (President's Water Resources Policy Commission (Vol. 3, p. 273). Moreover, it is unfair to PNPC. The Staff, which favored the Nez Perce plan in the earlier proceeding, now agrees that High Mountain represents the superior plan. WPPSS, if licensed to build High Mountain Sheep, would be permitted to skim the cream off milk produced by PNPC's efforts. More importantly, however, is the damage to the public interest. The comparative hearing was a contest between two rival plans and their proponents. If a municipal loser can be licensed merely by offering to build its rival's successful plan, it would be foolhardy for private utilities to enter such a loaded proceeding in the first place. Their investigation of prospective development sites, as envisaged by the Federal Power Act, would cease. The public interest would be the ultimate loser.

Accordingly, I do not read Section 7(a) of the Act as requiring the Commission to grant WPPSS' motion to amend its Nez Perce application so as to authorize a license for High Mountain Sheep. The grant or denial of WPPSS' motion is a matter within the Commission's sound discretion and, for reasons discussed elsewhere, the motion is denied.

---

[81] See *Federal Power Commission* v. *Niagara Power Corporation*, 347 U.S. 239 (1954) "The Act was dedicated to 'encouraging private enterprise and the investment of private capital' in power projects on a basis consistent with the public interest," citing *Chapman* v. *F.P.C.*, 345 U.S. 153 (1953).

[82] "* * * States and municipalities are accorded a preference right to licenses *on even terms* over citizens * * *." See comments of Senator Jones, Chairman of the Senate Committee on Commerce discussing the proposed legislation, 59 Cong. Rec. 246 (1919) [Emphasis supplied.]

Federal Development

Section 7(b) of the Federal Power Act requires that both pending applications for license be denied if, in the Commission's judgment, Federal development should be undertaken. The record was closed on September 12, 1961, with no recommendation for Federal development in evidence. As noted in the Staff brief (p. 225) filed March 1, 1962:

> The record reveals an immediate need for the power which could be produced by the High Mountain Sheep Project and that this project is best adapted to a comprehensive plan for developing the Middle Snake River. The record also discloses that the two applicants have spent considerable sums to develop designs, and that both applicants have indicated a willingness to begin construction immediately upon receipt of a license. There is of course no reason why the High Mountain Sheep Project could not be constructed at this time by the United States itself in the event Congress authorizes such development. On the other hand there is no compelling reason for the Commission, under Section 7(b), to recommend to Congress construction of either project by the United States. Consequently the Staff does not suggest that the Commission recommend development by the United States. It is also to be noted that neither the Corps of Engineers nor the Department of the Interior have recommended such construction to the Commission in their reports on the applications.

Section 7(b) reads as follows:

> Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development."

The position of the Department of Interior was first expressed in a letter to the Federal Power Commission of November 21, 1960 (FPC Exh. 42) urging delay in licensing either Mountain Sheep or Nez Perce. This view was supplemented by letter of March 15, 1961, withdrawing permission for Department of Interior personnel, whose prepared testimony had been served on the parties and copied into the transcript, to appear as witnesses. The letter suggested a recess or suspension of the hearing then in progress for the duration of "accelerated fish studies" with a target date set at the end of 1964, and concluded:

> * * * We believe that potential alternative sources of new power make prudent such a delay in further consideration of projects for the Middle Snake.
>
> * * * * * * *
>
> For the reasons above stated, the Department of the Interior recommends that neither the proposed High Mountain Sheep Project nor the proposed Nez Perce Project be licensed at this time.

On June 28, 1962, the Secretary wrote to the Chairman modifying the prior position of the Department of Interior in part as follows:

> * * * we believe that the varied and predominantly Federal interests involved in the development of this area of the Snake River outweigh other

> considerations and indicate that the Commission should recommend to Congress that the Mountain Sheep Dam should be built by the United States.

The change was supported by the following arguments: (1) hydraulic and electrical coordination with other Columbia River Basin projects could be more effectively achieved if the High Mountain Sheep project is a part of the Federal system; (2) the Mountain Sheep project represents less hazard to the fishery resource than the Nez Perce project and fish facilities can be incorporated and modified in a Federal project with greater flexibility than in a non-Federal project; (3) storage releases for navigation requirements could be made under Federal ownership and operation with less effect on power supply; (4) Federal construction would result in a lower cost of power; (5) Federal ownership would allow more precise and intimate coordination control than any agreement with non-Federal entities; (6) questions involving adjustment, offset or payment to non-Federal licensees for operation would be avoided; (7) assurance of continued availability of Salmon River for fishery and recreational resource would be an important element toward over-all-balance in a truly comprehensive plan for utilization of the water resources.

On July 6, 1962, the Commission reopened the record so as to include the Secretary's letter of June 28th (Exh. 43-A) as a statement of his current position, and provided an opportunity for the parties to file supplemental briefs commenting on the current views of the Secretary. Supplemental briefs were filed by both applicants, Staff,[53] State of Washington Departments of Fisheries and Game, Oregon Public Utilities Commissioner, Washington State Department of Conservation, Columbia River Tuna Packers Association, Washington State Sportsmen's Council, Inc., Oregon Wildlife Federation, Fishermen's Cooperative Association, Inc., Northwest Fisheries Association, Alaska Fishermen's Union, Pacific Fish Conservation League and Makah Indian Tribe.

All oppose Federal development[54] on the ground generally that issuance of an FPC license for non-Federal development now will provide identical or greater public benefits without the indefinite delays attendant upon a denial of the pending applications and a belated recommendation for Federal development.

1. The Secretary's recommendation is, of course, entitled to careful consideration, but the primary responsibility remains with the Commission. The letter (FPC Exh. 43-A) is not evidence *per se* of the validity of the facts alleged therein in support of the Secretary's recommendation. The reasons given for denying both pending applications and recommending Federal development, and the facts cited in support thereof, must be evaluated in the light of the entire record, the briefs, the statute, and the Commission's prior policy in dealing with similar recommendations.

When is a recommendation for development by the United States under Section 7(b) justified? The plain meaning of Section 7(b), its interpretation by the Courts, and application by the Commission, clearly suggest the answer—when licensing non-Federal development will not effectuate or achieve the public benefits that would be made available by Federal development. These benefits cover optimum development of the resource and include power, flood control, fish, navigation, and recreation. This is the clear import of the decision in

---

[53] The Staff brief refers to two letters, not of record, one dated April 25, 1962, from the Secretary of the Army (App. D), the other dated April 11, 1962, from the Bureau of the Budget (App. E). WPPSS submitted a third letter dated March 14, 1962, from the Secretary of Interior to the Secretary of the Army. Official notice is taken of all three letters.

[54] The Columbia River Tuna Packers Association opposes any development.

National Hells Canyon Ass'n v. *F.P.C.*,[illegible] 237 F. 2d 777 (CADC), cert. den., 353 U.S. 924, where the Court of Appeals observed in pertinent part:

> In order to decide, as required by § 7(b), whether in its judgment, the development should be undertaken by the United States, the Commission compared the evidence as to the public purposes which would be achieved by the three-dam installation privately proposed, and by the suggested federal high dam advocated by the petitioners. It concluded that "the public purposes such as flood control, navigation and recreation could be effectuated to about the same extent under either plan of development." This left for consideration and comparison the production of power. (P. 780.)

The basic issue before the Commission was succinctly stated by Mr. Justice Frankfurter in the Roanoke Rapids case[illegible]—"whether a private applicant would adequately develop all the benefits that should be derived from the proposed site." (P. 164.)

The same standard is reflected in prior Commission actions. In *Power Authority of the State of New York*, 9 FPC 301, the Commisison concluded that the State's original application did not adequately provide for navigation and the distribution of the power benefits. Accordingly, it recommended Federal development.

> We are convinced that this matter should be referred to Congress. The construction of the St. Lawrence Seaway and Power Project and the development of the power potential of the International Rapids Section are vitally important to the economy and defense of the United States and of Canada.

After the defeat in Congress of bills to authorize Federal participation with Canada in the combined seaway and power development and the filing by the Applicant of an amended application to include facilities common to navigation and power, the Commission issued a license for the project (12 FPC 172). Similar action was taken by the Commission in *Fresno Irrigation District, et al.*, 8 FPC 351; *Virginia Electric & Power Company*, 10 FPC 4, *Idaho Power Company*, 14 FPC 55 and *Alabama Power Company*, 18 FPC 257. In all these cases the Commission indicated that it would not recommend Federal development if the full economic development of the stream could be accomplished and all public benefits effectuated by the grant of a license.

Congress itself appears to have followed a similar policy in suspending previously enacted authorization for Federal development where subsequent events indicated that public benefits would be adequately provided by the licensee. Thus, Federal construction of the Priest Rapids Dam on the Columbia, the Alabama-Coosa River development, and the Grand River Dam in the Arkansas River Basin, were suspended and non-Federal development licensed under the Federal Power Act (68 Stat. 573, 302, 450).

2. We now turn to the merits of the Secretary's basic contention that adequate public benefits will not be provided if a license is issued. The Secretary does not propose a different site or project. He agrees that High Mountain Sheep

---

[illegible] Where the Court sustained the Commission's grant of a license for non-Federal development against the contention that it should have recommended construction by the United States under Section 7(b).

[illegible] *United States, ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153 (1953) where the Supreme Court rejected the position of the Secretary of the Interior that the Commission was required to recommend construction by the Federal Government and to deny VEPCO's license application because of Congressional approval of a comprehensive plan for development of the Roanoke River Basin.

should be built—"Taking all resources into account, * * * the High Mountain Sheep Dam on the Snake River represents the optimum development."

He argues, however, that, since all downstream Columbia River plants are Federally owned, maximum sustained public benefits will flow "with the least conflict between use if the project is a part of the Federal system." Coordination of an entire river basin under single ownership and operation is an appealing goal. The facts are, however, that numerous non-Federal projects are now operating in the Columbia River Basin and that coordination has been effected through the Northwest Power Pool and, more recently, the Coordination Agreement.[87] This Agreement goes far beyond the limited downstream coordination proposed by the Secretary. Its effectiveness is attested to by the Administrator of the Bonneville Power Administration:

> In brief, what the treaty requires is that all the generating facilities in the Pacific Northwest will be operated as though they were under a single ownership. The majority of these generating facilities are Federal, but a substantial number are non-Federal. What we do under this agreement is operate these facilities in unison, you might say, or in a coordinated way, to get the maximum production of power from them.
>
> In connection with this agreement the United States receives a payment of $1,100,000, representing the net benefits as negotiated which the non-Federal utilities receive from our Federal upstream storage. [Hearings, Subcommittee on Public Works Appropriations, House of Representatives, Part 3 (BPA) 87th Cong., 2d. Sess., p. 668.]

Moreover, as emphasized by the Staff, (br. p. 25-28) Federal ownership does not assure coordinated operation or eliminate the necessity for resolving conflicts between the different Federal Agencies involved in water resource activity. These include Army Engineers (navigation and flood control), Bureau of Reclamation (irrigation programs), Bureau of Indian Affairs, Fish and Wildlife Service, Bonneville Power Administration, and others. Coordination between these Federal Agencies is at least as difficult as coordination between Federal and non-Federal owners and operators. (Report of the President's Water Resource Policy Commission, Vol. 3, "Duplication and Conflict," p. 508, 9, 569 *et seq.*) As noted by WPPSS:

> * * * the Federal projects in the Columbia Basin are built and operated by several different agencies, under differing statutory authority and standards, pursuing different policies to different objectives—all with the result that there are inevitable and serious conflicts in operation and there is no agency which can finally resolve such conflicts below the office of the President of the United States (if the conflicts do not lie in the underlying statutes) or the Congress (if the conflicts stem from differences in statutory authority). [WPPSS Supp. br. p. 7.]

Further, the Federal Power Act provides an effective guarantor of cooperation by a licensee in the authority and practice of the Commission under Section 10 of the Act to require coordination with the Northwest Power Pool as a condition of the license (see Article 39, Wells Project No. 2149). The proposed order herein contains such a provision (See article 38).

Accordingly, I conclude that the public interest in the coordination of the High Mountain Sheep project with other projects in the Columbia River Basin will be as fully promoted and protected by the issuance of a license with appropriate conditions as by Federal development. All four organizing companies of PNPC are parties to the Coordination Agreement. High Mountain Sheep was "designed for operation and coordination with the Northwest Power Pool, and the transmission facilities that we build for this project will be designed for integration with the Northwest Power Pool network." (Tr. 146) Moreover, the existing Power Pool machinery provides for coordination, hydraulically and electrically, with the storage plants of the Federal system so as to provide for maximum prime energy in the system as a whole under periods of critical water flow. As stated by the Commission in *Idaho Power Company*, 14 FPC 55, 67.

---

[87] PNPC argues that "the principal obstacle to the execution of the Coordination Agreement in the pact was the reluctance of the managers of the Federal Power System to enter into such agreements." (Supp. br. p. 20.)

> The fact that in Section 7(b) Congress allows the Commission either to set the particular water resources aside for Federal development or to grant a license for development by a non-Federal entity is in itself an affirmative recognition by Congress that it is not in the public interest for the United States to undertake every water-power development that can be made or to reserve such water-power resources exclusively for Federal development merely because they happen to be subject to Federal jurisdiction or even because they happen to be included in a Federal agency's plans for Federal development.

The Secretary also contends that a Federal project will provide for effective fish passage with greater flexibility and ease than a Commission licensee. Both applicants have agreed to install such fishways as may be required and have submitted detailed plans, described earlier, of considerable ingenuity and imagination proposing the expenditure of many millions of dollars toward the solution of this problem. While the Department of Interior's letter of November 21, 1960 also stated that advice as to fishways would be forthcoming at a later date, no such advice has been received. The essential fact is, however, that the Commission will require the installation of any necessary fishways and such modifications as may be required in the future. There is no evidence to support the implication that somehow Federal construction and operation will provide superior fish passage over non-Federal development. As noted in the brief of the State of Washington Department of Fisheries and Game:

> A further recommendation is made that the High Mountain Sheep Project should be constructed by the Federal Government rather than any other agency because of the relative ease with which facilities for effective fish passage could be incorporated into a Federal project in comparison with the difficulties that would be encountered in a project constructed and operated by a non-federal entity. As fisheries agencies and Intervenors in the fisheries interests, any question as to which of a number of applicants should be licensed to construct a project would normally be beyond the scope of our interest.
>
> On the other hand, where it is suggested that the interests of the fisheries resource will be best served by issuing a license to one rather than another entity we are concerned that, by silence, our concurrence in this statement would be implied. Because of this possibility it is desirable that we state to the Commission that *the experience of the State of Washington Departments of Fisheries and Game in obtaining fish passage at any particular project does not indicate any basis for the conclusion that better fish passage will result at a project because it is Federally constructed.* As to the facilities to be provided in the event the project is constructed by other than the Federal Government, it is obvious that the Federal Power Commission will designate the fish passage facilities to be provided and, if desirable, could condition the license upon future modifications where necessary. Further, it has been the practice for the Commission to consider the recommendations

> of the State agencies and the Department of Interior in providing fish facilities. *We are therefore unable to conclude, on the basis of experience or otherwise, that construction of the High Mountain Sheep Project by the Federal Government will result in more efficient facilities* as we presume that the Federal Power Commission will act to protect the fisheries in the event the project is not Federally constructed. [Emphasis supplied.]

Similarly, there is no basis in this record for the suggestion that the public interest in navigation and flood control at High Mountain Sheep would be served better by Federal development. Jurisdiction over navigation and flood control is vested in the Corps of Engineers, not the Department of Interior. The Chief of Engineers has officially advised the Commission that "the scope of the project and purposes served as proposed by the applicant [PNPC] would be substantially the same as those which I proposed. * * * It is my view that the project should be operated for flood control as recommended in my proposed report as a part of comprehensive basin development." (FPC Exh. 37.) The project as proposed by the applicants meets the needs of flood control and navigation as defined by the Corps of Engineers to the same extent as if constructed by the Federal government. Specific provisions designed to insure compliance with these requirements will be provided in the proposed license.

The Secretary also contends that Federal construction will result in lower power costs. Presumably, the Secretary is referring to the delivered cost of power rather than the cost of construction. Theoretically, the project and the delivered cost of power should be the same whoever builds the dam. This is in fact the position of WPPSS. (Supp. br. p. 25) A Federal agency, however, can obtain money cheaper and is free from taxation. Offsetting these factors in the escalation in costs incident to delays in construction and vicissitudes of annual Congressional action or inaction. The applicants are ready to build on licensing. The Federal government must first begin the long process of time required for engineering, Congressional consideration and approval under circumstances conducive to extended delays.

More importantly, however, the Commission and the Courts have specifically rejected this argument. The Commission stated: (*Idaho Power Co.* 14 FPC 59)

> There is no provision in Section 7(b) or in any other section in the Act which leads us to believe that Congress intended that we recommend Federal development for the sole purpose of making power available at costs lower than would be possible if the same water resources were developed by a private entity under a license. Needless to say if the supplying of power at the lower costs resulting from Federal development should be considered as a decisive factor, there would be few cases involving major power projects where private development could be licensed under the Act because of the substantial difference in annual cost of investment money in favor of Federal over private financing and because of the much higher annual cost of taxes paid under private development as compared with the freedom from taxes under Federal development or, in some few instances, the minor annual payments by some Federal projects in lieu of State taxes.

The Court of Appeals concurred pointing out that the alleged lower cost of power from a federally constructed dam is

> * * * due to the Government's superior credit and its freedom from taxation. If this were the criterion under § 7(b), federal development would invariably be preferable and the Commission's authority to issue licenses to private applicants could never be exercised without first recommending the proposals for federal construction and waiting to see whether Congress would authorize the work. This would seem contrary to legislative

> intent, as § 7(b) requires the Commission to recommend federal development only when "in the judgment of the Commission" the work should be undertaken by the United States itself. The italicized phrase is read out of the statute if the Commission must recommend every development for federal construction simply because the United States has better credit than any private applicant and is free from taxation. [*National Hells Canyon Ass'n* v. *F.P.C.*, 237 F. 2d 777, 781.]

Finally, the Secretary argues that Federal construction will avoid the problem of adjustment, offset, or payment due to a non-Federal licensee. The Commission has taken substantial steps to solve the upstream-downstream benefits problem. In its order of July 12, 1962, licensing the Wells Project, No. 2149, on the Columbia River, the Commission stated in pertinent part: "However, in view of Section 10(f) of the Act, the sharing of such benefits [of coordinated operations] would not, of course, include any allowance for benefits which may be realized at Federal projects from upstream storage." The Commission has authority to require the full coordination and operation of licensed projects with other systems.

It is concluded, therefore, that construction and operation of the High Mountain Sheep Project under license by the Commission will effectuate comprehensive development in the public interest on a comparable basis with Federal development. There is no evidence in this record that Federal development will provide greater flood control, power benefits, fish passage, navigation or recreation; and there is substantial evidence to the contrary.

3. Moreover, in any realistic comparison of Federal with non-Federal construction, the factor of delay must be evaluated. As noted with approval by the Court of Appeals in *National Hells Canyon Ass'n* v. *Federal Power Commission*, *supra*, p. 781 (where it quoted from the Supreme Court's opinion in *U.S. ex rel., Chapman* v. *F.P.C.*, 345 U.S. 153, 169)

> Another consideration influenced the decision of the Commission: the little likelihood that federal development would be authorized in the foreseeable future. "Particularly relevant in this regard", said the Supreme Court in the Roanoke Rapids case, "is the estimate that public development at this site would not in the normal course be undertaken for many years."

PNPS is ready to build High Mountain Sheep now. It has expended close to $5,000,000, since issuance of a preliminary permit in 1955, on the investigation and engineering leading to its present detailed plans for the High Mountain Sheep project. At no time during this period, in which the Commission has been actively processing the various license applications covering this reach of the river, has the Department of Interior requested authorization to build High Mountain Sheep. It still has not done so. While its latest letter of June 28, 1962, requests that the Commission recommend Federal development to the Congress, the Secretary has not done so. So far as the record discloses, he has not asked the Bureau of the Budget for such authorization, nor has he requested Congressional authorization or approval of a High Mountain Sheep project to be built by the Bureau of Reclamation.

The letter from the Bureau of the Budget to the Secretary of the Army, dated April 11, 1962 (Supp. Staff br., App. E) states in part:

> The Secretary of the Interior expresses the view that authorization of four projects should be deferred pending the results of specific detailed studies by the Departments of the Interior and the Army, and that, at appropriate times, Flathead Lake Outlet Improvement and Penny Cliffs should be

> recommended for construction by the Corps of Engineers, and High Mountain Sheep (or any alternate) and Garden Valley Division should be recommended for construction by the Bureau of Reclamation.
>
> * * * * * * *
>
> You are also advised that no commitment can be made at this time as to when any estimate of appropriation would be submitted for the recommended projects, if authorized by the Congress, since this would be governed by the President's budgetary objectives as determined by the then prevailing fiscal situation.

In summary, the Secretary is asking the Commission to recommend Federal construction of a project, the details of which have not been engineered or described by the Department of the Interior, and which it has not recommended for construction now to the Administration or to the Congress. Moreover, the Secretary's latest letter of June 28, 1962, proposing Federal development does not indicate any present intention to press forward for early construction or development.[88] Rather, it is consistent with the objective common to all the prior letters—to reserve this reach of the Middle Snake for future development "at an appropriate time, for construction by the Bureau of Reclamation" (See letter from the Secretary of the Army to the Speaker of the House dated April 25, 1962, App. D). In these circumstances, and in view of the united opposition to Federal development, as evidenced by the briefs filed herein, of local interests in the Pacific Northwest both private and public, it would appear that there is far less likelihood that Federal development would be authorized by the Congress for High Mountain Sheep in the foreseeable future than there was in the Roanoke Rapids or the Hells Canyon cases.

By order dated September 28, 1962, WPPSS' Petition to Reopen the Record, filed July 13, 1962, was referred to the Presiding Examiner for disposition. The petition is denied. The proffered evidence consists primarily of statements made by subordinate Interior Department officials and purports to show that the Secretary's letter of July 26, 1962, does not really represent the Department's position on "the true facts of the progress of the fish-passage research program." (WPPSS pet., p. 3.)

The Secretary's letter was received to show his change of position and not as evidence of the success or failure of the Department of Interior's fish research program. WPPSS, along with all other parties, has been afforded ample opportunity to reply to the reasons given by the Secretary for his change of position. Its supplemental brief covers 47 pages. The Department of Interior's fish research program is not in issue here and no useful purpose would be served, nor would it be appropriate, to engage in a premature evaluation of a program which has not been completed, reported, or evaluated by the Department primarily responsible.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Snake River is a navigable river to and above the upper limits of the reservoir of either the High Mountain Sheep or the Nez Perce Projects

---

[88] The Staff brief notes that the letter of June 28, 1962, "does not indicate that any legislation has been proposed for authorizing Federal construction * * * or that any such legislation will be sponsored [or] that an appropriation for such construction will be sought." (P. 15.)

(*In re Idaho Power Company*, Project No. 1971, Opinion No. 283). The respective project works will be located on lands of the United States, and the reservoirs will inundate lands of the United States (PNPC Application for License, Exhibits F and K, WPPSS Application for License, Exhibit F).

(2) Pacific Northwest Power Company is a private corporation organized under the laws of the State of Oregon as a wholly-owned subsidiary of four sponsoring companies, namely, the Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, and the Washington Water Power Company.

(3) Washington Public Power Supply System is a municipal corporation organized and operating under and by virtue of the laws of the State of Washington, for the purpose of acquiring, constructing, and operating electrical generating and transmission facilities. It is comprised of 16 public utility districts of the State of Washington, 14 of which are presently participating in financial support for the Nez Perce license application, as are approximately 24 other public utility districts, municipalities, and cooperatives in the Pacific Northwest.

(4) Pacific Northwest Power Company, on March 31, 1958, filed an application under the Federal Power Act for the proposed High Mountain Sheep project (No. 2243), also referred to as the Middle Snake River project, to be located at river mile 189.2 on the Snake River just above the confluence of that river and the Salmon River.

(5) Washington Public Power Supply System, on March 15, 1960, filed an application under the Federal Power Act for the proposed Nez Perce project (No. 2273) to be located at river mile 186.2 on the Snake River just below the confluence of that river and the Salmon River.

(6) Public notice of these proceedings has been given as required by the Act.

(7) On July 24, 1961, WPPSS filed a motion for leave to amend its Nez Perce application to conform to evidence submitted during the course of the hearing including its revisions of designs and specifications. This motion is granted.

(8) On September 12, 1961, WPPSS filed a further motion for leave to amend its Nez Perce license application to include, as an alternative proposal to the Nez Perce project in the event the Commission should decide against licensing the Nez Perce project, the High Mountain Sheep project as designed by WPPSS. This motion is denied.

(9) The High Mountain Sheep project proposed by PNPC includes an arch dam creating a reservoir about 58 miles long with its normal water surface at elevation 1510, providing a gross storage capacity of 3,600,000 acre-feet, of which 2,250,000 acre-feet is usable, and an initial powerhouse installation of 5 turbines, each of 285,000 horsepower at 550-foot head, totaling 1,425,000 horsepower and 5 generators, each of 175,000 kilowatts rating at 0.95 power factor, totaling 875,000 kilowatts.

(10) The High Mountain Sheep project proposed by WPPSS is located on the Snake River at the same site proposed by PNPC a mile upstream from its confluence with the Salmon River and would include an arch dam creating a reservoir about 58 miles long with its normal water surface of elevation 1510, providing a gross storage capacity of 3,600,000 acre-feet, of which 2,250,000 acre-feet is usable, and an initial powerhouse installation of 6 turbines, each of 290,000 horsepower at 550-foot head, totaling 1,740,000 horsepower and 6 generators, each of 200,000 kilowatts rating at 0.95 power factor, totaling 1,200,000 kilowatts.

(11) The Nez Perce project proposed by WPPSS is located on the Snake River about 2.5 miles below its confluence with the Salmon River and would include an arch dam, creating a reservoir about 61 miles long up the Snake River and 36 miles up the Salmon River with its normal water surface of

elevation 1510, providing a gross storage capacity of 6,600,000 acre-feet, of which 4,700,000 acre-feet would be usable, and an initial underground powerhouse installation of 10 turbines, each of 290,000 horsepower at 570-foot head, totaling 2,900,000 horsepower and 10 generators, each of 200,000 kilowatts at 0.95 power factor, totaling 2,000,000 kilowatts.

(12) A comprehensive plan of development of the Columbia River and tributaries has been prepared by the Corps of Engineers, Department of the Army for flood control, navigation, irrigation, power development and other purposes, in report entitled "Water Resources Development, Columbia River Basin, U.S. Army Engineer Division, North Pacific," dated June 1958, as modified in report of Board of Engineers for Rivers and Harbors, dated June 5, 1959, and letter report of the Chief of Engineers, dated March 31, 1961.

(13) The applications for licenses as amended and supplemented by exhibits and testimony are sufficiently complete for an adequate understanding of the projects proposed.

(14) Either the High Mountain Sheep or the Nez Perce project, whichever may be constructed, would be located in or along a navigable water of the United States and would otherwise affect the interests of interstate or foreign commerce.

(15) Project layouts and structural designs for the High Mountain Sheep projects as presented by PNPC and WPPSS and for the Nez Perce project as presented by WPPSS show that either project can be operated satisfactorily for flood control.

(16) The estimated cost of construction, including interest during construction, of the High Mountain Sheep project as proposed by PNPC in the amount of $190,652,000 is reasonable.

(17) Operation of either project at reservoir elevation 1510 may result in a backwater effect on the Low Hells Canyon development of Project No. 1971 licensed to Idaho Power Company.

(18) After adjustment for possible backwater effect on the Low Hells Canyon development, the gross at-site energy generation by the High Mountain Sheep project proposed by PNPC and WPPSS is 5.20 and 5.72 billion kilowatt-hours of average annual energy, respectively.

(19) The dependable capacity of the Nez Perce project is estimated to be 1,867,000 kilowatts.

(20) The dependable capacity of the High Mountain Sheep project proposed by PNPC and WPPSS is estimated to be 930,000 and 1,218,000 kilowatts, respectively.

(21) The at-site power value of the power output of the Middle Snake River projects for use in determining value of power benefits for the comparative plans is $11.77 per kilowatt-year and 2.9 mills per kilowatt-hour.

(22) The power value at load center of the power output of the Nez Perce project proposed by WPPSS is estimated to be $17.77 per kilowatt-year and 2.37 mills per kilowatt-hour.

(23) The power value at load center of the power output of the High Mountain Sheep project proposed by PNPC is estimated to be $25.91 per kilowatt-year and 3.8 mills per kilowatt-hour.

(24) The High Mountain Sheep project proposed for construction by either PNPC or WPPSS, and the Nez Perce project proposed by WPPSS are economically feasible.

(25) New steam-electric power stations as sources of power supply alternative to the proposed hydroelectric projects would not be as economical for PNPC or WPPSS.

(26) The project structures proposed by PNPC and WPPSS for the High Mountain Sheep project would be safe and stable subject to further consideration and approval of finalized plans as hereinafter provided.

(27) The final design of the High Mountain Sheep arch dam should be verified by an acceptable analysis (such as the trial load method) and reviewed by the use of structural models.

(28) Hydraulic model tests will be necessary for the High Mountain Sheep spillway in order to determine its final design.

(29) There is substantial doubt in the record as to whether the left abutment at the Nez Perce site will safely support the thrust of the proposed arch dam. Further foundation exploration and study of site geology would be required to determine whether or not a safe arch dam can be constructed and to determine the extent of excavation and foundation grouting required.

(30) If we assume for comparative purposes that an arch dam can be constructed at the Nez Perce site, it is reasonable to assume that a safe arch dam can be constructed at the mile 3.7 Lower Canyon Dam site. However, more extensive geological exploration will be necessary to support any license application for a thin arch dam at the Lower Canyon site. The Lower Canyon mile 0.5 dam site is adequate to support the proposed rockfill dam.

(31) At a Prehearing Conference held in Washington, D.C., in May 1960, the parties stipulated that the respective alternative projects should be analyzed within what was termed the "common reach," that is the area of the river common to both alternative developments above and below which development projects on the river would be common to both alternative developments. The common reach was defined in this stipulation as extending from the tailwater of the China Gardens project at Snake River mile 172.5, elevation 845, to the normal pool elevation of the Hells Canyon project on the Snake River, elevation 1683 feet m.s.l., and to the normal pool elevation of the future Freedom project on the Salmon River, elevation 1,780 feet m.s.l.

(32) Within the common reach, the resources would be developed under the alternative Plans of Development by the following projects: the High Mountain Sheep Plan of Development would comprise the China Gardens project, High Mountain Sheep project, and Lower Canyon project; the Nez Perce Plan of Development would comprise the China Gardens project, the Nez Perce project, and the Whitebird project, the latter at Salmon River mile 58.8 or 59.8.

(33) Designs and cost estimates for all projects in the common reach are presented by PNPC, WPPSS, and the Staff in their respective direct cases. In addition, WPPSS presented completely revised designs and cost estimates for all projects involved in the respective alternative plans at the rebuttal stage of the proceeding, evidence which was excluded initially by the Examiner but was admitted upon ruling by the Commission on September 12, 1961. The Staff also presented, at the rebuttal stage of the proceeding, additional designs and cost estimates for the several projects of the alternative plans in two additional series.

(34) Differences exist in the elevations assigned to China Gardens project by the two Applicants and the Staff. The location and elevation of both High Mountain Sheep and Nez Perce projects are identical in the presentations of both Applicants and the Staff. The Lower Canyon project by PNPC and the Staff presentations is located at Salmon River mile 3.7 and is an arch dam at that location; Lower Canyon project in the WPPSS presentation is located at Salmon River mile 0.5 and is a rock-fill dam. Lower Canyon pool elevation as presented by PNPC and by WPPSS in its revised direct case is at reservoir elevation 1,595 feet m.s.l. The Staff pool elevation in its first presentation is at 1,595 feet m.s.l.,

and in its second presentation it is at 1,588 feet m.s.l. There are differences in the pool elevation and location of the Whitebird project.

(35) The variations in locations, heights and installations noted above do not have a significant effect on the potentials of the alternative Plans of Developments. The Applicants herein have agreed between themselves on a common statement of power potentials and annual power benefits resulting from the alternative Plans of Development under several stated conditions. The statement of annual power benefits is common to all of the variations noted above. The power potentials and annual power benefits are reasonable and are adopted herein.

(36) The Nez Perce development of the Nez Perce Plan would provide 5,015,000 acre-feet of usable storage for flood control, whereas the High Mountain Sheep and Lower Canyon developments of the High Mountain Sheep Plan would provide 5,515,000 acre-feet.

(37) The Nez Perce Plan and the High Mountain Sheep Plan will provide about the same navigation benefits.

(38) Either Plan would provide substantial recreational benefits.

(39) Initially, the High Mountain Sheep Plan of Development would provide 1,767,000 kw of nominal prime energy, 1,307,000 kw of average energy generation and 2,239,000 kw of plant peak capability. At the same point of time, the Nez Perce Plan would provide 1,590,000 kw of nominal prime energy, 1,233,000 kw of average energy generation and 2,092,000 kw of plant peak capability.

Thus, initially, the High Mountain Sheep Plan would have an excess over the Nez Perce Plan of 177,000 kw of nominal prime energy 74,000 kw of average energy generation, and 147,000 kw of plant peaking capability (Applicants' Joint Statement, Part I, Table 2, Sheet 1). The annual power benefits of the Nez Perce Plan would amount to $53,463,000 annually under initial conditions, and of the High Mountain Sheep Plan $57,436,000 annually, so that the power potential of the High Mountain Sheep Plan would have a greater value, initially, than the Nez Perce Plan of $3,973,000 annually.

(40) At approximately 1985, and prior to the construction of Crevice storage, the High Mountain Sheep Plan would have 1,124,000 kw of nominal prime energy, 1,220,000 of average energy generation and 1,679,000 of plant peak capability. At the same period, the Nez Perce Plan would have 1,039,000 kw of nominal prime energy, 1,156,000 kw of average energy generation and 1,540,000 of plant peak capability. At this period, the High Mountain Sheep Plan power potential would exceed the Nez Perce Plan power potential by 85,000 kw of nominal prime energy, 64,000 kw of average energy generation and 139,000 kw of plant peak capability (Applicants' Joint Statement, Part I, Table 5, Sheet 1). The power benefits of the High Mountain Sheep Plan will have an average value at this period of $49,644,000 and the power benefits of the Nez Perce Plan would have an average value of $47,004,000. Thus, the High Mountain Sheep Plan's benefits would have a monetary value exceeding the Nez Perce Plan's benefits of $2,640,000 annually.

(41) In the final period, assuming the construction of the Whitebird project and Crevice storage, the High Mountain Sheep Plan would have a potential of 1,326,000 kw of nominal prime energy, 1,388,000 of average energy generation and 3,556,000 kw of plant peak capability. The Nez Perce Plan for the same period would have 1,302,000 kw of nominal prime energy, 1,386,000 kw of average energy generation and 3,545,000 of plant peak capability. In this case, the excess of the High Mountain Sheep Plan over the Nez Perce Plan would amount to 24,000 kw of nominal prime energy, 2,000 kw of average energy generation and 11,000 kw of plant peak capability (Applicants' Joint Statement, Part I, Table 4).

The Nez Perce Plan would have an average annual value of $61,112,000 and the High Mountain Sheep Plan would have an average annual value of $61,526,000, or an excess for the High Mountain Sheep Plan at this period of $414,000. Accordingly, when final and complete development of all the hydroelectric resources of the Columbia River Basin is achieved, the High Mountain Sheep Plan would have a continuous and permanent excess of value over the Nez Perce Plan of approximately one-half million dollars a year.

(42) The annual flood control benefits of the High Mountain Sheep Plan of Development, without Canadian storage, in the initial period, are $5,340,000 annually, and those of the Nez Perce Plan of Development are $5,300,000 annually. In 1985, again without Canadian storage, they are respectively $6,560,000 annually and $6,500,000 annually. Thus, initially, the High Mountain Sheep Plan has a monetary advantage over the Nez Perce Plan in flood control benefits of $40,000 annually, and by 1985 of $60,000 annually. After the achievement of Canadian storage, the values of the respective plans drop—the High Mountain Sheep Plan being $610,000 annually and the Nez Perce Plan being $560,000 annually. However, the differential between the Plans remains substantially the same, namely, $50,000 annually. Under any circumstances, the High Mountain Sheep Plan will provide greater flood control benefits than the Nez Perce Plan by approximately $50,000 annually.

(43) In addition to the Nez Perce and High Mountain Sheep developments being economically feasible, Lower Canyon and both China Gardens developments are economically feasible.

(44) PNPC and WPPSS agree on the value of power benefits and annual operation and maintenance costs for the two alternative comparative plans; they do not agree on the construction costs of the several developments comprising the alternate plans.

(45) The cost estimates of the several developments comprising the two alternative plans is influenced by the technique of the cost estimator, site locations, geologic analysis, selection of dam type, foundation excavation assumptions, length and location of spillways, powerhouse location and design, major items of equipment and other structural features.

The range in variation of construction costs (without fish facilities) of the High Mountain Sheep development as presented by the several parties is about 20 percent, of the Nez Perce development about 20 percent, and of the Lower Canyon development about 33 percent.

(46) The effect of locating the Lower Canyon development at mile 0.5 with a rock-fill dam instead of at mile 3.7 with an arch dam is to increase the cost of the High Mountain Sheep Plan by about $48,900,000.

(47) PNPC estimated that its High Mountain Sheep Plan (without fish facilities) would cost $2,575,000 more than its Nez Perce Plan (without Whitebird and fish facilities) (Table 8); WPPSS estimated that its High Mountain Sheep Plan (without fish facilities) would cost $93,036,000 more than its Nez Perce Plan (without Whitebird and fish facilities). The difference is $90,461,000. A large portion of this difference (approximately $48,900,000) is attributable to WPPSS's adoption of the Lower Canyon development at mile 0.5 and PNPC's adoption of that development at mile 3.7.

(48) The Staff estimates that its High Mountain Sheep Plan (Comparison II, without fish facilities) would cost $49,616,000 more than its Nez Perce Plan (without Whitebird and Fish facilities). However, this comparison does not use the lowest Staff estimate for the High Mountain Sheep Plan, although it does include the lowest of the three Staff estimates for Nez Perce. If the lower Staff estimate for the High Mountain Sheep Plan is used, the differential adverse

to High Mountain Sheep is reduced to $13,460,000 ($406,933,000 less $393,473,000). Using Staff estimates, the estimated cost of the High Mountain Sheep Plan ranges between $406,933,000 and $443,089,000. The estimated cost of the Nez Perce Plan ranges between $393,473,000 and $433,514,000. These estimates are reasonable for comparative purposes.

(49) PNPC will sell the entire output of the project to the four organizing companies of PNPC—Portland General Electric Company, Pacific Power & Light Company, The Montana Power Company, and The Washington Water Power Company. These companies have executed firm commitments to purchase the entire output of the project, paying an annual cost which would equal all annual charges, including financing charges of PNPC, associated with the project. The four organizing companies will have a deficiency of their assured resources as against their estimated load as of the earliest date that High Mountain Sheep project can be expected to be in service that will equal or exceed the firm capabilities of the High Mountain Sheep project. Consequently, PNPC has demonstrated a need and a market for the output of the High Mountain Sheep project.

(50) WPPSS has failed to establish a need or a market for the output of either Nez Perce or High Mountain Sheep. Its participating public agencies have an assured source of power from their own facilities or from the Bonneville Power Administration until at least 1970. Moreover, the power available to these public agencies from Nez Perce or High Mountain Sheep will be more expensive than Bonneville power.

(51) WPPSS has no binding agreement with any utility to take any part of the Nez Perce power or High Mountain Sheep output.

(52) The power purchase contracts with its four organizing companies will assure to PNPC the payment of all assumed costs, including interest and amortization charges and earnings on the stock. The securities of PNPC will be readily marketable at prices equivalent to good grade utility securities. PNPC has the ability to finance the construction of the High Mountain Sheep project.

(53) WPPSS has failed to prove that it has the ability now to finance the construction of any project that might be licensed to it in this proceeding.

(54) If Canadian storage becomes available prior to High Mountain Sheep power, it will not affect the four sponsor companies' (PNPC) need for additional generating facilities.

(55) The transmission lines proposed by the Pacific Northwest Power Company would be adequate to transmit the output of the High Mountain Sheep project to the load centers of the four sponsor companies. The transmission lines proposed by the Washington Public Power Supply System would be adequate to transmit the output of the Nez Perce project to the B.P.A. grid.

(56) The Department of Agriculture has reported that the High Mountain Sheep project would have significant effects upon management and utilization of the resources of the Wallowa, Nez Perce and Payette National Forests, and has recommended several special conditions for the protection and utilization of the Wallowa, Nez Perce and Payette National Forests.

(57) The Department of the Interior has recommended a special condition to assure the feasibility of upstream irrigation developments, and reports that advice as to fishways will be submitted at a later date.

(58) The Chief of Engineers has recommended special conditions for the operation of the project for flood control, a special condition providing for a working agreement between the Licensee and the Corps of Engineers for the operating procedure needed in carrying out the flood control functions of the High Mountain Sheep project, and special conditions in the interest of navigation.

(59) The Department of Interior has requested that the Commission recommend to Congress that the Mountain Sheep Dam should be built by the United States.

(60) The installed horsepower capacity for the High Mountain Sheep project hereinafter authorized is 1,167,000 horsepower for the purpose of computing the administrative annual charge.

(61) The major portion of fish migrating up the Snake River past the Nez Perce site continue their migration up the Salmon River, and are predominantly spring and summer chinook. Fish migrating up the Snake River above the confluence of that river and the Salmon River are predominantly fall chinook, and represent a minor portion of the total fish migrating past the Nez Perce site.

(62) Fish migrating up the Snake River past the confluence of that river and the Imnaha River are now seriously jeopardized by an existing complex of dams immediately above the High Mountain Sheep Reservoir. The available evidence indicates that the attempt to maintain fish passage past the Brownlee and Oxbow Dams has not been successful.

(63) Significant numbers of fall chinook have been successfully reared in artificial spawning areas. There is no indication that the spring and summer chinook, which are the predominant fish migrating up the Salmon River, have been successfully reared in artificial spawning areas. Because of the size of the fall chinook run, the possibility exists that the run of these fish might be maintained with the aid of some form of transportation upstream and artificial spawning areas.

(64) PNPC's proposal to provide a separate entrance at the High Mountain Sheep project utilizing water only from the Imnaha River has a sound biological basis for anticipating that it will function to pass Imnaha upstream migrants around the reservoir to the Imnaha River.

(65) There is substantial evidence in the record that long and deep reservoirs present a biologic fish passage problem separate and distinct from that of designing fish facilities at high dams and that, with the knowledge now available, the Nez Perce project and the Lower Canyon project cannot now be built without constituting a major hazard to migrating fish, particularly the spring and summer chinook and steelhead in the Salmon River, and without risking substantial loss and possible destruction to the anadromous fish passing the site. However, because of a less complex reservoir condition, there is a greater likelihood of success at Lower Canyon than there would be at Nez Perce.

(66) The High Mountain Sheep project does not add substantially to the existing problems of maintaining the run of the main Snake River anadromous run which presently pass the Hells Canyon site, and, because of the special situation in the Imnaha River, there is reason to suppose that the High Mountain Sheep project can be built now without substantial harm to the fishery resources in that river.

(67) Using Staff construction (Comparison II) the High Mountain Sheep Plan has greater annual power benefits than the Nez Perce Plan for the initial period without Whitebird and Freedom, but the Nez Perce Plan has greater net annual power benefits than the High Mountain Sheep Plan for subsequent periods of development. Using the lower High Mountain Sheep Plan construction costs originally presented by the Staff, the High Mountain Sheep plan is superior to the Nez Perce plan at all stages of development except the final period when all common reach developments are in with Crevice storage.

(68) The High Mountain Sheep Plan of development is the comprehensive plan of development for this reach of the river under the standards established by Section 10(a) of the Act. It provides for greater power production than does the Nez Perce Plan of development, greater flood control benefits; and it better

provides for the preservation and maintenance of existing anadromous fish runs than does the Nez Perce plan of development. It provides greater flexibility in terms of the timing of its component projects and in the provision of alternatives to meet any new developments in fish passage facilities and techniques that may be developed in the future. The High Mountain Sheep project is the project best adapted to such a plan of development.

(69) PNPC has a statutory priority for its application for the High Mountain Sheep project (Project No. 2243) by virtue of a preliminary permit issued by the Commission on April 8, 1955.

(70) WPPSS has failed to establish that it has complied with State laws concerning its right to do business within the States of Oregon and Idaho, or to own or possess property within such States, or to carry on a utility operation within such States, or to have or acquire water rights within such States, or to construct the proposed projects within the States of Oregon and Idaho.

(71) Section 7(a) of the Federal Power Act does not entitle WPPSS as a matter of law to a reasonable time to adapt its conflicting Nez Perce Plan and project application to the High Mountain Sheep Plan and project application; and on the record made in this proceeding, permission to amend its Nez Perce application so as to seek a license for the High Mountain Sheep project should be denied.

(72) The Application for License for the Middle Snake River project No. 2243 by Pacific Northwest Power Company is granted, subject to the terms and conditions hereinafter set forth.

ORDER

Wherefore, *it is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided in the Commission's Rules of Practice and Procedure that:

(A) This license is issued to Pacific Northwest Power Company (hereinafter referred to as Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of the first day of the month in which acknowledgment of acceptance thereof is filed with the Commission by Pacific Northwest Power Company for the construction, operation and maintenance of Project No. 2243, to be known as the High Mountain Sheep project, on the Snake River and its tributaries, Idaho and Oregon, affecting navigable waters of the United States and the interest of interstate or foreign commerce and lands of the United States within and outside of Wallowa, Nez Perce and Payette National Forests, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(i) The proposed project consists of: All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; the general location of such project area being shown and described by certain exhibits which formed part of the application for license, or amendment thereof and which are designated and described as follows:

Exhibit	FPC No.	Showing
J..	2243	General map of project area.

(ii) All project works consisting of a concrete arch dam approximately 670 feet high, creating a reservoir extending about 58 miles upstream to Hells Canyon tailwater (Project No. 1971) on the Snake River and about 10 miles upstream on the Imnaha River with normal water surface area of about 17,300 acres and gross storage capacity of 3,600,000 acre-feet at normal water surface elevation 1510, of which 2,250,000 acre-feet would be usable with a drawdown of 173 feet; a chute-type radial-gate controlled spillway; low level intakes; two outdoor type powerhouses, one on each side of the river immediately downstream of the dam, having an initial installation of five units with each turbine rated 285,000 horsepower at 550-foot head and each generator rated 175,000 kw (184,000 kva at 0.95 power factor); three on the (left bank) Oregon side and two units on the (right bank) Idaho side, with provisions in the plans for the additional five similar units, two on the left bank and three on the right bank; and appurtenant electrical and mechanical facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by other exhibits which also formed a part of the application for license as amended and which are designated and described as follows:

Exhibit	FPC No.	Showing
L Sheet 30, amended and revised	2243	General plan.
L Sheet 31, amended and revised	2243	Profile and section.
L Sheet 32, amended	2243	Powerhouse Plans.
L Sheet 33, amended and revised	2243	Powerhouse cross-sections.
L Sheet 34, amended and revised	2243	Intake and Spillway sections.
L Sheet 35, amended and revised	2243	Arch dam.

M: Amended "General Description and Specifications of Equipment" regarding High Mountain Sheep project in two sheets.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful, in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(B) This license is also subject to the terms and conditions set forth in Form L-6, December 15, 1953 (16 FPC 1121) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" which terms and conditions designated as Articles 1 through 27, are attached hereto and made a part hereof, except for Articles 15, 16, 17, 23 and 24 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall commence construction of the High Mountain Sheep project within one year of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction; and shall complete the project and place it in operation within six years from the effective date of this license.

Article 29. The Licensee shall submit, in accordance with the Commission's rules and regulations, revised Exhibit L drawings for the project structures. These drawings shall be accompanied by detailed information as to the Licensee's exploration program and excavation plan for the dam, proposed foundation treatment, the design of the arch dam and other major hydraulic structures.

The Licensee shall not begin construction of the project works until the Commission approves the exhibit, the proposed program, plans, and designs.

Article 30. The final design of the arch dam shall be verified by an acceptable method of analysis (such as the trial load method) and reviewed by the use of structural models.

Article 31. The final design of the spillway shall be based on hydraulic model tests.

Article 32. The Licensee shall, within one year following the completion of the construction of the project file with the Commission revised Exhibit F and K showing final project boundary prepared in accordance with the Commission's rules and regulations.

Article 34. The Commission reserves the right to determine at a later date what transmission facilities shall be included in this license as part of the project works.

Article 35. The Licensee shall consult with the Forest Service in determination of the centerline location of transmission lines on or affecting national forest lands and shall secure concurrence of the Forest Service to the specific location of those lines occupying lands administered by the Forest Service.

Article 36. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 37. The Licensee shall not make any claim under the authority of this license against the United States or any water users' organization claiming through the United States for any damage resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands and other beneficial consumptive uses.

Article 38. The Licensee shall operate the project and its system in complete coordination with the Northwest Power Pool, shall construct and install, subject to the appropriate approval and consent of the Commission, such transmission facilities as may be required for such operation.

Article 39. The Licensee shall make available to the Idaho State College, upon further order of the Commission at the request of the Idaho State College, reasonable sums of money not to exceed $7,500 for the purpose of undertaking an archeological survey and salvage excavations prior to construction and flooding.

Article 40. The Licensee shall, in order to secure maximum recreational benefits, make every reasonable effort to maintain the water surface of the High Mountain Sheep reservoir at the highest level practicable from June 15 to September 15, of each year, as is consistent with the primary purposes of the reservoir to provide pondage for Licensee's daily, weekly, monthly or seasonal power requirements; requirements of downstream releases; and flood control.

Article 41. The Licensee shall cooperate with the Forest Service in the study and preparation of a recreation public use plan.

Article 42. The road or roads constructed, owned or controlled by the Licensee for the project developments, shall be made available without charge to the Forest Service, its timber operators, permittees, and other users, for the orderly administration, development, and protection of the national forests involved, and for operations necessary and incident to project development, provided that such use may be limited by reasonable safety and traffic control requirements. In appropriate circumstances and as agreed to by the Forest Service, the Licensee may require payment of the user to cover a fair share of the road maintenance costs.

Article 43. The Licensee shall, prior to impounding water, clear all lands in the bottom and margins of the reservoir between a plane five feet below ultimate low water elevation (El. 1337) of the reservoir and the plan at normal pool elevation of the reservoir, and shall cut all brush and trees below the lower plane so that none protrude above elevation 1332. The Licensee shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margin of the reservoir which may die due to operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 44. In the interest of flood control downstream from the project the Licensee shall operate the project in accordance with an agreement to be entered into by the Licensee and the United States Corps of Engineers for the purpose of determining detailed operating procedures for use during flood periods, in accordance with the following principles:

a. The total live storage space of about 2,250,000 acre-feet between elevation 1337 and elevation 1510 mean sea level will be made available for flood control use if and as required.

b. The reservoir level will be no higher than elevation 1475 by 1 March each year to provide about 600,000 acre-feet of storage space for flood control use at that time each year. Additional storage space will be made available between 1 March and the beginning of the flood period to insure the availability on 1 May of the total capacity needed for flood control as estimated by the Corps of Engineers.

c. The space made available as set forth above will be retained until capture of flood flows is requested by the Corps of Engineers, subject to involuntary storage as may be required due to excess of inflows over outlet capacity, or until refilling is authorized by the Corps of Engineers. In the event of involuntary storage during flood control operations, full storage capability will be regained as soon as possible.

d. During the flood storage period controlled outflows will be as warranted by the flood control requirements as determined by the Corps of Engineers with due regard to the requirements for the optimum multiple purpose operation of the project. When the Columbia River discharge at The Dalles is 600,000 c.f.s. or higher, the daily outflow may be reduced to 10,000 acre-feet, except that during years of severe flood conditions, the daily outflow may be reduced to as low as 4,000 acre-feet; below 600,000 c.f.s. discharge at The Dalles, the daily outflow will be determined with due consideration given to all purposes of the project.

e. A discharge capacity of 65,000 c.f.s. at minimum pool elevation 1382 is to be provided by the Licensee. This discharge capacity is based on the gated outlet capacity plus one half of the ultimate turbine hydraulic capacity.

The agreement will be subject to review from time to time as requested by the Licensee or the Corps of Engineers.

Article 45. In the interest of navigation the project shall be operated in accordance with the following requirements:

a. Minimum flow of not less than 13,000 c.f.s. will be maintained at Lime Point, Idaho, during annual storage refill season when determined to be required by the Corps of Engineers in the interest of navigation. Flows of up to 16,500 c.f.s. may be required at other times when determined by the Corps of Engineers to be necessary in the interest of navigation.

b. River fluctuations in the reach between Lewiston and Lime Point resulting from project operation shall not exceed a rate of one and a half feet per hour on the rising stage, and one foot per hour on the falling stage unless otherwise approved by the Corps of Engineers.

Article 46. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wild-life resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior, the Oregon State Game Commission, the Fish Commission of Oregon or the Idaho Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further*, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Article 47. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 48. The Licensee shall prior to beginning of operation of the Low Hells Canyon development of Project No. 1971, enter into an agreement with the Idaho Power Company, Licensee for Project No. 1971, to compensate that Company for backwater effect on the Low Hells Canyon development of Project No. 1971 constructed in accordance with plans approved by the Commission, resulting from the operation of the High Mountain Sheep project with maximum normal pool at elevation 1510 feet at the High Mountain Sheep dam. In the event no satisfactory agreement is concluded by such time, then upon the application of the Idaho Power Company, the Commission shall fix and determine the compensation to be made by Licensee for such encroachment after notice and opportunity for hearing.

Article 49. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of its upstream and downstream fish passage and handling facilities with those for Project No. 1971 of Idaho Power Company, as the Commission may direct upon recommendation of the Secretary of the Interior, the Oregon State Game Commission, the Fish Commission of Oregon, or the Idaho Department of Fish and Game.

Article 50. The Licensee shall pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations. The authorized installed capacity for such purposes is 1,167,000 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission-line purposes an amount to be fixed hereafter by the Commission; and

(c) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission-line purposes an amount to be fixed hereafter by the Commission.

(C) The exhibits described in paragraph (i) above are approved as part of the license for the project.

(D) The Licensee shall within one year from the effective date of the license, file with the Commission a plan of financing for Commission approval, and the Commission reserves the right to require such additional information, or such modifications in the proposed plan, as it may deem necessary before taking final action on the plan of financing. Licensee shall not commence construction prior to Commission approval of a plan for financing the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(F) The application of the Washington Public Power Supply System for license for Project No. 2273 is hereby denied.

William C. Levy,
Presiding Examiner.

APPENDIX A

Chronological List of Written Pleadings, Filings, Orders and Ruling in the Proceeding on Project Nos. 2243 and 2273, From March 31, 1958

Date	Name	Item
March 31, 1958	PNPC	Application for License (High Mountain Sheep—Project No. 2243).
April, 18 1958	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Petition for Leave to Intervene—Project No. 2243 (Granted by Commission's order of March 3, 1960)—Motion to Dismiss Application—Project No. 2243.
June 27, 1958	PNPC	Motion to Dismiss National Hells Canyon Association, Inc. and Northwest Public Power Association Petition to intervene and Motion to Dismiss of April 18, 1958—Petition for Declaratory Order.
July 23, 1958	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Answer in Opposition to Petition for Declaratory Order.
September 28, 1958	PNPC	Notice of Withdrawal of Petition for Declaratory Order.
September 29, 1959	PNPC	Amendment of Motion to Dismiss filed June 27, 1958.
October 26, 1959	Federal Power Commission	Notice of Application for License for Project No. 2243.
November 23, 1959	Idaho Fish and Game Commission and Idaho Fish and Game Department.	Petition to Intervene in Project No. 2243 (Intervention Granted by Commission Order of March 3, 1960).
December 1, 1959	Public Utility Commissioner of Oregon.	Notice of Intervention filed.
December 2, 1959	Columbia River Salmon & Tuna Packers Association.	Petition to Intervene in Project No. 2243 (Intervention Granted by Commission Order of March 3, 1960).
December 2, 1959	Oregon State Water Resources Board.	Petition to Intervene in Project No. 2243 (Granted by Commission's Order of March 3, 1960).
December 3, 1959	Public Utility Commissioner of Idaho.	Notice of Intervention filed.
December 3, 1959	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Amendment to Petition to Intervene filed April 18, 1958—Amendment to motion to Dismiss Application for Project No. 2243.

APPENDIX A—continued

Date	Name	Item
December 4, 1959	Oregon State Game Commission and Fish Commission of Oregon.	Petition to Intervene in Project No. 2243 (Granted by Commission's Order of March 3, 1960).
December 14, 1959	State of Washington Fisheries Department and State of Washington Game Department.	Petition to Intervene in Project No. 2243 (Granted by Commission's Order of March 3, 1960).
December 28, 1959	PNPC	Answer to Amend Motion to Dismiss Application—Memorandum in Support on Answer to Amended Motion to Dismiss.
January 4, 1960	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Response to PNPC Answer to Amended Motion to Dismiss and Memorandum in Support.
January 6, 1960	PNPC	Answer to Amended Petition to Intervene by National Hells Canyon Association, Inc. and Northwest Public Power Association.
February 1, 1960	Federal Power Commission	Order Fixing Hearing on Project No. 2243 for March 21, 1960.
March 15, 1960	WPPSS	Application for License for Project No. 2273 Motion for consolidation of proceedings on Project Nos. 2243 and 2273.
March 15, 1960	Federal Power Commission	Notice Postponing Hearing until April 4, 1960.
March 23, 1960	Federal Power Commission	Notice of Application for License for Project No. 2273.
March 28, 1960	PNPC	Answer to Motion for Consolidation Motion to Strike Portion of Motion for Consolidation.
March 30, 1960	Federal Power Commission	Order Consolidation Proceedings, Prescribing Procedure and Fixing Hearing for July 18, 1960.
April 18, 1960	Public Utility Commissioner of Oregon.	Notice of Intervention filed.
May 2, 1960	Oregon State Game Commission and the Fish Commission of Oregon.	Petition to Intervene in Project No. 2273 (Granted by Commission Order of May 20, 1960).
May 4, 1960	WPPSS	Motion for Extension of Time.
May 4, 1960	Columbia River Salmon & Tuna Packers Association.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 5, 1960	Fisherman's Cooperative Association, Inc.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 6, 1960	Pacific Northwest Power Company.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 6, 1960	State of Washington Fisheries Department and State of Washington Game Department.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 6, 1960	Northwest Fisheries Association.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	PNPC	Answer to WPPSS Motion for Extension of Time.
May 9, 1960	FPC Staff	Answer to WPPSS Motion for Extension of Time.
May 9, 1960	Makah Indian Tribe	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	Washington State Sportsmen's Council, Inc.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	Oregon Wildlife Federation	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	Idaho Wildlife Federation	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	Association of Pacific Fisheries and Puget Sound Salmon Canners, Inc.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 9, 1960	Idaho Fish and Game Commission.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 10, 1960	WPPSS	Answer to Opposition to Petition to Intervene by PNPC.
May 10, 1960	Pacific Fish Conservation League, Inc.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 11, 1960	Alaska Fisherman's Union	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 11, 1960	Oregon State Water Resources Board.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 12, 1960	Presiding Examiner	Notice Fixing Date of Prehearing Conference and Extending Time for Filing Until After Conference.

APPENDIX A—continued

Date	Name	Item
May 16, 1960	Department of Fish and Game of the State of Alaska.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of May 20, 1960).
May 19, 1960	Presiding Examiner	Notice of Prehearing Conference Results and Fixing Date of Hearing for October 17, 1960.
May 26, 1960	Presiding Examiner	Notice of Further Prehearing Conference on Fisheries.
June 13, 1960	Chinook and Cowlitz Indian Nations.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of July 13, 1960).
July 6, 1960	WPPSS	Petition to Intervene in Project No. 2243 (Granted by Commission's Order of October 7, 1960).
July 6, 1960	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of August 16, 1960).
July 12, 1960	PNPC	Answer to Petition to Intervene by National Hells Canyon Association, Inc. and Northwest Public Power Association.
July 13, 1960	Presiding Examiner	Report of Prehearing Conference.
July 15, 1960	Confederated Bands and Tribes of the Yakima Indian Nation.	Petition to Intervene in Project No. 2273 (Granted by Commission's Order of August 16, 1960).
July 23, 1960	WPPSS	Letter requesting PNPC to be directed to use only Docket No. 2243 and not 2173/2243.
August 3, 1960	WPPSS	Motion for Extension of Time.
August 8, 1960	PNPC	Reply to Motion for Extension of Time.
August 8, 1960	FPC Staff	Reply to Motion for Extension of Time.
August 10, 1960	Presiding Examiner	Ruling on Motion for Extension of Time to September 9, 1960 for Applicants filing of Direct Testimony.
August 10, 1960	Presiding Examiner	Ruling on WPPSS Request of July 23, 1960 affirmatively.
August 19, 1960	Oregon State Game Commission and Fish Commission of Oregon.	Motion for Extension of Time to October 7, 1960 for filing Intervener's Direct Testimony.
August 20, 1960	State of Washington Fisheries Department and State of Washington Game Department.	Motion for Extension of Time to October 7, 1960.
August 22, 1960	WPPSS	Amendment to Application for License for Project No. 2273.
August 25, 1960	Department of Conservation, State of Washington.	Petition to Intervene in Project Nos. 2243 and 2273 (Granted by Commission's Order of September 16, 1960).
August 26, 1960	PNPC	Reply to Motions for Extension of Time.
September 1, 1960	Oregon State Grange and Washington State Grange.	Petition to Intervene in Project Nos. 2243 and 2273 (Granted by Commission's Order of September 16, 1960).
September 2, 1960	Presiding Examiner	Ruling Granting Extension of Time for filing Staff and Intervener's Direct Testimony to October 7, 1960, and setting Hearing for November 4, 1960.
September 6, 1960	Idaho Fish and Game Commission, Washington State Sportsmen's Council, Inc., Pacific Fish Conservation League, Inc., Fishermen's Cooperative Association, Inc., Northwest Fisheries Association, Alaska Fishermen's Union and Makah Indian Tribe.	Join in Petition for Extension of Time for Filing of Intervener's Direct Testimony to October 7, 1960.
September 14, 1960	PNPC	Answer in Opposition to Petition of Oregon State Grange and Washington State Grange.
September 20, 1960	Presiding Examiner	Order Postponing Prehearing Conference to October 31, 1960.
September 21, 1960	Oregon State Grange and Washington State Grange.	Reply to PNPC Answer.
September 27, 1960	State of Oregon	Statement of Official Position of State of Oregon Filed.
September 28, 1960	Presiding Examiner	Examiner's Notice Prescribing Agenda.
October 3, 1960	National Hells Canyon Association, Inc. and Northwest Public Power Association.	Motions to Vacate Orders of Intervention.
October 12, 1960	PNPC	Answer to Motion by National Hells Canyon Association, Inc. and Northwest Public Power Association.
October 17, 1960	Federal Power Commission	Order vacating Order of March 3, 1960 Granting Intervention by National Hells Canyon Association, Inc. and Northwest Public Power Association.
October 18, 1960	Presiding Examiner	Notice to File motions to Strike Exhibits by October 31, 1960.

APPENDIX A—continued

Date	Name	Item
October 20, 1960	WPPSS	Notice of and Application for taking of depositions of FPC Staff members. Application for Issuance of Subpoenas for Appearance of FPC Staff members.
October 25, 1960	FPC Staff	Reply to Applications for Depositions and Subpoenas.
October 26, 1960	Presiding Examiner	Ruling Denying Application for Depositions and Subpoenas.
October 27, 1960	WPPSS	Motion for Continuance of Hearing to January 9, 1961.
October 31, 1960	Chinook and Cowlitz Indian Nations.	Motion to set date for Examination of Witnesses.
November 1, 1960	Presiding Examiner	Report on Prehearing Conference.
November 2, 1960	FPC Staff	Reply in Opposition to WPPSS Motion of October 27, 1960 for Continuance.
November 3, 1960	WPPSS	Appeal from Presiding Examiner's Ruling Denying Application for Depositions and Subpoenas. Answer in Opposition to Chinook and Cowlitz Indian Nations for Fixing of Date for Examination of Witnesses.
November 3, 1960	WPPSS	Application for Issuance of Subpoena of PNPC records.
November 2, 1960	PNPC	Reply in Opposition to WPPSS Motion of October 27, 1960 for Continuance.
November 4, 1960	Presiding Examiner	Denial of WPPSS Motion for Continuance (See Tr. 125, Part 1 of Volume I of Transcript).
November 4, 1960	WPPSS	Motion on record for reconsideration of denial of Motion for Continuance (See Tr. 125-140 for Motion and Replies of Parties to Motion).
November 4, 1960	Presiding Examiner	Ruling Denying Motion for Reconsideration of Motion for Continuance (See Tr. 140, Part 1 of Volume I).
November 4, 1960	WPPSS	Motion for week's (Stay) Continuance (See Tr. 140, Part 1 of Volume I).
November 4, 1960	Presiding Examiner	Ruling Denying Motion for Week's (Stay) Continuance.
November 7, 1960	WPPSS	Appeal from Presiding Examiner's Ruling Denying Motion for Continuance and Motion to Stay.
November 7, 1960	WPPSS	Motion Requesting the Commission to Stay Resumption of Hearing on Nov. 7, 1960.
November 7, 1960	Federal Power Commission	Order Denying Motion for Stay.
November 9, 1960	FPC Staff	Memorandum in Opposition to WPPSS Appeal of Examiner's Ruling of October 26, 1960.
November 15, 1960	PNPC	Answer to WPPSS Appeal of Examiner's Rulings of November 4, 1960.
November 22, 1960	FPC Staff	Memorandum in Opposition to WPPSS Appeal of Examiner's Rulings of November 4, 1960.
November 22, 1960	WPPSS	Motion for Leave to File Response to PNPC Answer to Appeal.
November 25, 1960	Federal Power Commission	Order Sustaining Presiding Examiner's Rulings Appealed by WPPSS on Applications for Depositions and Subpoenas.
November 25, 1960	Federal Power Commission	Order Sustaining Presiding Examiner's Rulings Appealed by WPPS on Motion for Stay and Continuance.
December 1, 1960	Columbia River Salmon Tuna Packers Association.	Motion to change Place of Hearing to Portland, Oregon.
December 2, 1960	Presiding Examiner	Amended Schedule of Witnesses Superseding Schedule Issued November 1, 1960.
December 13, 1960	Department of Conservation. State of Washington.	Application for Authorization for Taking Deposition of R. Wayne Lincoln.
December 16, 1960	Public Utility Commissioner of Idaho.	Request for Change of Scheduled Appearance of Witness.
December 19, 1960	WPPSS	Reply in Opposition to Interveners' Motion for Change in Place of Hearing.
December 23, 1960	Presiding Examiner	Notice of Authorization of Taking of Deposition of R. Wayne Lincoln.
December 27, 1960	Washington State Sportsmen's Council, Inc.	Petition for Amending of Schedule of Witness.
December 27, 1960	Washington State Sportsmen's Council, Inc., Pacific Fish Conservation League, Inc., Fishermen's Cooperative Association, Inc., Northwest Fisheries Association, Alaska Fishermen's Union, Makah Indian Tribe, Oregon Wildlife Federation, Idaho Wildlife Federation.	Join in Motion of December 1, 1960 for Change in Place of Hearing.
December 28, 1960	Chinook and Cowlitz Nations of Indians.	Join in Motion of December 1, 1960 for Change in Place of Hearing.
January 4, 1961	WPPSS	Reply in Opposition to Motion Schedule of Witnesses.

APPENDIX A—continued

Date	Name	Item
January 4, 1961	WPPSS	Petition for Declaratory Order Regarding Fishways.
January 9, 1961	State of Washington Fisheries Department and State of Washington Game Department.	Join in Motion for Change in Place of Hearing.
January 16, 1961	Idaho Fish and Game Commission.	Join in Motion for Change in Place of Hearing.
January 17, 1961	PNPC	Reply to Petition January 4, 1961 for Declaratory Order.
January 31, 1961	Presiding Examiner	Ruling Changing Place of Hearing to Portland, Oregon on March 31, 1961.
February 6, 1961	WPPSS	Supplement to Petition and Motion for Declaratory Order.
February 6, 1961	WPPSS	Appeal from Presiding Examiner's Denial of Motion of WPPSS to Strike Fishery Testimony. (Note the original motion was filed October 17, 1960, as part of the motions to strike as provided for by the Commission's Order of March 30, 1960. The Presiding Examiner's Denial of the original motion appears at Tr. 118 through 123, Volume I, part 1 of the transcript).
February 10, 1961	WPPSS	Application for Issuance of Subpoenas
February 13, 1961	Presiding Examiner	Report on Application for Subpoenas.
February 14, 1961	WPPSS	Supplement to Application for Subpoenas.
February 23, 1961	Federal Power Commission	Order Sustaining Presiding Examiner's Ruling of February 9, 1961, Denying Application for Subpoenas (For ruling made in the course of the hearing see Tr. 7211, Volume 46 of the transcript).
February 23, 1961	Presiding Examiner	Notice Requiring Filing of Rebuttal Testimony by April 5, 1961.
March 7, 1961	Federal Power Commission	Order Sustaining Presiding Examiner's Ruling Denying Motion to Strike Fishery Testimony.
March 30, 1961	WPPSS	Motion for Continuance to June 12, 1961.
April 3, 1961	PNPC	Reply to Motion for Continuance. Motion to Dismiss WPPSS Motion for Continuance.
April 10, 1961	WPPSS	Supplementary Motion for Continuance.
April 14, 1961	Federal Power Commission	Order Referring WPPSS Motions for Continuance to Presiding Examiner.
April 18, 1961	Presiding Examiner	Ruling Denying WPPSS Motion for Continuance and Extending Time for Filing of Rebuttal Testimony to April 21, 1961.
April 24, 1961	WPPSS	Motion for Leave to File Amendment to Application for Project No. 2273 to include a project at High Mountain Sheep site.
April 25, 1961	FPC Staff	Reply in Opposition to WPPSS Motion for Leave to Amend its Application to Include Project at High Mountain Sheep site.
April 26, 1961	PNPC	Motion to dispense with rebuttal testimony (See Tr. 9800-9802, Volume 66).
May 1, 1961	WPPSS	Motion for Leave to File Reply to Staff Answer to WPPSS Motion to Amend Application for License. Reply in Opposition to Motion of PNPC of April 26, 1961.
May 2, 1961	Presiding Examiner	Ruling Denying WPPSS Motion to Amend Application and Denying PNPC Motion to Dispense with Rebuttal Testimony, and Recessing Hearing Until June 12, 1961 at which Time Hearing to Proceed According to Agreement of Parties Set Forth at Tr. 9823, Volume 66.
May 12, 1961	WPPSS	Objections to Presiding Examiner's Ruling of May 2, 1961.
May 19, 1961	Federal Power Commission	Order Approving Examiner's Continuance of Hearing for more than 30 days and Sustaining Denial of Motion of Leave to File Amended Application.
June 20, 1961	WPPSS	Petition for Rehearing of Commission's Order of May 19, 1961, Denying Motion for Leave to File Amended Application.
June 29, 1961	PNPC	Answer in Opposition to WPPSS Petition for Rehearing.
July 20, 1961	Federal Power Commission	Order Denying Motion for Reconsideration.
July 21, 1961	FPC Staff	Motion for Reversal of Ruling of Presiding Examiner Denying Motion of Staff Counsel made on the Record July 21, 1961 at Tr. 13781, Volume 94, that certain evidence offered in rebuttal and excluded be admitted.
July 24, 1961	PNPC	Reply to Staff Motion for reversal of Presiding Examiner's ruling on testimony offered in rebuttal.
July 24, 1961	WPPSS	Motion Appealing Presiding Examiner's Ruling on Motion of Staff Counsel.

APPENDIX A—continued

Date	Name	Item
July 24, 1961	WPPSS	Motion to Amend License Application and for Order Declaring License Amended.
July 25, 1961	Federal Power Commission	Order on Motions Appealing Ruling of Presiding Examiner on Testimony offered in rebuttal, setting aside Presiding Examiner's Ruling.
July 26, 1961	Presiding Examiner	Ruling Reopening Proceedings and Setting September 12, 1961 as date for admitting previously excluded testimony as rebuttal.
August 7, 1961	PNPC	Petition for Reconsideration of Commission's Order of July 25, 1961, setting aside Presiding Examiner's Ruling.
August 25, 1961	Federal Power Commission	Order Denying PNPC Petition for Reconsideration
September 12, 1961	WPPSS	Motion to Strike portions of testimony and related exhibits by witness for PNPC from record.
September 12, 1961	WPPSS	Motion to Amend License Application to conform to exhibits and testimony of record pertaining to designs and cost estimates of High Mountain Sheep Project.
October 5, 1961	WPPSS	Memorandum in support of motion of Staff Counsel to Strike certain testimony made at hearing.
November 13, 1961	WPPSS	Motion for Extension of Time to 1/15/62 for filing applicants' briefs and for similar 30 days extension of filing all other briefs.
November 15, 1961	WPPSS	Motion to Rule on Motion of Staff Counsel to strike certain testimony made at hearing.
November 21, 1961	Presiding Examiner	Ruling issued Extending Time for Filing Briefs.
November 30, 1961	Presiding Examiner	Ruling Striking Testimony of Witnesses Perry and Pressey at hearing, pursuant to motion filed 11/15/61.
January 4, 1962	WPPSS	Motion for Leave to Substitute Complete Copy of order of Director of Conservation, State of Washington, dated 7/7/61, for incomplete copy thereof appended to motion filed 9/12/61, together with substitute copy of said order.
January 15, 1962	WPPSS	Initial brief, together with introductory material, joint exhibit and Joint Statement.
January 15, 1962		Applicant's brief, together with suggested findings of fact and supplement to brief.
January 15, 1962	PNPC, WPPSS, Staff Counsel	Motion to reopen record and admit additional evidence.
January 15, 1962	PNPC, WPPSS	Motion to Reopen Record and admit additional evidence.
January 29, 1962	WPPSS, PNPC, Staff Counsel	Motion to Reopen Record and admit additional evidence.
March 1, 1962	State of Washington Department of Conservation.	Brief.
March 1, 1962	Idaho Wildlife Federation	Brief.
March 1, 1962	Fishing and Game Agencies for States of Idaho, Oregon and Washington.	Consolidated brief.
March 1, 1962	Staff Counsel	Brief.
March 2, 1962	Chinook & Cowlitz Nations	Telegram requesting extension of time of 40 days in which to file briefs and findings.
March 2, 1962	Oregon Public Utilities Commission.	Initial Brief.
March 2, 1962	Washington State Sportmen's Council, Inc.; Oregon Wildlife Federation; Fishermen's Cooperative Association, Inc.; Northwest Fisheries Association; Alaska Fishermen's Union; Pacific Fish Conservation League; Makah Indian Tribe.	Consolidated brief.
March 2, 1962	Columbia River Salmon & Tuna Packers Association.	Brief.
March 5, 1962	Idaho Public Utilities Commission.	Brief.
April 2, 1962	PNPC	Reply brief.
April 2, 1962	WPPSS	Reply brief.
April 11, 1962	PNPC	Motion to Strike certain material from initial brief of WPPSS filed 1/15/62.
April 23, 1962	WPPSS	Answer to Motion filed 4/11/62.
June 11, 1962 (as amended June 15, 1962).	PNPC	To strike the Reply Brief of WPPSS
June 19, 1962	PNPC	Amendment to Motion to Strike
June 28, 1962	Secretary of Interior	Supplemental Report.
June 28, 1962	WPPSS	Answer to Motion filed 6/11/62

APPENDIX A—continued

Date	Name	Item
July 6, 1962		Order opening record for purpose of including letter of Secretary of Interior filed 6/28/62 as statement of his position, and within 20 days from date of issuance hereof parties may file supplemental brief with respect to said letter (Exh. 43-A).
July 6, 1962		Copy of letter of Secretary of Interior filed 6/28/62 sent to parties of record.
July 13, 1962	WPPSS	Petition to Reopen Record to Include Additional Documents.
July 18, 1962		Staff Counsel's answer to petition to reopen record.
July 23, 1962	Columbia River Salmon & Tuna Packers Association.	Supplemental brief.
July 24, 1962	PNPC	Answer to Petition to Reopen Record.
July 26, 1962	Staff Counsel	Supplemental brief.
July 26, 1962	State of Washington, Department of Fisheries and Department of Game.	Supplemental brief.
July 26, 1962	WPPSS	Supplemental brief.
July 27, 1962	PNPC	Supplemental brief.
July 27, 1962	Washington State Sportsmen's Council, Inc. *et al.*	Supplemental brief.
July 27, 1962	State of Washington, Department of Conservation.	Supplemental brief.
July 30, 1962	Oregon Public Utility Commissioner.	Supplemental brief.
August 2, 1962		Notice Extending Time to July 30, 1962 for filing briefs.
August 31, 1962	WPPSS	Amendement to Petition to Reopen Record filed July 13, 1962 to Request Stay of Issuance of Decision.
September 11, 1962		Staff Counsel's Reply to Amendment.
September 28, 1962		Commission's Referral of Motion to Reopen Record to Presiding Examiner.

APPENDIX B

ECONOMIC FEASIBILITY OF PROJECTS PROPOSED FOR CONSTRUCTION BY PNPC AND WPPSS—PROJECTS NOS. 2243 AND 2273

Exhibit reference	Nez Perce Project No. 2273		High Mountain Sheep Project No. 2273 WPPSS Financing		High Mountain Sheep Project No. 2243 PNPC Financing		
	WPPSS Analysis	FPC Analysis	WPPSS Analysis	FPC Analysis	PNPC Analysis	FPC Analysis	
	WPPSS Exs. 55, 148, 161, and 162; FPC Exs. 18, 20 and 22		WPPSS Exs. 271 and 268; FPC Exs. 20 and 82; Table 1A, Joint Ex. Pt. I		PNPC Exs. 22 and 23, 24 and 41; FPC Exs. 17, 19, 21 and 32		
Initial installation—nameplate kilowatts	2,000,000	2,000,000	1,200,000	1,200,000	875,000	875,000	1,200,000
Ultimate installation—nameplate kilowatts	3,200,000	3,200,000	2,000,000	2,000,000	1,750,000	1,750,000	2,000,000
OUTPUT AND ANNUAL VALUE							
At site:							
Dependable capacity—kilowatts	1,850,000	1,867.000	1,218,000	1,261,000	922,000	930,000	1,261,000
Unit Value	$11.77		$11.77	$11.77			
Total Value	$21,775,000		$14,336,000	$14,842,000			
Energy—1,000,000 kwh	9417	8532	5720	5283	5483	5195	5283
Unit value	$0.0029		$0.0029	$0.0029			
Total value	$27,309,000		$16,588,000	$15,321,000			
Total annual value—at site	$49,084,000		$30,924,000	$30,163,000			

At load center:							
Dependable capacity—kilowatts		1, 753, 000			857, 000	865, 000	1, 171, 000
Unit value		$17. 77			$22. 01	$25. 91	$25. 91
Total value		$31, 151, 000			$18, 863, 000	$22, 412, 000	$30, 341, 000
Energy—1, 000, 000 kwh		8191			5187	4914	5002
Unit value		$. 00237			$. 00279	$. 0038	$0. 0038
Total value		$19, 413, 000			$14, 472, 000	$18, 673, 000	$19, 008, 000
Total annual value—at load center		$50, 564, 000			$33, 335, 000	$41, 085, 000	$49, 349, 000
Annual Cost:							
Project Cost	[5] $391, 080, 000	[1] [5] $369, 120, 000	[5] $213, 000, 000	[1] [5] $229, 743, 000	[6] $257, 100, 000	[6] $253, 699, 000	$286, 304, 000
Cost of money—percent	4. 75	4. 5	4. 5	4. 5	6. 0	6. 0	6. 0
Fixed charges	[2] 21, 707, 000	[4] [7] 23, 523, 000	[9] 11, 417, 000	[5] [8] 15, 416, 000	[6] 24, 580, 000	[4] 18, 627, 000	21, 232, 000
O and M—production	2, 965, 000	[4] 2, 280, 000	2, 175. 000	1, 536, 000	[6] 1, 020, 000	[4] 1, 181, 000	1, 727, 000
O and M—fish facilities	750, 000	750, 000	454, 000	290, 000	480, 000	380. 000	380, 000
A and G expense	1, 310, 000	[4] 798, 000	792, 000	538, 000	[3] 525, 000	[4] 413, 000	545, 000
Transmission Cost		6, 707, 000				7, 336, 000	8, 382, 000
Total annual cost	$26, 732, 000	$34. 058, 000	$14, 838, 000	$17, 870. 000	$26, 605. 000	$27, 937, 000	$32, 266, 000
Excess of Value Over Cost	$22, 352, 000	$16, 506. 000	$16, 086, 000	$12, 293, 000	$6, 730, 000	$13, 148, 000	$17, 083, 000

---

[1] Table 1.
[2] 26,732−(2965+750+1310) WPPSS Ex. 162.
[3] (1020+480)0.35.
[4] Production plant only.
[5] Project cost including step-up substation.
[6] Includes transmission line to load centers.
[7] 350,670,000 x 0.0671 (Table 1 and FPC Ex. 20).
[8] 229,743,000 x 0.0671 (Table 1 and FPC Ex. 20).
[9] 10,778,000+426,000+213,000 (WPPSS Ex. 271, sh. 6).

O and M—Operation and Maintenance
A and G—Administrative and General Expense

APPENDIX C

SUMMARY OF INSTALLED CAPACITY AND CONSTRUCTION AND ANNUAL COSTS COMPARATIVE PLANS FOR DEVELOPMENT OF MIDDLE SNAKE RIVER

	High Mountain Sheep Plan				Nez Perce Plan					Difference between High Mountain Sheep Plan and Nez Perce Plan	
	High Mountain Sheep	Lower Canyon	China Gardens	Total	Nez Perce	China Gardens	Subtotal	Whitebird	Total	w/o Whitebird	With Whitebird
					Installed Capacity—1,000 kw						
FPC											
Direct:											
Installed capacity	1, 225	700	255	2, 180	1, 815	195	2, 010	52	2, 062	170	118
Reservoir elevation	1, 510	1, 595	945	----------	1, 510	920	----------	1, 575	----------	----------	----------
Comparison I and II:											
Installed capacity [1]	1, 200	800	237	2, 237	2, 000	198	2, 198	70	2, 268	39	−31
Installed capacity [2]	1, 200	910	237	2, 347	2, 000	198	2, 198	----------	2, 268	149	79
Reservoir elevation	1, 510	1, 588	941	----------	1, 510	920	----------	1, 575	----------	----------	----------
PNPC (DIRECT)											
Installed capacity	1, 225	700	255	2, 180	1, 815	195	2, 010	52	2, 062	170	118
Reservoir elevation	1, 510	1, 595	945	----------	1, 510	920	----------	1, 575	----------	----------	----------
WPPSS (REBUTTAL)											
Installed capacity	1, 200	910	205	2, 315	2, 000	170	2, 170	65	2, 235	145	80
Reservoir elevation	1, 510	1, 595	925	----------	1, 510	905	----------	1, 570	----------	----------	----------

	Construction Costs $1,000 [3]										
WITHOUT FISH FACILITIES											
FPC:											
Direct	$188,068	$148,474	$70,391	$406,933	$338,412	$57,481	$395,893	(4)	------------	$−11,040	------------
Comparison I	220,766	175,014	68,465	464,245	370,169	63,345	433,514	(4)	------------	−30,731	------------
Comparison II [1]	205,453	162,871	68,465	436,789	330,128	63,345	393,473	(4)	------------	−43,316	------------
Comparison II [2]	205,453	169,171	68,465	443,089	330,128	63,345	393,473	(4)	------------	−49,616	------------
PNPC (direct)	183,706	148,719	73,248	405,673	342,058	61,040	403,098	$38,592	$441,690	−2,575	$36,017
WPPSS (rebuttal)	197,163	197,126	66,000	460,289	308,253	59,000	367,253	(4)	------------	−93,036	------------
FISH FACILITIES											
FPC:											
Direct	22,918	20,500	12,500	55,918	43,900	9,600	53,500	1,036	54,536	−2,418	−1,382
Comparison I	15,390	29,008	12,535	56,933	46,684	10,028	56,712	1,107	57,819	−221	886
Comparison II	15,390	29,008	12,535	56,933	49,494	10,028	59,522	1,107	60,629	2,589	3,696
WPPSS (rebuttal)	15,837	34,874	[5] 11,000	61,711	37,747	[5] 8,500	46,247	948	47,195	−15,464	−14,516
WITH FISH FACILITIES											
FPC:											
Direct	210,986	168,974	82,891	462,851	382,312	67,081	449,393	26,963	476,356	−13,458	13,505
Comparison I	236,156	204,022	81,000	521,178	416,853	73,373	490,226	18,968	509,194	−30,952	−11,984
Comparison II [1]	220,843	191,879	81,000	493,722	379,622	73,373	452,995	18,968	471,963	−40,727	−21,759
Comparison II [2]	220,843	198,179	81,000	500,022	379,622	73,373	452,995	18,968	471,963	−47,027	−28,059
WPPSS (rebuttal)	213,000	232,000	77,000	522,000	346,000	67,500	413,500	15,500	429,000	−108,500	−93,000

[1] Lower Canyon installed capacity 800 Mw (WPPSS original plan) and reservoir at elevation 1588.

[2] Lower Canyon installed capacity 910 Mw (WPPSS rebuttal plan) and reservoir at elevation 1595.

[3] From Table 4.

[4] Omitted since part of Whitebird costs charged to Nez Perce fish facilities.

[5] Table 4, sheet 4.

NOTE: Plus (+) designates difference in favor of High Mountain Sheep Plan; minus (−) designates difference in favor of Nez Perce Plan.

APPENDIX D

SUMMARY OF ECONOMIC COMPARISONS—COMPARATIVE PLANS FOR DEVELOPMENT OF THE MIDDLE SNAKE RIVER (AMOUNTS IN $1,000)

Assumptions of levels of development		FPC			PNPC			WPPSS		
		Difference in annual cost between HMSP and NPP [1]	Difference in annual value between HMSP and NPP [2]	Net difference between annual cost and value	Difference in annual cost between HMSP and NPP [1]	Difference in annual value between HMSP and NPP [2]	Net difference between annual cost and value	Difference in annual cost between HMSP and NPP [1]	Difference in annual value between HMSP and NPP [2]	Net difference between annual cost and value
Initial period	Without fish facilities	[3] −$3,345	$3,973	$628	−$805	$3,973 (table 2) [2]	$3,168	−$5,653	$3,973	−$1,680
Common reach developments without Whitebird and Freedom.	With fish facilities	[3] −3,201	$3,973 (table 2) [2]	772				−6,657	$3,973 (table 2) [2]	−2,684
Subsequent period	Without fish facilities	[3] −3,345	$2,640	−705	−805	$2,640 (table 5) [2]	1,835	−5,653	$2,640	−3,013
Common reach developments without Whitebird and Freedom; no crevice storage.	With fish facilities	[3] −3,201	$2,640 (table 5) [2]	−561				−6,657	$2,640 (table 5) [2]	−4,017
Subsequent period	Without fish facilities				1,461	$1,167 (table 3) [2]	2,628			
All common reach developments; no crevice storage.	With fish facilities	[3] −1,954	$1,167 (table 3) [2]	−787				−5,608	$1,167 (table 3) [2]	−4,441
Subsequent period	Without fish facilities				1,461	$414 (table 4) [2]	1,875			
All common reach developments; with crevice storage.	With fish facilities	[3] −1,954	$414 (table 4) [2]	−1,540				−5,608	$414 (table 4) [2]	−5,194

NOTE: Plus (+) designates difference in favor of High Mountain Sheep Plan (HMSP), minus (−) designates difference in favor of Nez Perce Plan (NPP).

---

[1] From table 8, using stipulated O & M and A & G.
[2] From applicants' joint statement, Part J.
[3] Comparison II with Lower Canyon at elevation 1595 and 910,000 kilowatt capacity.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BLUE RIDGE GAS COMPANY, DOCKET NO. G-14422

ORDER AMENDING ORDER ISSUED FEBRUARY 1, 1960

(Issued February 6, 1964)

On October 16, 1963, Blue Ridge Gas Company (Applicant) filed an application to amend the Commission's order issued February 1, 1960, in Docket No. G-14422, 23 FPC 245, by deleting therefrom the maximum daily volume limitation of 2.041 Mcf on deliveries of natural gas to Applicant by Atlantic Seaboard Corporation (Atlantic), all as more fully set forth in the application to amend on file with the Commission.

The order of February 1, 1960, modified, and adopted as modified, the decision of the presiding examiner wherein Atlantic was directed, pursuant to Section 7(a) of the Natural Gas Act, to establish physical connection of its transportation facilities with the proposed facilities of Applicant and to sell and deliver to Applicant its natural gas requirements, not to exceed a maximum daily volume of 2,041 Mcf. Applicant requests herein that said volumetric limitation be removed.

Applicant states that said limitation prevents the full and orderly development of its business and places Applicant in a less advantageous position from that enjoyed by other customers of Atlantic who are not bound by such limitations. Further, it appears that Applicant has need to increase its maximum daily volume as a result of increased number of customers and increased natural gas requirements for its present and future customers.

On October 28, 1963, Atlantic advised by letter that it had no objection to the grant of the relief requested by Applicant.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 25, 1963 (28 F.R. 14282). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 1, 1960, in Docket No. G-14422 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 1, 1960, in Docket No. G-14422 be and the same is hereby amended by deleting therefrom the maximum daily volume limitation of 2,041 Mcf on the sale and delivery of natural gas to Applicant by Atlantic Seaboard Corporation, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LYNCHBURG GAS COMPANY v. UNITED FUEL GAS COMPANY, DOCKET NO. G-12862

ORDER TERMINATING PROCEEDING

(Issued February 6, 1964)

On July 9, 1957, Lynchburg Gas Company filed a complaint against United Fuel Gas Company, contending the terms of availability of the latter's SG-1 (Surplus Gas) rate schedule to be unduly preferential. Lynchburg at that time purchased its entire supply of gas from Atlantic Seaboard Corporation, which in turn was almost entirely supplied by United Fuel. The SG-1 schedule was designed to enable United Fuel to dispose of a quantity of gas labelled as "surplus" to two affiliates, Ohio Fuel Gas Company and Manufacturers Light & Heat Company, which were then purchasing at approximately 100% load factor under Seaboard's contract-demand rate schedule. The SG-1 Rate Schedule was, by its terms, limited to the period of June 14, 1957, to October 31, 1957. Seaboard filed an answer to the complaint, denying that the terms of availability of the rate schedule were discriminatory, and Lynchburg filed a reply. No further proceedings were had upon the complaint.

On November 20, 1957, United Fuel filed a Notice of Cancellation of Rate Schedule SG-1 and also a request for leave to withdraw a related certificate application in Docket No. G-12791. The grounds stated in this "Notice" were that the SG-1 schedule had been intended to be applicable only to a period ending on October 31, 1957 and that that date had already passed. During the period from June 14–October 31, 1957, United Fuel sold Manufacturers a total of 2,104,395 Mcf (at 14.73 psia) and sold Ohio Fuel a total of 850,036 Mcf. The price, as specified in the SG-1 tariff, was 27¢ per Mcf.

On December 20, 1957, the Commission, by letter order, accepted the SG-1 Rate Schedule for filing as of June 14, 1957, and accepted the Notice of Cancellation, effective as of October 31, 1957. The Commission also permitted United Fuel to withdraw the certificate application in Docket No. G-12791. Since October 1957, United Fuel has not maintained a "surplus gas" rate schedule; accordingly, there can be no present controversy over the terms of availability of such a schedule. In addition, Lynchburg has not, at any time since 1957, requested the Commission to grant it any form of relief with respect to the approximate five-month period when United Fuel did sell gas under the SG-1 schedule. Nor does it appear that there is any such relief to which Lynchburg or other direct or indirect customer of United Fuel might now be entitled. It follows then that the proceeding instituted upon Lynchburg's complaint has become moot, and the proceeding should be terminated.

The Commission orders:

The proceedings in Docket No. G-12862 are hereby terminated because of mootness and the complaint of Lynchburg Gas Company therein is dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TOWN OF MAURY CITY, TENNESSEE, DOCKET NO. CP63-321

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 6, 1964)

On November 27, 1963, the Town of Maury City, Tennessee (Applicant) filed a new application amending one filed on May 23, 1963, in Docket No. CP63-321, pursuant to Section 7(a) of the Natural Gas Act for an order directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its facilities with those which Applicant proposes to construct, and to sell and deliver to Applicant its daily and annual requirements for distribution and resale in the community, as more fully described in the application on file with the Commission.

The application states that there is no gas being distributed and sold in the Town of Maury City. Applicant proposes to construct and operate a distribution system in the said community and to distribute and sell natural gas therein for domestic and commercial consumption.

Applicant will construct a lateral line approximately 9 miles to the transmission pipeline of Texas Gas together with regulating facilities at the point of connection.

On December 12, 1963, Texas Gas filed with the Commission an Answer to Applicant's request wherein it is stated that it has no objection to the rendition of the services requested, but not to exceed 371 Mcf per day at a base pressure of 14.73 psia provided that a service agreement be agreed upon within 45 days after issuance of this order.

Due notice of the filing of the application and opportunity for hearing thereon have been given by publication in the Federal Register on January 15, 1964, (29 F.R. 369). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation, with its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by this Commission in its order of March 30, 1949, in Docket No. G-859 (8 FPC 228).

(2) Applicant is a municipality organized under the laws of the State of Tennessee and is legally authorized to construct and operate a gas distribution system within its borders.

(3) It is necessary and desirable in the public interest to direct Texas Gas Transmission Corporation to establish physical connection of its gas transmission facilities with the facilities to be constructed by the Applicant and to sell and deliver to Applicant up to 371 Mcf of natural gas per day at pressure of 14.73 psia, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the filing with the Commission by Applicant of proof of adequate financing within 30 days of the date on which this order issues.

(5) The requirement that Texas Gas serve Applicant, as proposed, will not place any undue burden upon Texas Gas nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Gas Transmission Corporation be and hereby is directed to establish physical connection of its transmission facilities with the proposed facilities to be constructed by Applicant as hereinbefore described and to sell and deliver up to 371 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Texas Gas shall report in writing to the Commission the date of commencement of service to Applicant.

(C) This order is hereby conditioned upon Applicant being prepared to receive natural gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the filing with the Commission by Applicant of proof of adequate financing within 30 days of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER DENYING APPLICATION FOR REHEARING AND STAY

(Issued February 7, 1964)

Washington Public Power Supply System, intervenor in this investigatory proceeding, filed on January 10, 1964, a petition for rehearing and stay of the order issued December 11, 1963, 30 FPC 1471.

The Commission, on December 11, 1963, issued an interim order which amended and supplemented prior interim orders prescribing fish facilities for Project No. 1971 and which directed the Presiding Examiner to proceed further in this investigatory proceeding instituted by the order issued March 22, 1963, with respect to Project No. 1971 of Idaho Power Company on the Snake River in Idaho and Oregon.

The order issued December 11, 1963, amended and supplemented prior orders pursuant to Article 35 of the license for the project and substantially as requested and recommended in a stipulation entered into by the licensee for Project No. 1971 and all interested State and Federal fishery agencies.

Intervenor objects to amending and supplementing prior orders prescribing fish facilities at this time. We are of the view that the delay proposed by Intervenor is unjustified.

A full discussion of the points raised in Intervenor's petition is unnecessary. Suffice it to say that all Federal and State agencies primarily interested in the fishery resources agreed that prompt implementation of the provisions of the order is necessary and that delay is undesirable. We, too, have gone into this matter thoroughly and have come to the same conclusion.

It is recognized that all problems and controversies in respect to this resource are not resolved; for this reason we have declined, in issuing our order of December 11, 1963, to terminate the investigatory proceeding and have reserved the right to make further modifications. To delay all action, for perhaps many months, pending the final outcome of that investigation and related studies, is unwarranted.

The Commission finds:

The assignments of error and grounds for rehearing and stay set forth in the application filed by Washington Public Power Supply System on January 10, 1964, for rehearing and stay of the Commission's order issued on December

11, 1963, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any change in or modification of the said order.

The Commission orders:

Washington Public Power Supply System's application filed on January 10, 1964, for rehearing and stay of the Commission's order issued on December 11, 1963, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MATT CAREY AND JULIAN A. KNIGHT, PROJECT NO. 961

ORDER ACCEPTING SURRENDER OF LICENSE (TRANSMISSION LINE)

(Issued February 7, 1964)

Application was filed on November 4, 1963 by Mrs. Helen Carey, apparent successor in interest to the above-named licensees of record for the project, for surrender of the license for transmission line Project No. 961 affecting lands of the United States within the Beaverhead (formerly Madison) National Forest in Madison County, State of Montana.

The U.S. Forest Service has reported that all works covered by the license have been removed and the lands of the United States involved have been left in a condition satisfactory to the Service.

Annual charges under the license have been paid through the calendar year 1958.

The Commission finds:

Acceptance of surrender of the license for transmission line Project No. 961 is appropriate.

The Commission orders:

Surrender of the license for transmission line Project No. 961 is hereby accepted, effective as of December 31, 1958.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7117; DELAWARE POWER & LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, DOCKET NO. E-7137

ORDER ALLOWING RATE SCHEDULE TO TAKE EFFECT AND AMENDING ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued February 7, 1964)

This Commission by order issued November 18, 1963, instituted an investigation of all rate schedules of Delaware Power & Light Company (Delaware

Power) subject to the jurisdiction of this Commission and ordered a hearing in the above-entitled proceeding as to their lawfulness. That hearing is currently in progress.

Delaware Power on January 10, 1964, tendered for filing pursuant to Section 205 of the Federal Power Act a rate schedule, tentatively designated in the files of the Commission as Delaware Power's Rate Schedule FPC No. 32, and requested that the proposed schedule be permitted to take effect as of January 10, 1964. Other rate schedules of Delaware Power for service to the City of Dover are currently under investigation in the Commission's current rate proceeding.

The proffered rate schedule embodies a contract under the terms of which Delaware Power agrees to provide the City of Dover, Delaware (Dover) with wholesale electric service up to 16,500 KW in the event of an emergency. In requesting the proposed effective date, Delaware Power stated that it has been informed by Dover that one of Dover's generating units needs extensive overhaul and that during the overhaul period the proposed emergency service would provide necessary back-up reserve for Dover's other generating sources.

From the foregoing circumstances, it appears that the requirements for the filing and posting of the proffered rate schedule not less than 30 days prior to the proposed effective date thereof may be waived without undue prejudice to the interests of those who might be affected under the provisions of the Federal Power Act, that the proffered rate schedule should be permitted to take effect as of January 10, 1964, and that the proffered rate schedule should be included among those rate schedules of Delaware Power currently under investigation, all in the manner hereinafter provided.

The Commission finds:

(1) Good cause has been shown that the 30 day notice period provided in Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations thereunder be waived with respect to Delaware Power's Rate Schedule FPC No. 32 and such rate schedule be allowed to take effect as of January 10, 1964.

(2) It is appropriate for purposes of the Federal Power Act, particularly Sections 205 and 206 thereof, that the Commission's order issued November 18, 1963, in the above-entitled proceeding be amended to include in the list of rate schedules set forth on page 3 thereof and in paragraph (A) on page 5 thereof, Delaware Power's Rate Schedule FPC No. 32.

The Commission orders:

(A) The rate schedule as described above is hereby designated as Delaware Power's Rate Schedule FPC No. 32. The 30 day notice period provided in Section 205 of the Federal Power Act and in § 35.3 of the Commission's Regulations under the Federal Power Act is hereby waived with respect to Delaware Power's Rate Schedule FPC No. 32 and it is hereby allowed to take effect as of January 10, 1964.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule in question insofar as its effective date is concerned.

(C) Nothing contained in this order shall be construed as a waiver in any other respect of the requirements of Section 205 of the Federal Power Act or of the Commission's Regulations under the Act; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the above-designated rate schedule; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(D) The Commission's order issued November 18, 1963 in the above-entitled proceeding is hereby amended to include in the list of rate schedules on page 3 and in paragraph (A) thereof Delaware Power's Rate Schedule FPC No. 32.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against Delaware Power.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. G-14853; HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. G-15208

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 10, 1964)

On October 1, 1963, Arkansas Louisiana Gas Company (Arkansas Louisiana) in Docket No. G-14853 and on October 21, 1963, Humble Gas Transmission Company (Humble) in Docket No. G-15208 filed applications to amend the Commission's order issued December 8, 1958, 20 FPC 791, in said Dockets by authorizing the continuance of the sale of gas until December 18, 1968, by Arkansas Louisiana to Humble pursuant to a new agreement, dated August 30, 1963, between the two companies, all as more fully set forth in the respective applications to amend.

The order of December 8, 1958, authorized Arkansas Louisiana to construct and operate certain facilities and to sell and deliver at the tail gate of Arkansas Louisiana's Munce Compressor Station, Ouachita Parish, Louisiana, natural gas to Humble (formerly Olin Gas Transmission Corporation). Said order also authorized Humble to operate any facilities, subject to the jurisdiction of the Commission, necessary for such sale.

By letter of May 17, 1963, Humble exercised its right to terminate the contract between the two parties at the end of five years. Accordingly, Arkansas Louisiana filed in Docket No. CP63-331 its application to abandon the sale covered thereby.[1] Subsequently, Arkansas Louisiana and Humble entered into the new agreement to continue the sale at the same price (18.2293 cents per Mcf) and at the same delivery point. Said agreement also provides that Arkansas Louisiana may deliver such volumes from time to time as it may have available for sale and as Humble may wish to buy.

On October 1, 1963, Arkansas Louisiana tendered for filing the August 30, 1963, agreement as its First Revised Sheet Nos. 180, 181, 182, 183, 184 and 185 to its FPC Gas Tariff, Original Volume No. 2, covering the herein proposed continued sale of gas to Humble.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 10, 1964 (29 F.R. 270). No protest or petition to intervene has been filed in this proceeding.

---

[1] Arkansas Louisiana's subject application to amend in Docket No. G-14853 also withdraws its abandonment application in Docket No. CP63-331.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and public convenience and necessity require that the Commission's order issued December 8, 1958, in Docket Nos. G–14853 and G–15208 be amended as hereinafter ordered.

(2) The public convenience and necessity require that the revised tariff filings of Arkansas Louisiana, hereinabove described, be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) The Commission's order issued December 8, 1958, in Docket Nos. G–14853 and G–15208 be and the same is hereby amended by authorizing the continuance of the sale of gas until December 18, 1968, by Arkansas Louisiana to Humble pursuant to a new agreement, dated August 30, 1963, between Arkansas Louisiana and Humble, all as hereinbefore described and as set forth in the respective applications to amend.

(B) Arkansas Louisiana's First Revised Sheet Nos. 180, 181, 182, 183, 184 and 185 to its FPC Gas Tariff, Original Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64–65

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 10, 1964)

On September 16, 1963, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64–65 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Cities Service Gas Company (Cities Service)[1] all of Applicant's gathering facilities in the Armour Webb Gas Field, Grant County, Oklahoma, all as more fully set forth in the application.

Cities Service has agreed to deliver to Applicant, free of charge, Applicant's fractional interest of 15.42 percent of the 6,000,000 Mcf of the estimated remaining gas reserves in the said field. Applicant states that Cities Service will deliver over a ten year period all of the remaining gas reserves of 6,000,000 Mcf at 14.65 psia at interconnections of Applicant's and Cities Service's systems near Lyons and Hutchinson, Kansas, or, at any other point mutually agreed upon, at the rate of 11.5 cents per Mcf for the balance of 84.58 percent of the remaining gas reserves controlled by Cities Service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support thereof, and upon consideration of the record,

---

[1] In Docket No. CP63–188 (Phase II), Cities Service was authorized by the Commission's order issued December 30, 1963, 30 FPC 1612, to develop and operate the Armour Webb Field as an underground storage field.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order permitting and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Arkansas Louisiana Gas Company of the facilities hereinbefore described, as more fully described in the application, be and the same are hereby granted.

(B) Applicant shall advise the Commission in writing of the date of abandonment within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–112

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 10, 1964)

On November 15, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP64–112 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 23.6 miles of 30-inch looping sections at three locations to provide increased service to existing customers. The respective sections are to be located as follows: 7.7 miles north of Beaver, Oklahoma; 6.4 miles north of Bushton, Kansas and 9.5 miles north of Oakland, Iowa. Applicants saleable system capacity is to be increased by 20,031 Mcf of gas per day.

The estimated total cost of the proposed facilities is $2,624,000, to be financed from cash on hand, reserve accruals and retained earnings.

Applicant states that it has approximately 12.7 trillion cubic feet of gas reserves as of January 1, 1963. Based on present withdrawals, including this project, the reserve life index of the system is 20.1 years and are adequate to enable it to meet the peak day requirements of its system through the year 1973.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., ET AL., DOCKET NO. G-17613, ET AL.; HASSIE HUNT TRUST ESTATE, DOCKET NO. RI64-296; WM. HERBERT HUNT TRUST ESTATE, DOCKET NO. RI64-297; AREA RATE PROCEEDING, DOCKET NO. AR61-2

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 10, 1964)

On December 19, 1963, Hassie Hunt Trust and Wm. Herbert Hunt Trust Estate (Hunt) filed a motion for reconsideration[1] of the Commission's order issued

---

[1] Hunt termed the motion as an application for rehearing and reconsideration. An application for rehearing of an interlocutory order such as here involved may not properly be filed. [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e))]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

November 19, 1963 in Texaco Inc., *et al.*, Docket No. G–17613, *et al.*, insofar as that order initiated proceedings in Docket Nos. RI64–296 and RI64–297 for the limited purpose of determining the contractual basis, if any, for Hunt's 23.55¢ rates for the period subsequent to April 1, 1963.[2] The order also provided that in the event it is determined that the Hunt rates are no longer contractually authorized, it should also be determined what are the proper contractual rates and as of what date the 23.55¢ rates ceased to be effective.

In support of the motion, Hunt states, *inter alia*, (1) the Commission has no authority under the Natural Gas Act to institute a proceeding concerning the contractual basis for existing effective rates not under suspension; (2) sufficient notice has not been given to permit adequate time for presentation of their case because of doubt as to who has the burden of proof; and (3) the Commission has no right to order refunds for the period subsequent to April 1, 1963, but prior to a Commission order setting just and reasonable rates for the instant sales, citing *Mississippi Power and Light Company* v. *Memphis Natural Gas Company*, 162 F. 2d 388 (1947), cert. denied 332 U.S. 770.

In *United Gas Pipe Line* v. *Mobile Gas* (1956), 350 U.S. 332, as modified by *United Gas Pipe Line* v. *Memphis Light, Gas and Water* (1958), 358 U.S. 103, the Supreme Court held that the Commission must reject any filing for a rate increase which is inconsistent with or not authorized by the basic contract between the parties. As a collorary thereof, we have the power as well as the duty under the Natural Gas Act to refuse to permit continued collection of any rate in excess of the contractually authorized rate. We need not decide at the present time what, if any, refund obligation Hunt would have under the Natural Gas Act in the event it is determined that the contractually authorized rates for Hunt's sales were below the rates actually charged and collected for a period of time prior to our decision. This issue should be disposed of, if relevant, in connection with the hearing in this case. In any event irrespective of our authority to order refunds, it would appear that the purchasers would be entitled to seek restitution on the contract if it is determined that as of some date Hunt ceased to have contracted authority to charge the higher rate, and the fact that the higher rate had been on file with the Commission would not be determinative. See *Kansas-Nebraska Natural Gas Co.* v. *Pan American Petroleum Co.* 297 F. 2d 561 (C.A. 8) certiorari denied, 370 U.S. 937. Without passing on the question of whether the court in such a private action could itself determine the contested issue of whether Hunt had retained contractual authority for its rate, or that this would be a matter for the primary jurisdiction of our agency, it is clear that it would be appropriate for us to make an initial determination of this issue.

As to any claimed lack of notice in this matter, we note that the November 19 order provides for a prehearing conference on January 28, 1964, prior to the initiation of hearings herein. Hunt therefore would have had ample time in which to prepare its case. In any event the hearing herein has been indefinitely postponed by notice from the Secretary issued January 17, 1964.

The Commission finds:

The motion for reconsideration filed by Hunt on December 19, 1963, in the above-designated proceedings, sets forth no new facts or legal considerations which were not fully considered prior to the issuance of the November 19 order, or which now having been considered, warrant modification of said order.

---

[2] The favored nation increased rates of 23.55¢ per Mcf under Hassie Hunt Trust Estate FPC Gas Rate Schedule No. 3 and Wm. Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 5, which were allegedly triggered by Pan American's 23.55¢ rate as more fully explained in the November 19 order, were not suspended within the period allowed under Section 4(e) of the Act due to administrative error.

The Commission orders:

The motion for reconsideration filed by Hunt on December 19, 1963, in the above-designated proceedings is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., DOCKET NO. G–17613;[1] SUNRAY DX OIL COMPANY, DOCKET NOS. G–17726 AND G–17727; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G–17740; THE ATLANTIC REFINING COMPANY, DOCKET NO. G–17741; AUSTRAL OIL COMPANY, INC., DOCKET NO. G–17797; TEXAS GULF PRODUCING COMPANY, DOCKET NO. G–17925;[1] P. R. RUTHERFORD, DOCKET NO. G–17928; CONTINENTAL OIL COMPANY, DOCKET NO. G–17936; THE SUPERIOR OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–17989; TED WEINER (OPERATOR), ET AL., DOCKET NO. G–17993; JEFFERSON LAKE SULPHUR COMPANY (OPERATOR), ET AL., DOCKET NO. G–17997; WILLARD E. WALKER, DOCKET NO. G–18099; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G–18100; TRICE PRODUCTION COMPANY, DOCKET NO. G–18516; DAVID CROW, TRUSTEE, DOCKET NO. G–20083; J. P. OWEN (OPERATOR), ET AL., DOCKET NO. G–20555; MARACAIBO OIL EXPLORATION CORPORATION (OPERATOR), ET AL., DOCKET NO. RI60–138; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17526; SUN OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–17923

ORDER REOPENING PROCEEDINGS FOR FURTHER CONSIDERATION

(Issued February 10, 1964)

By order issued herein on July 24, 1963, [lead docket AR61–2, 30 FPC 402] we denied motions by The United Gas Improvement Company (UGI) and others, to reject, cancel and dismiss certain favored-nation increased rate filings allegedly triggered by sales from Pan American Petroleum Corporation (Pan American) to Transcontinental Gas Pipe Line Corporation (Transco) under its FPC Gas Rate Schedule No. 242, among others. By order of November 19, 1963, 30 FPC 1316, we denied rehearing of our order of July 24, 1963.[2] We held in that order that the producers had the right under the favored-nation provisions in their contracts to file for increased rates of 23.55¢ per Mcf at least during the period prior to April 1, 1963, in light of the Pan American settlement proposal involving sales under its FPC Gas Rate Schedule No. 242 in Docket No. G–16946.[3] The proposal, which was approved by an order also issued November 19, 1963, provided for a 20.625¢ per Mcf settlement rate effective as of April 1, 1963, with no refunds required for the period prior thereto.

---

[1] Orders were issued in Docket Nos. G–17613 and G–17925 approving settlements, which, if they become final, will dispose of the issues discussed herein insofar as they relate to these dockets.

[2] In our November 19 order we also denied similar motions by UGI, which had not yet been filed when the July 24 order was issued, with respect to favored-nation rate increases involved in Docket Nos. G–17923 and G–17526. Thereafter by order issued January 3, 1964, UGI's applications for rehearing in these dockets were also denied, 31 FPC 15.

[3] With respect to the contractual basis for the favored-nation increased rates for the period subsequent to March 31, 1963, the above-entitled proceedings were set for hearing to the extent that they involved this question.

Since the issuance of our November 19 order, objections have been filed to the Pan American settlement which require us to vacate our order approving the settlements insofar as it relates to Pan American's sale under its Rate Schedule No. 242. Pan American's unconditioned temporary certificate at a rate of 23.55¢ in Docket No. G–16946 is thus still in effect. Additionally, the decision in *P.S.C. of New York* v. *F.P.C.*, Case No. 17582, CADC, 329 F. 2d 242 (1964); cert. denied 377 U.S. 963 (1964) will require consideration of refund requirements on issuance of a permanent certificate for the Pan American sale. In view thereof, the Pan American 23.55¢ initial rate at least at the present time cannot be considered as necessarily constituting a contractual basis for collecting higher prices under the contracts in issue for the period prior to April 1, 1963, because of the possibility of a refund under the above court decision. We therefore conclude that we should reconsider our holding here and delay determination of this matter until such time as the certificate proceeding involving Pan American's sale is disposed of.

The Commission orders:

For the reasons set forth above, the above-entitled proceedings are reopened for the purpose of further consideration of UGI's motions insofar as they relate to the contractual basis for the 23.55¢ per Mcf favored-nation increased rates for the period prior to April 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS EXPLORATION CORPORATION, DOCKET NO. CI60–76

FINDINGS AND ORDER AFTER STATUTORY HEARING, CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL, AND ACCEPTING FPC GAS RATE SCHEDULE FOR FILING.

(Issued February 10, 1964)

On January 20, 1960, Texas Gas Exploration Corporation (Applicant) filed in Docket No. CI60–76 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption to Texas Gas Transmission Corporation from acreage in the Chacahoula Field, Lafourche Parish, Louisiana, all as more fully set forth in the application.

On October 8, 1963, as supplemented on November 26, 1963, Applicant submitted an offer of settlement and motion for approval thereof similiar to those proposals submitted and approved with respect to the applications for certificates consolidated with *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* Applicant proposes a reduction in initial contract price from 21.75¢ to 20.625¢ per Mcf at 15.025 psia including tax reimbursement, a moratorium on future rate changes through March 31, 1968, an extension of make-up provisions for prepaid gas to the life of the contract[1], a condition that the settlement rate is subject to prospective adjustment dependent upon the final determination in Docket No. AR61-2, and an understanding that the settlement rate determines only the payments which may legally be made under the contract[2] and can not estop the Commission from considering the appropriate cost to be attributed to the instant sale if Texas Gas Transmission Corporation's purchased-gas costs are in issue in proceedings instituted pursuant to Sections 4(e) or 5(a) of the Natural Gas Act[1].

---

[1] These two provisions differ from those submitted and approved with respect to the applications consolidated with Docket No. G–13221, *et al.*, due to the affiliation between Applicant and the gas purchaser.

No answers to Applicant's motion and offer have been received.

We find this proposal, generally, to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken, and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium period at a rate no higher than the rate in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Docket No. AR61-2 seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in the instant case which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of Docket No. AR61-2 should go into effect upon conclusion of judicial review of our final order therein. We can not now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding, and our approval of the settlement will be so conditioned.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on February 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits attached thereto and the offer of settlement, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Exploration Corporation, is a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

---

[1] See footnote p. 403.

[2] Applicant's FPC Gas Rate Schedule No. 4.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should amend its related rate schedule as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Texas Gas Exploration Corporation, upon the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application and settlement proposal herein.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The certificate granted in paragraph (A) above is granted upon the express condition that Applicant comply fully with the terms of this order and the settlement proposal, which settlement is expressely approved under the conditions of this order.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved, except as specifically provided by the settlement proposal. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(E) The settlement rate herein approved shall be construed only to determine the payments which may legally be made under the contract and shall not estop the Commission from considering the appropriate cost to be attributed to the instant sale if the purchased-gas costs of Texas Gas Transmission Corporation are in issue in any proceeding instituted pursuant to Section 4(e) or 5(a) of the Natural Gas Act.

(F) Applicant shall amend its related rate schedule to reflect the settlement rate and to provide an extension of make-up provisions for prepaid gas to the life of the contract.

(G) Upon compliance with all of the terms of this order and the settlement proposal, the related rate schedule shall be accepted for filing, effective on the date of initial delivery, and designated as Texas Gas Exploration Corporation FPC Gas Rate Schedule No. 4.

(H) The certificate issued herein shall be void and of no effect unless accepted in writing by Applicant within thirty days from the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TILLAMOOK PEOPLE'S UTILITY DISTRICT, PROJECT NO. 2274

ORDER ACCEPTING SURRENDER OF PRELIMINARY PERMIT

(Issued February 10, 1964)

Application was filed on November 20, 1963 by Tillamook People's Utility District, of Tillamook, Oregon, for surrender of its preliminary permit for proposed hydroelectric Project No. 2274, to be located on Trask River in the County of Tillamook, Oregon, affecting Oregon and California revested lands and other lands of the United States.

The preliminary permit was issued to the permittee by Commission order issued February 17, 1961 for a period of 24 months, effective as of February 1, 1961. The permit was extended a period of one year by Commission order issued April 24, 1963.

In its application for surrender, the permittee advised the Commission that the permittee's Board of Directors had accepted the recommendations of its consulting engineers who had reported that the permittee should defer construction of the proposed project for a period of from five to ten years, since it appeared from studies made at the site that the proposed project at present is not economically feasible.

The Commission finds:

Acceptance of surrender of the preliminary permit for proposed Project No. 2274 is appropriate.

The Commission orders:

Surrender of the preliminary permit for proposed Project No. 2274 is hereby accepted, effective as of November 20, 1963.

OPINION NO. 419

UNITED GAS PIPE LINE COMPANY v. COASTAL STATES GAS PRODUCING COMPANY, ET AL., DOCKET NO. CP64-75, ET AL.

OPINION AND ORDER DISMISSING COMPLAINT IN PART

(Issued February 10, 1964)

Syllabus

1. Commission *holds* it has no jurisdiction over gas sales in Austin, Texas area by producer's subsidiary. PP. 408, 409.
2. Since provisions of Section 1(c) of the Act are available to a separate corporate entity which is part of overall gas system extending over many states, determination here [*supra*] would not be changed by classifying producer as pipeline and treating its subsidiaries as an entity. P. 409.
3. In proceedings to invoke Sections 14 and 20 of the Natural Gas Act, Commission *dismisses* complaint, in part, and *defers* action on remaining elements thereof

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

By the Commission:

United Gas Pipe Line Company (United) on September 27, 1963, filed a "Formal Complaint" and request for other relief directed against certain actions which it alleges are being and have been taken by Coastal States Gas Producing Company (Coastal) and its affiliated companies.[1]

The gist of United's complaint is that it is an interstate pipeline company, subject to the jurisdiction of this Commission and has been and is selling natural gas service to Southern Union Gas Company (Southern Union) for service in Austin, Texas, and to direct industrial customers in the Austin area. While these sales by United have always been treated as non-jurisdictional and United does not suggest that this classification is erroneous, it alleges that the intent of Coastal is to usurp the Austin market and that this would have an adverse effect upon other jurisdictional customers obtaining their gas from United.

Southern Union distributes gas which it presently purchases from United in Austin; the contract under which it sells this gas expires on April 1, 1967. It has contracted with Coastal for the purchase of further supplies of gas, with sales to commence at the termination of the United contract. The City of Austin also has entered into a contract with Coastal for a long-term gas supply for its electric generating system.[2] The several contracts were assigned by Coastal to its affiliate, Lo-Vaca Gathering Company (Lo-Vaca).

The basis for United's claim that the Coastal-Lo-Vaca sales in the Austin area are jurisdictional is as follows. Alamo, a Coastal affiliate which is a gas distributor in the San Antonio area, purchases gas from Rio Grande Valley Gas Company (Rio Grande) (which is not affiliated with Coastal) in Southern Texas, which gas is by contract, transported by South Texas and Lo-Vaca to Alamo for sale in San Antonio, Texas. In addition, Lo-Vaca purchases gas from Coastal which gas Coastal either produces or purchases from producers in southern Texas counties; this gas is transported by South Texas to a point near Freer, Webb County, Texas, for delivery to Lo-Vaca. Lo-Vaca transports some of this gas to Alamo; remaining portions are available for delivery by Lo-Vaca at various points on its system, including Austin. Lo-Vaca also obtains supplies of gas at other points along its system. None of the gas actually delivered to Lo-Vaca will cross state lines.[3]

South Texas, an interstate pipeline under our rules, obtains gas at various points in South Texas which it transports beyond the Freer take-off point to Transcontinental Gas Pipe Line Corporation (Transco) for delivery across state lines. In fact, the entire capacity of the South Texas line at and beyond Freer is dedicated to the sale it has made to Transco, and its line is available for transporting gas for the account of Coastal and Alamo to Lo-Vaca's line only to the extent that Transco does not choose to avail itself of all the gas dedicated to it. It is apparent that the gas delivered by Coastal and other producers to South Texas for transportation to Lo-Vaca at the Freer take-off point will be commingled in the South Texas lines with gas which will be transported across state lines by Transco, and will in fact get into the Transco lines. At the same time it is clear that some of the gas delivered by South Texas to Lo-Vaca will actually come from production sold to South Texas for resale to Transco.

---

[1] United specifically complains about the activities of Coastal and other affiliated or subsidiary companies. Ben Bolt Gathering Company, Lo-Vaca Gathering Company (Lo-Vaca), South Texas Natural Gas Gathering Company (South Texas), Texas Southeastern Gas Company, and Alamo Gas Supply Company (Alamo) are all wholly owned subsidiaries of Coastal.

[2] Another purchaser, the Lower Colorado River Authority, also has contracted with Coastal for the supply of gas to its power plants.

[3] Check valves prevent the back-flow of this gas and Lo-Vaca does not deliver the gas to any company which transports the gas across state lines nor does Lo-Vaca, itself, transport gas across state lines.

United alleges that Coastal, now classified by the Commission as an independent producer, should be classified as a pipeline, that the Coastal companies should be treated as a single entity, and that the sales of gas by Lo-Vaca are jurisdictional. It requests that the Commission order Lo-Vaca to cease unauthorized construction of facilities, to cease taking steps to render unauthorized service at Austin and to Southern Union, and that a full investigation of Coastal be undertaken.

A motion to dismiss the complaint was filed by Coastal, *et al.* on December 2, 1963. An answer to the motion was filed by United on December 9, 1963[4]

We have carefully examined the aforementioned complaint, the motion to dismiss, and the answers thereto. The facts detailed above present involved questions concerning our jurisdiction over certain aspects of the proposed transactions, specifically whether the Coastal and Rio Grande sales to Lo-Vaca and Alamo, and South Texas' transportation of this gas is subject to the certification jurisdiction of this Commission under Section 7 of the Natural Gas Act. The determination of these jurisdictional questions depend in large part upon the ultimate decisions of the courts and the Commission in certain pending matters, and could not finally be resolved at this time. For the reasons set forth below, however, we are convinced that the questions raised by United as to our jurisdiction over the sales Lo-Vaca is making to Austin and Southern Union (as well as to the Lower Colorado River Authority) do not depend upon our resolution of these questions as to our jurisdiction over other facets of the overall plans of the several Coastal entities or upon the litigation before the Commission or in the courts which may be relevant to these other questions. We think under these circumstances that the public interest would not be served by deferring the statement of our views on this aspect of United's complaint. Since we have decided that we have and will have no jurisdiction over such sales, we shall dismiss the complaint in part, and defer action on the remaining questions.

The proposed sales by Lo-Vaca in the Austin Area fall into two categories: direct sales[5] and sales for resale.[6] We have no rate jurisdiction over direct sales under the Natural Gas Act. The proposed Lo-Vaca sale for resale to Southern Union is also not subject to our rate jurisdiction, even assuming it is a sale in interstate commerce. This is because the sale involves gas received by Lo-Vaca within Texas for ultimate consumption in Texas and a certificate of the Texas Railroad Commission has been filed with us in accordance with the provisions of Section 1(c) of the Act to the effect that the rates, services and facilities of Lo-Vaca involved in its sales of natural gas for resale in Texas are subject to its regulatory jurisdiction and it is exercising such jurisdiction.

We, of course, exercise certificate jurisdiction under Section 7(c) of the Natural Gas Act over natural gas companies which engage in interstate transportation activities even where the sales involved are not subject to our rate jurisdiction. Lo-Vaca, however, is not engaged in the interstate transportation of natural gas within the meaning of Section 7(c) of the Act: all the gas flowing in its lines originates in Texas and none flows into other states.[7]

---

[4] The City of Austin filed an answer on November 22, 1963.

[5] Sales to Austin and the Lower Colorado River Authority for use in their electric generating plants.

[6] The proposed sales to Southern Union.

[7] The situation is to be distinguished from the *Florida Parishes* case (*United Gas Pipe Line Company*, Docket No. CP62-161, Opinion No. 401, August 26, 1963, 30 FPC 560, order granting rehearing October 24, 1963, 30 FPC 1073), where most of the gas flowing in United's pipeline was destined for consumption in states beyond the Louisiana point of origin.

We have considered the question whether any of these determinations might be subject to revision if we were to determine that the Coastal and Rio Grande sales or South Texas' transportation of this gas were jurisdictional. We do not think they would. At most we might determine that either the sales or transportation was jurisdictional and should be denied as not required by public convenience and necessity. Lo-Vaca would then have the obligation of providing gas from other intrastate sources to make up for any Coastal and Rio Grande gas necessary to fulfill its obligations, but the Lo-Vaca sales to its customers in the vicinity of Austin would neither become jurisdictional nor be rendered impossible. A determination by us that the various Coastal companies should be treated as one entity for Commission purposes would not change the picture. It is well established that the provisions of Section 1(c) of the Act are available to a separate corporate entity which is part of an overall natural gas system extending over many states.

We shall, therefore, dismiss the United complaint insofar as it alleges that the activities of Lo-Vaca in selling gas to, and transporting gas for, customers in the Austin area are subject to our jurisdiction.

As indicated above, we shall defer action upon the other elements of United's complaint. Specifically until there has been a final resolution of the questions raised in *Lo-Vaca Gathering Company* v. *F.P.C.*, 323 F. 2d 190, petition for rehearing denied December 17, 1963 (CA5),[8] and in the *Florida Parishes* case, *supra*, we shall not attempt to pass upon the issues raised by the complaint as to our jurisdiction over the sales by Rio Grande to Alamo and Coastal to Lo-Vaca, or South Texas' transportation of such gas. We believe that pending such action we should not consider the request that we reclassify Coastal as a pipeline or consider all of the Coastal entities as one for Commission purposes.[9]

The Commission orders:

The motion of Coastal States Gas Producing Company, *et al.* to dismiss the complaint of United Gas Pipe Line Company is hereby granted insofar as it pertains to the question of Commission jurisdiction over Lo-Vaca Gathering Company in this matter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HOLYOKE WATER POWER COMPANY, PROJECT NO. 2004

ORDER CORRECTING LICENSE

(Issued February 11, 1964)

By letter dated December 3, 1963, Holyoke Water Power Company has requested the removal from its license for constructed Project No. 2004 of an ambiguity involving the actual horsepower capacity authorized in the license issued September 9, 1949 and made effective July 5, 1949.

---

[8] The mandate in this case was stayed by order of the circuit court on January 10, 1963, and the Commission intends to ask the Solicitor General to file a petition for a writ of certiorari on its behalf to bring the matter before the United States Supreme Court.

[9] United has also intervened in two Coastal applications to abandon sales to Trunkline Gas Company (Docket Nos. CI64–237 and CI64–269) and complains that the gas would be used to serve the Austin markets. We have made no decisions on whether the public interest would permit such abandonments, but will, in view of United's intervention, set these cases for hearing in the near future. It would appear, however, that the sales by Lo-Vaca to Austin are not dependent upon this gas, and the delivery of this gas to Lo-Vaca would not change our determination regarding our lack of jurisdiction over Lo-Vaca's sales.

The letter correctly points out that the annual charges prescribed in the license are based on an "authorized ultimate installed capacity (102,985 horsepower)" whereas elsewhere in the license the installed capacity authorized is 38,485 horsepower.

The Commission finds:

In the circumstances, clarification of the license is appropriate and desirable.

The Commission orders:

(A) The license issued to Holyoke Water Power Company for Project No. 2004 is hereby revised in the following respects, effective as of January 1, 1964:

PARAGRAPH I. Article 22 of the license for Project No. 2004 is hereby revised by changing line 6 thereof to read "horsepower on the authorized installed capacity (38,485)."

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER ALLOWING WITHDRAWAL

(Issued February 11, 1964)

By Commission order of October 23, 1963, the Public Service Commissions of Indiana, Michigan, Wyoming, Maryland and Georgia, and the Pennsylvania Public Utility Commission were permitted to intervene in the above-entitled proceeding. Thereafter, on November 4, 1963, staff filed and served its direct testimony and exhibits. Respondent, Indiana & Michigan Electric Company, and all intervenors were given until December 9, 1963, to file and serve their direct testimony and exhibits. Upon motion filed December 11, 1963, the Public Service Commission of Indiana was given an extension of time, until December 30, 1963, to file its direct case and exhibits.

On December 20, 1963, the Public Service Commission of Indiana filed a notice of withdrawal from these proceedings alleging, in part, that it had not been given adequate time to prepare its direct testimony and exhibits. Similar notices of withdrawal were filed by the Public Service Commissions of Maryland and Wyoming on January 21 and 30, 1964, respectively.

The Commission orders:

The Public Service Commissions of Wyoming, Maryland and Indiana are hereby permitted to withdraw from any further participation in these proceedings, without prejudice to their continued participation in this proceeding if they desire to do so.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EXPENDITURES FOR POLITICAL PURPOSES—AMENDMENT OF ACCOUNT 426, OTHER INCOME DEDUCTIONS, UNIFORM SYSTEM OF ACCOUNTS, AND REPORT FORMS PRESCRIBED FOR ELECTRIC UTILITIES AND LICENSEES AND NATURAL GAS COMPANIES—FPC FORMS NOS. 1 AND 2, DOCKET NO. R-226

ORDER NO. 276-A

AMENDMENT TO ORDER REVISING ACCOUNT 426, OTHER INCOME DEDUCTIONS, AND ANNUAL REPORT FORMS

(Issued February 11, 1964)*

By order issued December 18, 1963, we prescribed, among other things, new schedules entitled "Expenditures for Certain Civic, Political and Related Activities" to be included in the annual reports (FPC Forms Nos. 1 and 2) required to be filed by electric utilities, licensees, and natural gas companies. Inadvertently we failed to include therein the required related amendment of the regulations to provide for the new schedules.

The Commission orders:

(A) Amend §§ 141.1(d) and 260.1(c), Chapter I of Title 18 of the Code of Federal Regulations, by inserting, to immediately precede the line "Common Utility Plant" appearing in each, a line reading "Expenditures for Certain Civic, Political and Related Activities."

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. G-14562 AND RP64-4; CONTINENTAL OIL COMPANY, DOCKET NOS. G-13680 AND G-17649; SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. G-13827 AND G-17625; NEWMONT OIL COMPANY, DOCKET NOS. G-13948 AND G-17765

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND IMPOSING REPORTING REQUIREMENTS

(Issued February 11, 1964)

On December 4, 1963, Tennessee Gas Transmission Company (Tennessee) filed a petition to amend our order of January 2, 1963, which issued certificates of public convenience and necessity to the applicants in Docket Nos. G-14562, G-13680, G-13827 and G-13948.[1]

The settlement proposal conditionally approved by the order of January 2 provided, *inter alia*, that the price to be paid to producers Continental Oil Company, Socony Mobil Oil Company, Inc. and Newmont Oil Company (collectively as MCN) shall be 19¢ per Mcf;[2] but in addition, Tennessee shall pay 1.625¢ per Mcf to an escrow agent as tax reimbursement to provide for the contingency of the producing acreage (Block 46 Field, Vermilion Area and Block 64 Field, East Cameron Area, Offshore Louisiana) being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana. By order issued August 7, 1963, in *Socony Mobil Oil Company, Inc., et al.*, Docket No. G–17625, *et al.*, 30 FPC 452, we required Tennessee to make special reports to the Commission in Docket No. RP64–4 concerning the status of the escrow account. Tennessee states in its petition to amend that recent investigation disclosed that the Block 64 Field is not within the area which is the subject of dispute between the State of Louisiana and the United States and, further, that this acreage is approximately 18½ miles from the shoreline of Louisiana and is unquestionably all Federal owned lands. Tennessee's petition was accompanied by a letter agreement executed by Tennessee and MCN in which MCN agree with Tennessee's request provided that they be allowed to file prospectively during the moratorium period for the 1.625¢ per Mcf tax reimbursement should the acreage be determined to be subject to such tax. Tennessee therefore requests that the Commission amend the January 2 order to:

---

*Published in the Federal Register on February 15, 1964, (29 F.R. 2494).

[1] *Tennessee Gas Transmission Company*, 29 FPC 4.

[2] All volumes expressed at 15.025 psia.

(1) Eliminate the requirement that Tennessee place 1.625¢ per Mcf in escrow for each Mcf delivered from the Block 64 Field.

(2) Provide that MCN shall have the right during the moratorium on future price changes, as set forth in said order, to file prospectively for an increase in price to 20.625¢ per Mcf if the acreage in the Block 64 Field is judicially determined to be within the taxing jurisdiction of the State of Louisiana.

Tennessee states that the Block 46 Field is in the disputed area and does not propose that it be relieved of the escrow and reporting requirements of the January 2 order insofar as they relate to that field. On January 2, 1964, Tennessee filed a copy of the escrow agreement and report of amounts paid in relating to the December 21, 1962, order[3] but stated that an escrow arrangement had not been made as to the January 2, 1963 order because of the pendency of the instant petition.

We agree with Tennessee that the instant proposal is more in the public interest than the tying up of funds in an escrow account for an indefinite period. Since the producers have agreed to give up the security for future payment of back taxes which the escrow arrangement would have provided, we shall grant the petition of Tennessee. We shall also amend the order of August 7, 1963, as amended on November 12, 1963,[4] to relieve Tennessee of the related reporting requirement for the Block 64 Field escrow account. We shall also extend the time for filing the escrow agreement and initial report pertaining to the Block 46 Field.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act that the Commission's order of January 2, 1963, in *Tennessee Gas Transmission Company*, 29 FPC 4 and the Commission's order of August 7, 1963 in *Socony Mobil Oil Company, Inc., et al.*, Docket No. G–17625, *et al.*, as amended on November 12, 1963, be amended as ordered below.

The Commission orders:

(A) The Commission's order of January 2, 1963, in *Tennessee Gas Transmission Company*, 29 FPC 4 is hereby amended to delete therefrom the requirement that Tennessee put into an escrow account 1.625¢ per Mcf for each Mcf delivered from the Block 64 Field, East Cameron Area, Offshore Louisiana.

---

[3] *Continental Oil Company*, 28 FPC 1090. This report, filed in Docket No. RP64–4, was also required by the order of August 7, 1963, *supra*.

[4] This order relieved Tennessee of a similar escrow requirement pertaining to the Block 62 Field, East Cameron Area, Offshore Louisiana.

(B) The Commission's order of August 7, 1963, in Socony Mobil Oil Company, Inc., *et al.*, Docket No. G-17625, *et al.*, as amended on November 12, 1963, is hereby further amended to delete therefrom the requirement that Tennessee file reports with the Commission relating to an escrow account with respect to the Block 64 Field, East Cameron Area, Offshore Louisiana.

(C) Ordering paragraph (I) of the Commission's order referred to in paragraph (B), *supra*, is hereby further amended to provide that the date on or before which Tennessee shall make the initial filing required therein relating to the Block 46 Field is February 28, 1964.

(D) MCN shall have the right during the moratorium period on future price changes, as set forth in the settlement proposal conditionally approved by the Commission's order referred to in paragraph (A), *supra*, to file prospectively for increases in prices to 20.625¢ per Mcf for sales from the Block 64 Field when and if the Block 64 Field is judicially determined to be within the taxing jurisdiction of the State of Louisiana.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP64-8

ORDER GRANTING MOTION

(Issued February 13, 1964)

On October 14, 1963, the Commission issued an order instituting an investigation into the justness and reasonableness of certain changes in Midwestern Gas Transmission Company's CD-2 Rate Schedule and suspending the effectiveness of the changed rate schedule for one day. The changed rate schedule increased the monthly minimum bill of Michigan-Wisconsin Pipe Line Company (the only CD-2 purchaser) from 75% to 87½% of the contract quantity. Paragraph (G) of the Commission order of October 14, 1963 directed Midwestern to file and serve "the material required to be filed for a major rate increase under Section 154.63 of the Commission's regulations under the Natural Gas Act."

Pursuant to another provision of the Commission's order, a prehearing conference was held before the Presiding Examiner designated to act in this case. Midwestern there stated its view that, because of the recent completion of the record in Docket No. RP61-19 *et al.*, (Section 5(a) proceedings involving both the Northern and Southern systems of Midwestern), no purpose would be served by requiring its submittal in this proceeding of the detailed cost of service data listed in Section 154.63. Our staff expressed its willingness to stipulate that if Midwestern were to supply certain specific additional information, it would be possible to dispense with the filing of the complete cost of service data required by Section 154.63. No party objected to this stipulation. Midwestern has supplied the information called for by the staff and in addition has submitted a tabulation purporting to show that specific exhibits and portions of the transcript in Docket No. RP61-19 *et al.*, supply the substance of most of the Statements required by Section 154.63.

At a subsequent session of the prehearing conference the Presiding Examiner directed Midwestern within ten days to file a motion for relief from further compliance with the provisions of paragraph (G) of the Commission order of October 14, 1963. On January 15, 1964, Midwestern filed such a motion. No responses have been filed by any other party. Since the parties are agreed that the material in the record of Docket No. RP61-19 *et al.* supplies the necessary cost of service data to the extent relevant to this proceeding, no purpose would now be served by requiring Midwestern's filing of each of the Statements called for in Section 154.63.

The Commission finds:

The Commission order of October 14, 1963 in the above proceeding should be amended as hereafter provided.

The Commission orders:

The order of October 14, 1963 in the above proceeding is hereby amended by deleting paragraph (G) therefrom.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7129

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued February 14, 1964)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Washington, Wyoming, California, Montana, and Idaho, with its principal business office at Portland, Oregon, filed an application on September 30, 1963, for authority pursuant to Section 204 of the Federal Power Act, to issue unsecured Promissory Notes in the aggregate principal amount of $45,000,000 outstanding at any one time. The Notes will be executed and delivered under and pursuant to a Credit Agreement, dated as of October 1, 1963. Under the Credit Agreement, Applicant has the right to borrow from, repay to and reborrow from the banks, and the respective banks are obligated to lend to Applicant, from time to time during the period March 31, 1964 to September 30, 1965, sums not exceeding in aggregate principal amount at any one time outstanding the amount set forth below opposite the names of the respective banks.

Morgan Guaranty Trust Company of New York	$15,750,000
The Chase Manhattan Bank	10,935,000
The First National City Bank of New York	5,850,000
Mellon National Bank and Trust Company	3,375,000
Continental Illinois National Bank and Trust Company of Chicago	2,520,000
Manufacturers Hanover Trust Company	2,520,000
Wells Fargo Bank	2,520,000
Harris Trust and Savings Bank	1,530,000

The afore-mentioned Credit Agreement provides that the Notes to be issued thereunder shall be dated the date of the borrowings evidenced thereby, shall mature eleven months after their dates or on September 30, 1965, whichever shall be earlier, and shall bear interest at a rate per annum equivalent to the prime commercial rate of interest charged by Morgan Guaranty Trust Company of New York from time to time. The Credit Agreement further provides for the payment to the banks of a commitment fee computed at the rate of ¼ of 1% per annum on unborrowed balances.

Applicant states that the funds obtained from the proposed issuance of Promissory Notes, together with funds available to it from internal sources, will be used to finance temporarily its construction program, the expenditures for which are estimated to be approximately $47,000,000 for 1964 and $41,000,000 for 1965. The principal items of expenditures for those years are described as follows: $4,825,000 for completion of the third unit at the Dave Johnston Steam Plant in 1964; $250,000 in 1964 and $3,190,000 in 1965 for the completion of additional transportation and mining facilities at the Dave Johnston Steam Plant; $2,200,000 toward the construction of the first unit at the Cherokee, Wyoming steam plant 24 miles west of Rawlins (total cost estimated at $33,750,000); $200,000 in 1965 toward the construction of a coal mine for the Cherokee Steam Plant (total cost estimated at $3,640,000); $3,400,000 in 1964 for the completion of the 230/500 kv transmission line from Stephens Butte, California to Keno, Oregon; $1,900,000 in 1964 for completion of a 230 kv transmission line from Oregon Basin, Wyoming to Thermopolis, Wyoming (To be operated initially at 115 kv); $2,550,000 in 1964 for completion of a 230 kv transmission line from Kemmerer, Wyoming to Treasureton, Idaho; $815,000 in 1965 for a 230 kv transmission line from Sinclair, Wyoming to Cherokee Steam Plant (also to be operated initially at 115 kv); $935,000 in 1964 for a 230 kv transmission line from Medford, Oregon to Grant's Pass, Oregon; $910,000 in 1964 for a 115 kv transmission line from Bly, Oregon to Lakeview, Oregon; $5,660,000 in 1964 and $8,050,000 in 1965 for new substations and conversion and additions to existing substations; $17,880,000 in 1964 and $18,480,000 in 1965 for additional distribution facilities; $2,370,000 in 1964 and $2,400,000 in 1965 for additions to steam heating, water and telephone utility systems; and $4,770,000 in 1964 and $4,890,000 in 1965 for other plant facilities, surveys, and investigations.

The initial borrowings under the new Credit Agreement, beginning on March 31, 1964, will cover an amount sufficient to pay and discharge any notes outstanding as of March 31, 1964, if any, under an earlier Credit Agreement dated as of August 15, 1961 (Docket No. E-7011) as supplemented by the Letter Agreement dated as of August 14, 1962 (Docket No. E-7052).

The Applicant states that the proposed Notes will be retired through the sale of permanent securities, but that the timing and method of sale of such permanent securities are not presently determinable. Applicant states that it presently expects the permanent securities to be in the nature of long-term debt.

Written notice of the application has been given to the Public Utilities Commission of California, the Public Utilities Commission of Idaho, the Public Service Commission of Montana, the Utilities and Transportation Commission of Washington, the Public Service Commission of Wyoming, the Public Utility Commissioner of Oregon and to the Governors of each of those States. Notice has also been given by publication in the Federal Register on October 16, 1963 (28 F.R. 11087), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before October 25, 1963, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

On November 7, 1963, the Washington Utilities and Transportation Commission, on October 18, 1963 the Public Service Commission of Montana, and on October 17, 1963 the Idaho Public Utilities Commission approved the proposed issuance of Promissory Notes by Applicant in the manner and for the purposes described above. On October 29, 1963 the California Public Utilities Commission approved the proposed issuance of Notes with the following restrictions:

> No authorization is herein granted to applicant to finance the cost of transmission facilities which cross federal lands, unless and until applicant first shall have obtained the approval of the proper agency of the government of the United States. No part of the securities herein authorized shall be used to finance the 230 kv line from Klamath Falls, Oregon, south into California to interconnect with the system of the Pacific Gas and Electric Company (Keno, Oregon to Stephens Butte, California).

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued March 28, 1962, Pacific Power & Light Company, in Docket No. E-7025.

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $45,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $45,000,000 all as described above, will be in excess of 5% of the par value of the other securities of Applicant, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance by Applicant of Promissory Notes in the aggregate principal amount of $45,000,000, outstanding at any one time, including all notes heretofore authorized, upon the terms and conditions and for the purposes set forth in the application as amended, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereto, being not later than September 30, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NOS. 2287 AND 2288

ORDER MODIFYING ORDERS ON REHEARING

(Issued February 14, 1964)

By our order issued July 2, 1962, we granted the applications for rehearing filed by Public Service Company of New Hampshire (Applicant) of our orders of April 25, 1962 issuing licenses to Applicant for constructed Project Nos. 2287 and 2288 on the Androscoggin River in the State of New Hampshire. The applications for rehearing took exception solely to Article 20 of each license order which provides for possible future obligation of Applicant in regard to fish and wildlife resources. By our order issued July 2, 1962 we granted rehearing limited to the issues raised by the applications.

Upon consideration of the aforesaid applications and the allegations in support thereof, *the Commission finds:*

It will not be inconsistent with the public interest to modify our orders of April 25, 1962 in Project Nos. 2287 and 2288 as hereinafter provided.

The Commission orders:

(A) The orders issued April 25, 1962 in Project Nos. 2287 and 2288 are hereby modified by eliminating Article 20 of each license order and substituting in lieu thereof the following new Article 20:

Article 20. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(B) The aforementioned Commission orders issued April 25, 1962, as modified by this order, shall be accepted by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN VALLEY IMPROVEMENT COMPANY, PROJECT NO. 2113

ORDER APPROVING PROJECT EXHIBITS AND FIXING ANNUAL CHARGES

(Issued February 17, 1964)*

On various dates between January 29, 1962 and April 17, 1963, Wisconsin Valley Improvement Company, licensee for Project No. 2113, filed for Commission approval 22 new project exhibits and by letter authorized Commission staff to revise 5 exhibits already approved as part of the license for the project which affects public lands of the United States and is situated on the Wisconsin River and headwater tributaries, Wisconsin. The staff revisions have been made.

---

*Modified on rehearing, July 9, 1964, 32 FPC 92.

Certain of the subject exhibits permit a Commission determination of United States lands now used for project purposes and an assessment of annual charges for such use.[1] Others of the subject exhibits show modifications, additions, replacements and repairs to existing project structures which permit more efficient project operations.

The license for the project was issued on May 28, 1959, for a period of 50 years, effective as of August 1, 1943.

The Commission finds:

(1) The following described exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit: J-2 (FPC No. 2113-54).

Exhibit: K-2 (FPC No. 2113-48), K-9 (FPC No. 2113-55), K-10 (FPC No. 2113-56).

Exhibit: L-2 (FPC No. 2113-49), L-3 (FPC No. 2113-50), L-4 (FPC No. 2113-51), L-10b (FPC No. 2113-52), L-11 (FPC No. 2113-65), L-14 (FPC No. 2113-57), L-15 (FPC No. 2113-58), L-16 (FPC No. 2113-59), L-17 (FPC No. 2113-60), L-18 (FPC No. 2113-61), L-19 (FPC No. 2113-62), L-20 (FPC No. 2113-66), L-24 (FPC No. 2113-63), L-24a (FPC No. 2113-64), L-26 (FPC No. 2113-46), L-27a (FPC No. 2113-47), L-28 (FPC No. 2113-53).

Exhibit M: (Revised 1962) "Gate Hoisting Equipment," consisting of two typewritten pages.

(2) The following described exhibits, now part of the license and which have been revised by the staff at the authorization of the licensee, should be reapproved as part of the license for the project.

Exhibit: K-7 (FPC No. 2113-36), K-15 (FPC No. 2113-13), K-16 (FPC No. 2113-14).

Exhibit: L-7 (FPC No. 2113-4), L-9 (FPC No. 2113-42).

(3) The following described exhibits, now part of the license and which have been superseded, should be eliminated from the license for the project:

Exhibit: L-4 (FPC No. 2113-37), L-10b (FPC No. 2113-44), L-11 (FPC No. 2113-39), L-20 (FPC No. 2113-35), L-24 (FPC No. 2113-18), L-26 (FPC No. 2113-20), L-28 (FPC No. 2113-22).

Exhibit M: Signed June 6, 1952.

(4) The annual charges under the license for recompensing the United States for the use, occupancy and enjoyment of its lands are reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2113.

(B) The exhibits described in finding (2) above are hereby reapproved as part of the license for the project.

(C) The exhibits described in finding (3) above are hereby eliminated from the license for the project.

---

[1] While certain land exhibits have received Commission approval, Article 32 of the license reserves to the Commission the right to determine at a later date annual charges for the use of Government lands.

(D) Subparagraphs (a) and (b) of finding (3) of the license for the project are hereby modified to read as follows:

(3) The project consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States: such project area and project boundary being more specifically shown and described in part by certain exhibits which formed part of the application for license and which are designated as follows:

Exhibit J–1: (FPC No. 2113–1) "General Map of Reservoir System," J–2: (FPC No. 2113–54) "Rainbow and Pickerel Reservoirs," J–3: (FPC No. 213–8) "Willow Reservoir," J–4: (FPC No. 2113–9) "Rice Reservoir," J–5: (FPC No. 2113–10) "Spirit Reservoir," J–6: (FPC No. 2113–11) "Eau Pleine Reservoir," K–1: (FPC No. 2113–12) "Vieux Desert Reservoir," K–2: (FPC No. 2113–48) revised, "Twin Lakes Reservoir," K–3: (FPC No. 2113–40) "Little Deerskin and Buckatahpon Reservoirs," K–4: (FPC No. 2113–30) "Long-on-Deerskin Dam," K–5: (FPC No. 2113–2) "Lower Nine Mile and Seven Mile Reservoirs," K–6: (FPC No. 2113–41) "Burnt Rollways Reservoir," K–7: (FPC No. 2113–36) revised, "Sugar Camp Reservoir," K–8: (FPC No. 2113–3) "Big and Little St. Germain Reservoirs," K–9: (FPC No. 2113–55) "Rainbow and Pickerel Reservoirs," K–10: (FPC No. 2113–56) "Pickerel Lake Dam," K–11: (FPC No. 2113–32) "North Pelican Dam," K–12: (FPC No. 2113–26) "South Pelican Reservoir," J–K–13: (FPC No. 2113–28) "Minocqua Reservoir," K–14: (FPC No. 2113–31) "Squirrel Lake Dam," K–15: (FPC 2113–13) revised, "Willow Reservoir," K–16: (FPC No. 2113–14) revised, "Rice Reservoir," K–17: (FPC No. 2113–15) "Spirit Reservoir," K–18: (FPC No. 2113–16) "Eau Pleine Reservoir."

(b) Principal project works comprising:

The following 21 controlled natural lakes and reservoirs located on the headwaters of the Wisconsin River; Lac Vieux Desert, Twin Lakes, Buckatahpon, Long-on-Deerskin, Little Deerskin, Seven Mile, Lower Nine Mile, Burnt Rollways, Sugar Camp, Little St. Germain, Big St. Germain, Pickerel Lake, Rainbow, North Pelican, South Pelican, Minocqua, Squirrel Lake, Willow, Rice, Spirit and Eau Pleine, with controlled outlet gates equipped with gate hoisting equipment at the mouth of each lake and reservoir.

The location, nature and character of the above structures being more specifically shown on and described in part by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L–1 (FPC No. 2113–17) "Plans and Cross Section of Vieux Desert Dam and Gate," L–2 (FPC No. 2113–49) "Plans and Cross Sections of Twin Lakes Dam and Gate," L–3 (FPC No. 2113–50) "Bridge and Reinforcing Details at Twin Lakes Dam," L–4 (FPC No. 2113–51) "Plans and Cross Sections of Buckatahpon Dam and Gate," L–5 (FPC No. 2113–33) "Long-on-Deerskin Dam," L–6 (FPC No. 2113–38) "Gate and Dam Plans Little Deerskin Dam," L–7 (FPC No. 2113–4) revised, "Plans and Cross Sections of Seven Mile Dam and Gate," L–8 (FPC No. 2113–5) "Plans and Cross-Section of Lower Nine Mile Dam and Gate," L–9 (FPC No. 2113–42) revised, "Plan and Cross Sections of Burnt Rollways Dam and Marine Railway," L–10a (FPC No. 2113–43) "Burnt Rollways Marine Railway and Gate Details," L–10b (FPC No. 2113–52) revised, "Plans of Burnt Rollways Boat Lift," L–11 (FPC No. 2113–65) "Plans and Cross Sections of Sugar Camp Dam and Gate," L–12 (FPC No. 2113–6) "Gate and Dam Plans of Little St. Germain Dam," L–13 (FPC No. 2113–7) "Gate and Dam Plans of Big

St. Germain Dam," L-14 (FPC No. 2113-57) "Plan and Cross Sections of Dam, & Details of Gate at Pickerel Lake," L-15 (FPC No. 2113-58) Plans and Cross Sections of Pickerel Canal Dam and Gate (Auxiliary Outlet)," L-16 (FPC No. 2113-59) "Plans and Cross-Sections of Gilmore Control Dam & Gate (Auxiliary Outlet)," L-17 (FPC No. 2113-60) "Plan and Cross Sections of Rainbow Dam," L-18 (FPC No. 2113-61) "Plans and Cross Sections of Dikes and Bridge at Rainbow Reservoir," L-19 (FPC No. 2113-62) "Details of Roll Gates and Deep Gates at Rainbow Dam," L-20 (FPC No. 2113-66) "Gate and Dam Plans of North Pelican Dam," L-21 (FPC No. 2113-27) "Gate and Dam Plans of Pelican Dam," L-22 (FPC No. 2113-29) "Gate and Dam Plans of Minocqua Dam," L-23 (FPC No. 2113-34) "Squirrel Lake Dam," L-24 (FPC No. 2113-63) revised, "Plan and Cross Section of Willow Dam," L-24a (FPC No. 2113-64) "Piling Diagram of Willow Dam," L-25 (FPC No. 2113-19) approved in part, "Details of Roll Gate and Deep Gates at Willow Dam," L-26 (FPC No. 2113-46) revised, "Plans and Cross Sections of Rice Dam," L-27 (FPC No. 2113-21) "Details of Tainter Gates of Rice Dam," L-27a (FPC No. 2113-47) "Details of Tainter Gate at Rice Dam," L-28 (FPC No. 2113-53) revised, "Plans and Cross Sections of Spirit Dam and Gates," L-29 (FPC No. 2113-23) "Plans and Cross Sections of Dikes at Spirit River Flowage," L-30 (FPC No. 2113-24) "Plan and Sections of Big Eau Pleine Dam," L-31 (FPC No. 2113-25) only insofar as it shows the "Gate Plans of Big Eau Pleine Dam," L-31a (FPC No. 2113-45) "Gate Plans and Cross Sections of the Big Eau Pleine Dam".

Exhibit M: (Revised 1962) "Gate Hoisting Equipment," consisting of two typewritten pages.

(E) Article 32 of the license for the project is hereby revised to read as follows:

Article 32. The Licensee shall pay to the United States the following annual charges, effective as of August 1, 1943:

(i) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands (101.30 acres) the sum of $243.12.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP64-93

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 18, 1964)

On October 16, 1963, as amended on October 31 and November 7, 1963, Alabama-Tennessee Natural Gas Company (Applicant) filed in Docket No. CP64-93 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification and operation of certain existing facilities and the sale and delivery of natural gas to Muscle Shoals Natural Gas Corporation (Muscle Shoals), an existing customer, for resale by the latter to the U.S. Army Muscle Shoals Phosphate

Development Works, Muscle Shoals, Alabama, all as more fully set forth in the application, as amended.

The existing facilities to be used for the proposed sale are approximately two miles of 3- and 4-inch pipeline and metering and regulating equipment authorized by the Commission's order of November 7, 1951, in Docket No. G–1774. Said facilities were used until July 1, 1957, for deliveries to a phosphate plant of the U.S. Army Corps in Muscle Shoals. Applicant proposes herein to modify the existing meter station at an estimated cost of $4,100, which cost will be financed from cash on hand.

Applicant proposes to sell to Muscle Shoals, under Applicant's FPC Gas Rate Schedules G–1 and I–1, up to 600 Mcf per day of additional firm and up to 600 Mcf per day of interruptible natural gas.

On November 21, 1963, Applicant was granted a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal place of business in Florence, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 2, 1948, in Docket No. G–585 (7 FPC 257).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Alabama-Tennessee Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BROWN COMPANY, PROJECT NO. 2300

ORDER MODIFYING ORDER ON REHEARING

(Issued February 18, 1964)

By our order issued September 7, 1962 we granted the application for rehearing filed by Brown Company (Applicant) of our order issued July 19, 1962 issuing a license to Applicant for constructed Project No. 2300 on the Androscoggin River in Shelburne, New Hampshire. The application for rehearing took exception solely to Article 20 of the license order which provides for possible future obligation of Applicant in regard to fish and wildlife resources. By our order issued September 7, 1962 we granted rehearing limited to the issues raised by the application.

Upon consideration of the aforesaid application and the allegations in support thereof, *the Commission finds:*

It will not be inconsistent with the public interest to modify our order of July 19, 1962 in Project No. 2300 as hereinafter provided.

The Commission orders:

(A) The order issued July 19, 1962 is hereby modified by eliminating Article 20 therefrom and substituting in lieu thereof the following new Article 20:

Article 20. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(B) The aforementioned Commission order issued July 19, 1962, as modified by this order, shall be accepted by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-99

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 18, 1964)

On October 25, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-99 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation by Applicant of a mainline tap and meter station, the sale and delivery of natural gas to Washington Natural Gas Company (Washington Natural) and The Washington Water Power Company (Water Power) by means of such facilities and authorizing, as to Applicant's interest therein, certain other facilities to be constructed and operated by Water Power, all for the purpose of testing and evaluating an underground storage reservoir in the Jackson Prairie area near Chehalis, Lewis County, Washington, all as more fully set forth in the application.

The application shows that Applicant, Washington Natural and Water Power have jointly undertaken to test and evaluate the storage area. Further, the parties have agreed that Water Power shall operate the storage project during conduct of the testing activities and that each party shall share during said period, on a one-third undivided basis, all costs and obligations associated with the project, including costs in the amount of $403,000 heretofore expended on necessary activities preliminary to testing.

Applicant proposes to construct and operate the following facilities:

A mainline tap and a 4½-inch O.D. standard orifice-type, two-way meter station, together with necessary appurtenances, on Applicant's 26-inch O.D. mainline in Lewis County, Washington.

Applicant also seeks authorization, as to its interest therein, with respect to the following facilities to be constructed by Water Power:

(1) A 4½-inch O.D. pipeline, approximately 2.0 miles in length, together with necessary appurtenances, extending from the outlet of the meter station described above to the compressor station described in (2) below and thence to two test injection wells.

(2) A portable type compressor station, consisting of two 150 horsepower gas engine-driven reciprocating compressor units, together with necessary appurtenances.

Applicant states further that approximately 600,000 Mcf of natural gas is proposed to be injected for test purposes and that such quantity will be supplied by Applicant. Of the 600,000 Mcf, 200,000 Mcf will be sold and delivered for the account of Washington Natural and a like quantity for Water Power. The remaining 200,000 Mcf will be Applicant's share of the total quantity.

The total cost of testing, including the amount of $403,000 heretofore expended, is estimated at $965,400, which cost will be shared equally by all parties. Applicant will finance its share of the total estimated cost out of current working funds, supplemented, as necessary, by short-term bank loans.

On December 13, 1963, Applicant was granted a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities to be constructed and operated by Applicant hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation

thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The facilities to be constructed and operated by Water Power hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce and with respect to Applicant's interest therein are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) The certificate of public convenience and necessity hereinafter issued to Applicant should be made subject to the following conditions:

(a) The inventory of gas in the storage reservoir should not exceed 600,000 Mcf of natural gas (at 14.73 psia).

(b) Quarterly reports containing the following information should be submitted by Applicant to the Commission:

1. The volume of gas injected into the Skookumchuck formation.
2. The volume of gas present in the Skookumchuck formation.
3. The amount of leakage, if any, from the Skookumchuck formation.
4. The maximum daily injection volume experienced during the reporting interval.
5. The shut-in wellhead pressure for each well.
6. Subsea elevation of the water level in each well.
7. Location and extent of the gas bubble, or bubbles, plotted on a structure map of the storage reservoir.
8. A brief discussion of current operations.

(c) The certificate authorization hereinafter granted should terminate at 12:01 a.m., August 1, 1964.

(d) The certificate authorization hereinafter granted should be without prejudice to a determination by the Commission of its jurisdiction over the joint operations of Washington Natural Gas Company and The Washington Water Power Company in the event that operation of the reservoir as a storage field proves to be feasible and gas is injected, stored and delivered from the reservoir.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities; to sell and deliver natural gas; and, with respect to Applicant's interest therein, to share in the cost of the facilities to be constructed and operated by Water Power, all solely for the purpose of testing an underground reservoir, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized to be constructed by Applicant shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate of public convenience and necessity issued to Applicant in paragraph (A) above is hereby made subject to the following conditions:

(a) The inventory of gas in the storage reservoir shall not exceed 600,000 Mcf of natural gas (at 14.73 psia).

(b) Quarterly reports containing the following information shall be submitted by Applicant to the Commission:

1. The volume of gas injected into the Skookumchuck formation.
2. The volume of gas present in the Skookumchuck formation.
3. The amount of leakage, if any, from the Skookumchuck formation.
4. The maximum daily injection volume experienced during the reporting interval.
5. The shut-in wellhead pressure for each well.
6. Subsea elevation of the water level in each well.
7. Location and extent of the gas bubble, or bubbles, plotted on a structure map of the storage reservoir.
8. A brief discussion of current operations.

(c) The certificate authorization granted in paragraph (A) above shall terminate at 12:01 a.m., August 1, 1964.

(d) The certificate authorization granted in paragraph (A) above is without prejudice to a determination by the Commission of its jurisdiction over the joint operations of Washington Natural Gas Company and The Washington Water Power Company in the event that operation of the reservoir as a storage field proves to be feasible and gas is injected, stored and delivered from the reservoir.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-134

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued February 18, 1964)

On December 9, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-134 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for permission and approval to abandon certain facilities, and for a certificate of public convenience and necessity authorizing the Applicant to install and operate facilities for the purpose of effecting certain realignments of facilities utilized in it's Driver, Midkiff, TXL, Emma and Tunstill Compressor Stations for the acquisition of natural gas from several Permian Basin sources, all as more fully set forth in the application on file with the Commission.

Applicant proposes to (a) abandon by removal two (2) 2000 Hp gas-engine driven compressor units and appurtenances in the Driver Station and to relocate the same in its TXL Station, and one (1) 2000 Hp gas-engine driven compressor unit and appurtenances in it's Midkiff Station and to relocate the same in its Tunstill Station; (b) install one (1) 330 Hp compressor unit and turbo charging kit in the Tunstill Station; (c) make modifications in and additions to its TXL meter station and relocate the same on the suction side of the TXL Compressor Station; (d) make compressor cylinder modifications on the two (2) 153 HP compressor units in it's Emma Station; (e) install and operate additional gas dehydration facilities to provide an increase of 9000 Mcf per day in the inlet capacity of its Tunstill Dehydration Plant under Section 2.55(a) of the Commission's General Policy and Interpretations; and (f) increase the operating pressure of the pipeline utilized to transport gas from the South Andrews and Emma Fields to Shell Oil Company's TXL Plant.

Applicant states the proposed realignment of facilities is required due to changed operating conditions in the northern part of the Spraberry Field in Midland and Glasscock Counties, Texas, and the need for additional compressor capacity in the named stations.

The Commission by letter dated January 2, 1964, granted the Applicant temporary authorization to construct and operate one 333 Hp compressor unit and turbo charging kit in the Tunstill Station.

The estimated cost of the proposed facility rearrangements and additions is $1,318,500, which will be defrayed from current working funds, supplemented by short-term bank loans if necessary.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities proposed to be abandoned by removal, as hereinbefore described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) The facilities proposed to be installed and operated, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the installation and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The installation and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application filed in this proceeding, are hereby granted to Applicant.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to install and operate the proposed facilities, as more fully described in the application filed in this proceeding, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64-10

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 18, 1964)

On July 16, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP64-10 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon other facilities, as follows:

(1) To construct and operate approximately 30.4 miles of 6-inch natural gas transmission pipeline A-26 extending from a point on Applicant's existing 18-inch Line A near the City of Quanah in Hardeman County, Texas, northerly across the Red River to a point approximately 4 miles west of the Town of Eldorado in Jackson County, Oklahoma, and thence northwesterly to Applicant's existing city gate measuring station serving the Town of Hollis in Harmon County, Oklahoma;

(2) To construct and operate approximately 4.3 miles of 4-inch natural gas transmission pipeline A-26-1 extending from a point on proposed 6-inch line A-26 easterly to Applicant's existing city gate measuring station serving the Town of Eldorado in Jackson County, Oklahoma;

(3) To abandon by removal and salvage Line 71-30, consisting of approximately 10.64 miles of 4-inch pipeline together with two river crossings of 0.16 miles of 3-inch and 1.86 miles of 2-inch pipeline extending from Line A near the City of Quanah in Hardeman County, Texas, to the existing city gate measuring station serving the Town of Eldorado in Jackson County, Oklahoma;

(4) To abandon by removal and salvage approximately 5.39 miles of 6-inch Line 71-37 extending from Line 71 to the Dodson tap for Line 74-1 in Collingsworth County, Texas;

(5) To abandon the Shamrock No. 2 Compressor Station in the East Panhandle Field together with approximately 12.57 miles of 16-inch Line 71 extending from the outlet of said compressor station to the Samnorwood tap for Line 71–36, in Collingsworth County, Texas, the initial 1.68 miles of said 16-inch line to be sold and transferred to Warren Petroleum Corporation (Warren) for use as a gathering facility in the area and remaining 10.89 miles of said 16-inch line together with the Shamrock No. 2 Compressor Station to be removed and salvaged;

(6) To abandon the operation of that portion of Line 71 remaining north of the Dodson-Hollis tap for Line 71–37 in Collingsworth County, Texas, for the transportation of natural gas in interstate commerce, said facility to be thereafter supplied from Applicant's Line U with gas produced, transported, sold, and consumed entirely within the State of Texas;

all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The proposed construction and abandonments constitute a realignment of facilities in order that Applicant may continue to render effective natural gas service to its existing markets in the Texas Panhandle and Western Oklahoma area, which realignment is made necessary by the fact that the supply of natural gas available to Applicant in the East Panhandle Field, Wheeler County, Texas, has declined to such an extent that the continuation of service therefrom is unwarranted. The abandonment of facilities as proposed will not result in the abandonment or diminution of natural gas service from Applicant's transmission pipeline system to any city, town or community, and will affect only 53 right-of-way customers who cannot thereafter be served. Applicant has arranged to dispose of its purchase contracts covering producing wells in the East Panhandle Field to Warren who will continue to purchase gas under such contracts, or under replacement contracts, resulting only in a substitution of purchasers and no abandonment of service with respect to such contracts and suppliers.

Applicant estimates the total cost of the proposed new natural gas pipeline transmission facilities at $459,900. The cost of removing the transmission facilities to be abandoned is estimated at $78,500, leaving a net salvage value in recoverable material of $188,610. All costs will be paid out of funds on hand.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities to be constructed as hereinbefore described, all as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The facilities to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are used in the trans-

portation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The abandonment proposed by Applicant is permitted by the public convenience and necessity, and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(C) Applicant shall advise the Commission of the date of the abandonment of the facilities within 10 days of the date thereof.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(E) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, NEW YORK STATE NATURAL GAS CORPORATION, AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-59

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 18, 1964)

On September 9, 1963, The Manufacturers Light & Heat Company, New York State Natural Gas Corporation, and Texas Eastern Transmission Corporation (Applicants), filed in Docket No. CP64-59 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas under the terms of an exchange agreement August 22, 1963, by and between New York Natural, Texas Eastern, and Manufacturers, including the redelivery thereof to New York Natural, by Texas Eastern, for the account of Manufacturers, and for the construction and operation of approximately 3.25 miles of 6-inch pipeline and appurtenant facilities by New York Natural in Mann Township, Bedford County, Pennsylvania, all as more fully set forth in the application on file with the Commission.

New York Natural and Manufacturers have entered into operating agreements providing for the joint development and operation of oil and gas leases in Bedford County, Pennsylvania, and will share equally the cost of constructing and operating the proposed pipeline (to be operated by New York Natural) at an estimated construction cost of $77,530, including appurtenant facilities needed at the Artemas Connection. These costs will be financed from funds on hand by both companies.

Under the proposed exchange agreement, which provides for the exchange on a gas-for-gas basis, gas will be delivered into Manufacturers Line No. 1804 at the Artemas Connection. Texas Eastern will deliver quantities of gas equivalent to New York Natural's share of the covered production at existing interconnections of Texas Eastern's pipelines with pipelines of New York Natural in Pennsylvania, and will deduct equivalent quantities of gas from its deliveries to Manufacturers at existing delivery points in Pennsylvania, to offset the quantities delivered to New York Natural for the account of Manufacturers.

The Commission granted Applicants a temporary certificate on October 11, 1963. The requested facilities have been installed, and were placed in operation on October 15, 1963.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) Applicant, New York State Natural Gas Corporation, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 27, 1942, in Docket No. G-312 (3 FPC 844).

(3) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(4) The proposed exchange and delivery of natural gas between the Applicants, and the construction and operation of facilities for the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed exchange and delivery of natural gas, and the construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicants, are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the three Applicants in this proceeding, jointly, authorizing the exchange and delivery of natural gas as hereinbefore described, the construction of facilities by New York Natural and Manufacturers, and the operation thereof by New York Natural, as more fully described in the joint application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-90

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 18, 1964)

On October 10, 1963, as supplemented November 13, 1963, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64-90 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 660 horsepower compressor and station on its 8-inch Stratford lateral and 5.2 miles of 8-inch pipeline along the Stratford lateral line, all as more fully described in the application.

Applicant states that the proposed facilities are required to enable it to receive into its transmission system daily contract volumes of gas supply, as well as variable volumes received from sources that are subject to allowable limitations.

Applicant anticipates increased demands by its present customers during the winter season of 1963-64.

The total estimated cost of the proposed facilities is $369,000.

By letter dated December 16, 1963, Applicant was granted a temporary certificate to construct the proposed facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate the proposed facilities, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–142

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 18, 1964)

On December 19, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64–142 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove a meter and regulator station located in Jasper County, Texas, used to serve the sawmill of Sidney H. Dixon (Dixon).

Dixon has advised Applicant that termination of the service agreement between them is desired, effective as of January 1, 1964, because another source of fuel has been located. The facilities to be abandoned are utilized directly in connection with this single customer and will not be required for any other service.

The original cost of the facilities to be abandoned and removed was $728.43. After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant United Gas Pipe Line Company, of the facilities hereinbefore described, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of removal of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. G–2214

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 19, 1964)

On November 21, 1963, Cities Service Gas Company (Applicant) filed an application to amend further the Commission's order in Docket No. G–2214 issued September 25, 1953, as amended March 12, 1962, by authorizing Applicant to construct and operate certain facilities, replacing and reclaiming certain existing facilities, and to transport and deliver, on an interruptible basis, up to a maximum of 1,701,043 Mcf (at 14.73 psia) of natural gas annually to Farmers Chemical Company (Farmers)* in lieu of the presently authorized interruptible annual maximum volume of 338,154 Mcf (at 14.73 psia), all as more fully set forth in the application to amend.

---

*Formerly Missouri Farmers' Association, Inc.

The order of September 25, 1953, authorized Applicant to construct and operate certain facilities in Cherokee County, Kansas, and in Jasper County, Missouri, in order to sell and deliver natural gas, on an interruptible basis, to the Missouri Farmers' Association, Inc., now Farmers, to be utilized by Farmers at its fertilizer plant near Empire City, Kansas. Said order limited deliveries of natural gas to 182,077 Mcf annually (at 14.73 psia). The order of March 12, 1962, authorized an increase in deliveries to 338,154 Mcf annually (at 14.73 psia).

Applicant has been advised by Farmers that the latter again intends to expand its Empire City plant and, therefore, will need the requested increased deliveries of natural gas.

Specifically, Applicant proposes to construct and reclaim the following facilities in order to make the requested increased deliveries:

Replace approximately 2.07 miles of the present Farmers 3-inch pipeline with 6-inch pipeline beginning at a point of connection with Applicant's Galena 10-inch pipeline in Cherokee County, Kansas, and extending eastwardly to the terminus of the present 3-inch pipeline at a point in Jasper County, Missouri.

The estimated cost of the proposed facilities is $26,650. Said cost reflects the cost of removal and salvage credit for the facilities to be replaced and reclaimed. The estimated cost will be financed from treasury cash.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 21, 1964 (29 F.R. 509). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. G-2214 issued September 25, 1953, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. G-2214 issued September 25, 1953, as amended, be and the same is hereby further amended by authorizing Applicant to construct and operate the proposed facilities, replacing and reclaiming certain existing facilities, and to transport and deliver, on an interruptible basis, up to a maximum of 1,701,043 Mcf (at 14.73 psia) of natural gas annually to Farmers Chemical Company in lieu of the presently authorized interruptible annual maximum volume of 338,154 Mcf (at 14.73 psia), all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. RP64-1

ORDER DISMISSING INVESTIGATION AND TERMINATING PROCEEDING

(Issued February 19, 1964)

On the basis of the data available to the Commission in the Annual Form 2 Report filed by Colorado Interstate Gas Company (Colorado Interstate) for the year 1962, it appeared that Colorado Interstate's earnings for that year might be excessive. Therefore, by order of July 3, 1963, the Commission instituted an investigation to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Colorado Interstate, any of the rates, charges, or classifications demanded, observed, charged or collected, or any rules, regulations, practices, or contracts affecting such rates, charges or classifications, might be unjust, unreasonable, unduly discriminatory, or preferential.

For the purpose of expediting that investigation, the order required Colorado Interstate to report cost and revenue data in conformity with Subsection (f) of Section 154.63 of the Commission's regulations under the Natural Gas Act (except statements N and P). Pursuant to the order of July 3, 1963, Colorado Interstate filed on September 3, 1963, such a report for the calendar year 1962, adjusted for changes in revenues and costs known, measurable with reasonable accuracy and effective prior to October 1, 1963.

An examination and analysis by the Commission of the submitted data reveals that, *inter alia*, Colorado Interstate as of April 30, 1963, experienced reduced revenues due to a loss of certain short-term sales to El Paso Natural Gas Company and Cities Service Gas Company. Since the bulk of the natural gas sold to these short-term customers came from Colorado Interstate's own low cost production, the concomitant decrease in the cost of service was relatively minor, and there resulted a major change in the company's earnings situation. The Commission has reevaluated Colorado-Interstate's past and present earnings and has determined that further investigation of its costs and revenues for the test year 1962 is not warranted. Accordingly this proceeding should be terminated.

This termination does not constitute approval by the Commission of the data or any principles underlying the data submitted by Colorado Interstate nor is this order to be construed by any party as a waiver of the Commission's authority under the Natural Gas Act to investigate at any time after the date of issuance of this order matters that may affect the reasonableness of Colorado Interstate's rate and return.

The Commission finds:

The investigation of Colorado Interstate Gas Company should be dismissed and the proceeding in Docket No. RP64–1 should be terminated.

The Commission orders:

The investigation of Colorado Interstate Gas Company is hereby dismissed and the proceeding in Docket No. RP64–1 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEVADA POWER COMPANY, PROJECT NO. 2321

ORDER ISSUING LICENSE (MINOR)

(Issued February 19, 1964)

Application was filed on September 17, 1962 by Nevada Power Company, (Applicant) of Elko, Nevada, for a license under Section 4 (e) of the Federal Power Act (Act) for constructed minor Project No. 2321, known as the Lamoille Canyon Project, located on Lamoille Creek, a tributary of the Humboldt River, in Elko County, Nevada, and affecting lands of the United States within the Humboldt National Forest and other lands of the United States.

The existing hydroelectric plant, structures, and waterways, built in 1913, were for the most part rehabilitated in 1941 by the Elko-Lamoille Power Company which owned and operated the project until February 1960 when title was transferred to Applicant. The plant has been operating under a Final Power Permit issued by the Department of Agriculture to Applicant's predecessor on March 21, 1914. It appears that a 25-year license will be ample for this project which, as shown above, has been in operation for many years.

The Department of the Interior has reported that the project has no material effect on fish and wildlife resources and offered no objection to the granting of a license for the project.

The Department of Agriculture has stated that the terms and conditions usually included by the Commission in licenses for such projects would be adequate for the protection and utilization of the Humboldt National Forest and offered no objection to the granting of a license for the project.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Nevada, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project affects lands of the United States within the Humboldt National Forest and other lands of the United States.

(3) No conflicting application is before the Commission.

(4) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with any reservation or with the purposes for which the Humboldt National Forest was created or acquired.

(5) The project does not affect a Government dam.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) The installed capacity of the project is 200 horsepower, and the power generated by the project is used for public utility purposes in the City of Elko and surrounding areas.

(8) The amount of annual charges to be paid by the licensee for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands is reasonable as hereinafter fixed and specified.

(9) Exhibit A: (FPC No. 2321-1) filed as part of the application and redesignated in paragraph (B) below as Exhibit K: (FPC No. 2321-1) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(10) It will be in the public interest to waive the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a); 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Nevada Power Company (Licensee) of Elko, Nevada, under Sections 4(e) and 10(i) of the Act for a period of 25 years, effective as of January 1, 1964, for the continued operation and maintenance of Project No. 2321, located on lands of the United States within the Humboldt National Forest and other lands of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2321 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A small rock fill diversion dam about 5 feet high and 14 feet long on Lamoille Creek about 6 miles upstream from the community of Lamoille; about 4.22 miles of 16 in. diameter steel pipe; a forebay reservoir formed by a hydraulic fill earth dam; 16 in. diameter steel penstock; Lamoille Canyon powerhouse containing a 200 kw hydroelectric unit and auxiliary equipment; and about 22.1 miles of transmission line extending from the powerhouse to Elko substation in the City of Elko.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located in the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

The lands and project works being more specifically shown and described by a certain exhibit forming part of the application for license and which has been redesignated and is described as follows:

Exhibit K: (FPC No. 2321-1) Map, signed by M. E. Lundberg, Vice President, dated September 7, 1962.

(C) This license is also subject to the terms and conditions set forth in Form L-7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions are attached hereto and made a part hereof and also subject to the following special conditions set forth herein as special articles:

Article 15: The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of recompensing the United States for the costs of administration of Part I of the Act, $13.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including those occupied for transmission line purposes, $21.00.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from the license.

(E) The redesignated exhibit described in paragraph (B) above is hereby approved as part of the license for the project.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., ET AL., DOCKET NO. G-15546, ET AL.*

ORDER REQUIRING REFUNDS IN ADDITIONAL PROCEEDINGS ON REMAND, DENYING PETITIONS FOR MODIFICATION OF ORDER, AND REJECTING PETITION FOR LEAVE TO INTERVENE[1]

(Issued February 19, 1964)

The United States Court of Appeals for the District of Columbia on July 18, 1963, affirmed the Commission's order of March 5, 1962, 27 FPC 441, requiring producers to refund to certain of their pipeline customers tax reimbursement amounts collected from them with respect to the additional one cent per Mcf Louisiana gas gathering tax which was declared unconstitutional by the Louisiana Supreme Court. *Pan American Petroleum Corporation* v. *F.P.C.*, 322 F. 2d 999. The same court in a related decision issued the same day reversed the March 5 order insofar as refunds were not required to be made by the producers to Tennessee Gas Transmission Company (Tennessee). *Tennessee Gas Transmission Company* v. *F.P.C.*, 322 F. 2d 1006.

In our March 5 order we required producers to make refunds to those pipeline customers who had adequately protected their rights in these proceedings. See 27 FPC at 443–444. We did not, however, require the producers to make refunds to Southern Natural Gas Company (Southern), United Gas Pipe Line Company (United) and Tennessee, among others, because of their failure to protect their rights in these matters. See 27 FPC at 444. Tennessee and Southern both filed timely applications for rehearing of the March 5 order, which were denied by order issued April 26, 1962. 27 FPC 847. Thereafter, Tennessee petitioned for court review in certain specified proceedings (listed in Appendix A hereof) in which they were involved as a purchaser. Southern, however, did not file a petition for court review. United has never sought intervention in any of these cases either prior or subsequent to the March 5 order. Nor did United file an application for rehearing or a petition for court review of that order.

In the *Tennessee* case, *supra*, the court held that Tennessee had the right to seek judicial review of the March 5 order, and rejected the Commission's reason for denying refunds to Tennessee. The court said 322 F. 2d 1009:

> The Commission concedes that Tennessee would have been entitled to refunds if Tennessee had protested the Commission's order of May 29, 1961 and that the denial of refunds rested solely on the absence of such protest. As stated above, however, on August 30, 1961, the Commission, sua sponte, reopened the May 29 order in all the dockets before it. Assuming, without deciding, that Tennessee's right to refunds expired with its time for protesting the May 29 order, we think the effect of the Commission's action of August 30, 1961 was to revive the proceedings as to Tennessee and all other purchasers named in those dockets. It follows that the Commission's reason for denying refunds to Tennessee must fail.

---

*The proceedings involved here are listed in the appendices attached hereto. These proceedings represent only a portion of the approximately 400 proceedings disposed of by the March 5, 1962 order.

[1] This order does not provide for consolidation of the proceedings involved here, nor should it be so construed.

In light of the court remand, we shall provide for refunds to Tennessee in the proceedings listed in Appendix A.[3]

With respect to the above refunds, it may be that Tennessee will take the position that it is not presently under obligation to flow-through to its jurisdictional customers all or a part of their proportionate share of the amount of money it will receive from the producers. For the reasons set forth in our order in *Hunt Oil Co.*, Docket No. G-9065, *et al.*, issued July 16, 1963, 30 FPC 220, we shall condition this order to require the producers to retain (without interest obligation to them) the refunds due to Tennessee in a special account, and shall direct Tennessee to submit a report setting forth what it intends to do with the refunds if they are made to it, and, if it proposes not to pass them on to its jurisdictional customers why it believes it is entitled to retain these refunds.

Southern and United on August 20 and September 9, 1963, tendered petitions requesting the Commission to modify its March 5 order to provide for refunds to them in the proceedings listed in Appendices B and C, respectively. A number of producers have filed answers to these petitions. In support of their petitions Southern and United claim, *inter alia*, that the effect of the court decision in the Tennessee case was to nullify the March 5 order insofar as that denied refunds to any purchaser in any of these proceedings and to reopen these proceedings as to all purchasers who were denied refunds for further proceedings consistent with the Court's opinion. They particularly emphasize in this connection the following statement by the court, 322 F. 2d at 1009: "* * * We think the effect of the Commission's action of August 30, 1961 was to revive the proceedings as to Tennessee and all other purchasers named in those dockets."

In the alternative, Southern requests leave to intervene in the proceedings listed in Appendix B hereof.

Tennessee's petition for review of the March 5 order did not purport to be a "class action" for the benefit of all purchasers denied relief in the many proceedings involved in that order, but was specifically limited to those proceedings in which Tennessee had been denied relief. Nothing in the court's opinion indicates that it construed Tennessee's petition as a "class action". To the contrary, the court after carefully noting that Tennessee had fully preserved its rights after the Commission in its August 30, 1961 order resuscitated them, ruled that "the Commission's reason for denying refunds to Tennessee must fail", (322 F. 2d at 1009). It did not set aside or otherwise void the Commission's March 5 order generally but merely directed that the order be "(r)eversed and remanded for further proceedings consistent with this opinion." As Southern and United point out, the court indicated that the Commission's August 30, 1961 order revived the proceedings as to all purchasers named in the various dockets. The affect thereof is that as of August 30, 1961, Southern, United and Tennessee were considered to be in exactly the same position. This does not mean, as Southern and United suggest, that they were not subsequently required to protect their rights thereafter. Southern in failing to petition for review of the March 5 order following denial of its application for rehearing, and United by failing to file either an application for rehearing or a petition for review of that order have relinquished whatever rights they might otherwise have had herein had they followed the course of action pursued by Tennessee. Under Section 19 of the Natural Gas Act the March 5 order became final as to Southern and United.

---

[3] Tennessee in its initial court brief indicated that they were no longer pressing the petition for review with respect to Docket Nos. G-15555, G-15566, G-15663, G-15925 and G-16076 because they had received appropriate refunds from producers in these dockets. For this reason, these proceedings have been omitted from Appendix A.

Pan American Petroleum Corporation v. *F.P.C.* 322 F. 2d 999; *F.P.C.* v. *Colorado Interstate Gas Co.*, 348 U.S. 492, 498; *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149, 157. Accordingly, the petitions for modification of the March 5 order by Southern and United must be denied. For the same reason, Southern's alternative request for leave to intervene should be rejected as untimely.

The Commission finds:

(1) The increased rates reflected in the supplements filed in the proceedings listed in Appendix A with respect to sales of gas to Tennessee should be disallowed and refunds provided for as hereinafter ordered.

(2) The petitions filed by Southern and United for modification of the March 5, 1962 order should be denied, and Southern's petition for leave to intervene should be rejected.

The Commission orders:

(A) The increased rates reflected in the rate supplements applicable to sales to Tennessee in the proceedings listed in Appendix A are disallowed.

(B) Each respondent listed in Appendix A shall compute the refund to Tennessee of the amounts collected under the respective agreements and undertakings filed in compliance with the Commission's suspension orders in the proceedings herein, and shall report to the Commission in writing within 30 days from the date of issuance of this order the amount of such refund showing the basis for such determination.

(C) Each respondent listed in Appendix A shall retain the refund due to Tennessee, which it shall have computed in accordance with Paragraph (B) above, in a special account, with no interest obligation after the date of issuance of this order, pending Commission action and further order respecting such monies.

(D) The petitions filed by Southern and United for modification of the March 5, 1962 order are hereby denied, and Southern's petition for leave to intervene is hereby rejected.

APPENDIX A

G–15548	Texaco Inc.
G–15551	Shell Oil Company
G–15563	Cities Service Production Company
G–15584	E. J. Hudson, *et al.*
G–15586	Tidewater Oil Company
G–15589	Sohio Petroleum Company (Operator), *et al.*
G–15611	Shell Oil Company
G–15618	John W. Mecom d/b/a Mecom Petroleums
G–15619	John W. Mecom, Operator, *et al.*
G–15633	Sun Oil Company
G–15668	Kerr-McGee Oil Industries, Inc., (Operator), *et al.*
G–15678	The Atlantic Refining Company
G–15718	Humble Oil and Refining Company
G–15730	Continental Oil Company
G–15751	Gulf Oil Corporation
G–15752	Phillips Petroleum Company (Operator), *et al.*
G–15763	Continental Oil Company (Operator), *et al.*
G–15837	The California Company, A Division of California Oil Company
G–15846	Union Oil Company of California
G–15935	M. L. Mayfield, *et al.*
G–16033	The Atlantic Refining Company
G–16342	Sunnyland Contracting Company, Inc.

APPENDIX B

	Docket Nos.
David Crow, Trustee, *et al*	G-15573
L. E. Smith, *et al*	G-15579
H. L. Hunt	G-15580
Secure Trusts	G-15588
Murphy Corporation, *et al*	G-15605
Shell Oil Company	G-15611
Lyda Hunt-Herbert Trusts, *et al*	G-15622
Estate of William G. Helis	G-15627
Union Producing Company	G-15661
Sinclair Oil & Gas Company	G-15662
Spartan Drilling Company, Inc., Agent (Operator), *et al*	G-15666
Kerr-McGee Oil Industries, Inc	G-15667
Kerr-McGee Oil Industries, Inc. (Operator), *et al*	G-15668
M. B. Chastain, *et al*	G-15676
Sam Sklar, Trustee	G-15684
The Hunter Company, Inc	G-15727
Monsanto Chemical Company	G-15737
Union Producing Company	G-15745
Petersen Petroleum Corporation	G-15747
Vanson Production Corporation (Operator), *et al*	G-15762
Hurley Oil and Gas Company (Operator), *et al*	G-15764
Delta Drilling Company	G-15832
J. M. Flaitz and R. B. Mitchell (Operator), *et al*	G-15866
C. H. Lyons, Sr., *et al*	G-15936
Francis W. Scott	G-15939
C. H. Lyons, Sr. (Operator), *et al*	G-15944
F. A. Callery, Inc. (Agent), *et al*	G-15950
C. A. Hilburn, *et al*	G-15954
F. A. Callery, Inc. *et al*	G-15956
Midland Petrochemical Company	G-16035
M. P. O'Meara, *et al*	G-16046
United Carbon Company	G-16075
H. T. Shalett and David Crow	G-16244
Max Pray (Operator), et al	G-16470
Humble Oil & Refining Company	G-15718
The California Company	G-15837
Gulf Oil Corporation	G-15642 and G-15831
Tidewater Oil Company	G-15586
Phillips Petroleum Company	G-15596
Phillips Petroleum Company (Operator), *et al*	G-15597
Continental Oil Company	G-15730

APPENDIX C

G-15548	Texaco Inc.
G-15551	Shell Oil Company
G-15552	Shell Oil Company (Operator)
G-15553	Shell Oil Company (Operator) *et al.*
G-15556	Cities Service Reserves, Inc. (now Cities Service Company)
G-15562	Amerada Petroleum Corporation (Operator), *et al.*
G-15564	Cities Service Oil Company (now Cities Service Petroleum Company)
G-15570	Annie Norton, *et al.*

APPENDIX C—continued

G–15571	**Continental Oil Company**
G–15572	**Hunt Oil Company**
G–15586	**Tidewater Oil Company**
G–15591	**Bel Oil Corporation**
G–15593	**Sunray Mid-Continent Oil Company (now Sunray DX Oil Company)**
G–15594	**Sunray Mid-Continent Oil Company (now Sunray DX Oil Company)**
G–15595	**Sam Sklar (Operator) *et al.***
G–15596	**Phillips Petroleum Company**
G–15597	**Phillips Petroleum Company (Operator) *et al.***
G–15603	**Murphy Corporation**
G–15606	**The Ohio Oil Company (now Marathon Oil Company)**
G–15607	**The Ohio Oil Company (now Marathon Oil Company)**
G–15610	**Oil Participations, Inc., *et al.***
G–15611	**Shell Oil Company**
G–15612	**Shell Oil Company (Operator) *et al.***
G–15613	**The British American Oil Producing Company**
G–15615	**States Oil Company, Inc.**
G–15616	**States Oil Company (Operator) *et al.***
G–15618	**John W. Mecom d/b/a Mecom Petroleums**
G–15629	**Placid Oil Company**
G–15633	**Sun Oil Company**
G–15635	**Gilbert S. Johnson**
G–15636	**W. H. Hunt**
G–15638	**Mrs. Tom J. Moffitt, *et al.***
G–15639	**H. W. Perritt**
G–15643	**States Oil Company, *et al.***
G–15646	**Cities Service Reserves, Inc. (now Cities Service Company)**
G–15647	**Cities Service Reserves, Inc. (Operator) *et al.* (now Cities Service Company)**
G–15655	**Placid Oil Company, *et al.***
G–15662	**Sinclair Oil & Gas Company**
G–15669	**George Parker, *et al.***
G–15670	**Leonard W. Phillips, *et al.***
G–15671	**J. R. Butler**
G–15673	**Sam Sklar, Trustee (Operator), *et al.***
G–15675	**Norman V. Kinsey, Jr.**
G–15679	**The Atlantic Refining Company (Operator) *et al.***
G–15687	**Humble Oil & Refining Company**
G–15720	**Tidewater Oil Company**
G–15729	**Texas Gulf Producing Company**
G–15738	**Henry I. Schober, *et al.***
G–15746	**William G. Helis Estate, *et al.***
G–15749	**William C. and T. M. Nolan d/b/a Munoco Company**
G–15752	**Phillips Petroleum Company (Operator) *et al.***
G–15763	**Continental Oil Company (Operator) *et al.***
G–15781	**Amerada Petroleum Corporation**
G–15831	**Gulf Oil Corporation**
G–15835	**Sohio Petroleum Company**
G–15837	**The California Company**
G–15846	**Union Oil Company of California**
G–15854	**Charles B. Wrightsman**

APPENDIX C—continued

G–15867	**Sinclair Oil & Gas Company**
G–15870	**Tidewater Oil Company**
G–15876	**Marshall R. Young, *et al.***
G–15947	**Union Texas Petroleum, a Div. of Allied Chemical Corporation**
G–15956	**F. A. Callery, Inc., *et al.***
G–15957	**F. A. Callery, Inc. (Operator) *et al.***
G–15960	**Pioneer Oil & Gas Company, Inc., *et al.***
G–15966	**J. C. Trahan Drilling Contractor, Inc.**
G–16033	**The Atlantic Refining Company**
G–16034	**The Atlantic Refining Company (Operator) *et al.***
G–16052	**Hudson Gas & Oil Corporation, *et al.***
G–16057	**Eulalie N. Nobles, *et al.***
G–16058	**Cuban American Oil Company (now McCulloch Oil Corporation of California**
G–16074	**Union Oil Company of California (Operator)**
G–16129	**Marshall R. Young, *et al.***
G–16246	**Walter Duncan (Operator) *et al.***

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 710

ORDER AMENDING LICENSE (MAJOR)

(Issued February 19, 1964)

Application was filed on September 11, 1963, by Wisconsin Power & Light Company, licensee for Project No. 710, for amendment of its license for the project located on Wolf River in the vicinity of Shawano, in Shawano County, Wisconsin.

The application seeks to eliminate from the license subparagraph B of Article 23 which prescribes annual charges ($1,500.00) for the use by the project works of tribal lands within the Menominee Indian Reservation.

The application for amendment was suggested by the Commission in view of the Secretary of the Interior's April 26, 1961 proclamation (26 F.R. 3726) terminating as of April 30, 1961 Federal trusteeship over the property of the Menominee Indians pursuant to Public Law 83–399, approved June 17, 1954 (68 Stat. 250).

Title to the Indian tribal lands within the former Menominee Indian Reservation was transferred to Menominee Enterprises, Inc. with whom the licensee entered into a lease, effective as of September 1, 1962, which provides, among other things, for the payment by the licensee to Menominee Enterprises, Inc. of $1,500 per annum. Annual charges under the license have been paid to the Commission for the use by the licensee of such former Indian Reservation lands to September 1, 1962.

The Commission finds:

It will be consistent with the public interest to amend the license as hereinafter provided.

The Commission orders:

(A) The license for Project No. 710 is hereby amended, effective as of September 1, 1962, by eliminating therefrom subparagraph B. of Article 23.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. G-15187

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 20, 1964)

On November 4, 1963, as amended on November 8, 1963, Arkansas Louisiana Gas Company (Applicant) filed an application to amend further the Commission's order in Docket No. G-15187 issued October 14, 1958, as amended, by authorizing Applicant to construct and operate 1.0 mile of 8-inch pipeline and appurtenant meter and regulator facilities in order to add a new delivery point and to sell to Mississippi River Fuel Corporation (Mississippi) in Union Parish, Louisiana, an additional daily maximum of 20,000 Mcf of natural gas, all as more fully set forth in the application to amend, as amended.

The order of October 14, 1958, as amended, authorized Applicant, among other things, to sell and deliver 35,000 Mcf of natural gas per day to Mississippi for resale from October 15 of each year through April 16 of the succeeding year for a five-year period ending April 16, 1963, and to sell and deliver 1,000 Mcf per day from April 16, 1963, until May 1, 1963. The Commission's order issued September 19, 1963, extended such authorization for one year. Said sales are made at the outlet of Applicant's Ruston Gasoline Plant, Lincoln Parish, Louisiana.

The application indicates that Mississippi has urgent need for more gas in the subject area and that Applicant at the proposed new delivery point will sell and deliver the herein proposed additional volumes of natural gas to Mississippi only when available and Mississippi will purchase natural gas only when needed, all during the period from October 15 to April 16, inclusive.

The application shows the total estimated cost of the proposed facilities to be $45,800.

Applicant and Mississippi have entered into an amendatory agreement, dated October 28, 1963, providing for the proposed additional service.[1]

---

[1] Said amendatory agreement provides that the herein proposed sale will continue until such sale is terminated by 30-day prior written notice by either party to the other or until the principal contract between the parties terminates or is terminated in accordance with the provisions thereof.

On December 13, 1963, Applicant was issued a temporary certificate authorizing the construction and operation of the proposed facilities and the proposed sale and delivery of natural gas at the new delivery point.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 21, 1964 (29 F.R. 509). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. G–15187 issued October 14, 1958, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. G–15187 issued October 14, 1958, as amended, be and the same is hereby further amended by authorizing Applicant to construct and operate 1.0 mile of 8-inch pipeline and appurtenant meter and regulator facilities in order to add a new delivery point and to sell to Mississippi River Fuel Corporation in Union Parish, Louisiana, an additional daily maximum of 20,000 Mcf of natural gas, as hereinbefore described and as set forth in the application to amend, as amended.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION OIL COMPANY OF CALIFORNIA AND RUTH I. PENTON AND D. N. PENTON, D.B.A. PENTON AND PENTON, DOCKET NO. G–19006;[1] RUTH I. PENTON AND D. N. PENTON, D.B.A. PENTON AND PENTON (SUCCESSOR TO UNION OIL COMPANY OF CALIFORNIA), DOCKET NO. CI64–476

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, ADDING RESPONDENT IN AND REDESIGNATING RATE PROCEEDING, AND ACCEPTING SUCCESSOR'S AGREEMENT AND UNDERTAKING

(Issued February 20, 1964)

On October 18, 1963, Ruth I. Penton and D. N. Penton, d.b.a. Penton and Penton, (Applicants) filed in Docket No. CI64–476 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to United Gas Pipe Line Company for resale for ultimate public consumption from the Gordon Field, Beauregard Parish, Louisiana, all as more fully set forth in the application.

Applicants propose to sell natural gas from certain leases, as successors in interest to Union Oil Company of California, pursuant to a contract heretofore designated as Ruth I. Penton and D. N. Penton, d.b.a. Penton and Penton, FPC Gas Rate Schedule No. 2. The subject sale was initially authorized, among others, in Docket No. G–3711.

---

[1] Consolidated with Docket No. AR61–2, *et al.*

The effective rate under the predecessor's rate schedule, Union Oil Company of California FPC Gas Rate Schedule No. 30, is 20.25¢ per Mcf at 15.025 psia, inclusive of tax reimbursement, subject to refund in Docket No. G–19006. By an instrument filed November 14, 1963, styled as a Motion to Intervene, Penton and Penton request to be made parties respondent in the proceeding in Docket No. G–19006. Concurrently with the aforementioned motion, Penton and Penton filed an agreement and undertaking in said docket assuming liability to refund any portion of the increased rate found by the Commission not to be justified therein. The assignment of the producing properties to Penton and Penton is effective as of June 1, 1963.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the certificate application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants, Penton and Penton, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon commencement of the service under the authorization hereinafter granted.

(2) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) Applicants should be added as respondents in the rate proceeding in Docket No. G–19006; said docket should be redesignated accordingly, and Applicants' agreement and undertaking should be accepted for filing.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicants herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) Penton and Penton be and are hereby made parties respondent in the pending rate proceeding in Docket No. G–19006 insofar as said proceeding pertains to the sales made from the producing properties assigned to Penton and Penton by Union Oil Company of California, pursuant to Penton and Penton's FPC Gas Rate Schedule No. 2, effective as of June 1, 1963, and said proceeding is hereby redesignated accordingly.

(E) The agreement and undertaking submitted by Penton and Penton on November 14, 1963, in the proceeding in Docket No. G–19006, assuming the obligation to refund any portion of the increased rate collected by Penton and Penton found by the Commission in said proceeding not to be just and reasonable, insofar as the final determination in said proceeding is applicable to Penton and Penton, be and the same is hereby accepted for filing; and any such refunds shall bear interest at the rate of seven percent per annum.

(F) Penton and Penton shall comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder, and the agreements and undertakings assuming refund obligations in Docket No. G–19006 shall remain in full force and effect until discharged by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

HASSIE HUNT TRUST, OPERATOR, ET AL., DOCKET NO. G–19115; H. L. HUNT, OPERATOR, ET AL., DOCKET NO. G–19116; HUNT OIL COMPANY, DOCKET NO. G–19117; WILLIAM HERBERT HUNT TRUST ESTATE, OPERATOR, DOCKET NO. G–19118; LAMAR HUNT TRUST ESTATE, DOCKET NO. G–19119; GEORGE W. GRAHAM, INC., OPERATOR, ET AL., DOCKET NO. G–19123; PLACID OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G–19124; PLACID OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G–19125

ORDER GRANTING APPLICATION FOR RECONSIDERATION AND MODIFYING OPINION AND ORDER

(Issued February 24, 1964)*

On February 7, 1964, an application was filed by the above-listed producers for modification of ordering paragraph (D) of the Order accompanying Opinion No. 412–A, 31 FPC 181. The relevant factual background is as follows:

In Opinion No. 412, issued December 9, 1963, 30 FPC 1438, the Commission required applicants (1), in ordering paragraph (E), to file supplements within 30

---

*Reconsideration and stay denied by order issued April 17, 1964, 31 FPC 946. Affirmed on all substantive rulings, remanded on refund question, *sub nom. Continental Oil Co., et al. v. F.P.C.*, — F. 2d —, (CA5–1967).

days to their rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contracts, and (2), in ordering paragraph (F), to refund to Natural Gas Pipeline Company of America a sum equal to the difference between the price charged to and collected from Natural and the respective conditioned initial price applied to all volumes paid for by Natural after November 2, 1961, with interest at 7 percent per annum until full refund has been made. On December 27, 1963, applicants requested that we either modify our findings and order or, in the alternative, grant a stay of paragraphs (E) and (F) until judicial review could be obtained. On January 24, 1964, we issued Opinion No. 412-A wherein we refused to modify our findings and order, but conditionally stayed the requirements of paragraphs (E) and (F) pending judicial review of Opinion No. 412 or until the Order otherwise becomes final, *e.g.*, expiration of the time limitation for the filing of such review.

Two conditions were attached to the stay. The first, in paragraph (C), requires applicants to deposit in a special account with a bank or trust company all sums received subsequent to December 9, 1963, in excess of the conditioned initial prices deemed necessary for the protection of the public interest and to hold such monies intact. The second condition, set forth in paragraph (D), provides that if our order in this proceeding is upheld on judicial review, applicants shall also refund, with interest at 7 percent, all excess amounts received after December 9, 1963, by virtue of the stay in the reduction in rate directed in paragraph (E) of the initial order.

Applicants contend that since they are required to deposit in a bank or trust company all excess charges collected after December 9, 1963, and are thus deprived of the use of this money and the opportunity of enjoying a return on an investment of such revenues, no interest should be required if and when the refund thereof becomes necessary. Our action in ordering the trust fund to be set up was based on a similar requirement in a November 5, 1963, order in *United Gas Pipe Line Company, et al.*, Docket No. CP60-36, *et al.*, which in turn was patterned after an order of the Court of Appeals for the Fifth Circuit[1] staying the effectiveness of our order in Opinion No. 398, *Placid Oil Company, et al.* On November 12, 1963, however, the court issued another order in that case involving other producers[2] which does not require the establishment of escrow accounts and allows the producers to retain beneficial use of the excess charges pending determination of the appeal by the court. Any refunds made thereafter are required by the court's order to include interest at 7 percent. In our opinion this latter method is to be preferred. Accordingly, we shall amend the proviso included in paragraph (C) of the order accompanying Opinion No. 412-A so as to permit the applicants to hold and utilize in their business activities all amounts collected after December 9, 1963, currently being charged in excess of the maximum rates prescribed in paragraphs (B) and (C) of the order accompanying Opinion No. 412, but shall require them to make any refunds with interest at 7 percent.

The temporary authorizations issued in the various dockets in this proceeding provided, and in the case of the severed dockets still provide, that no change from the 18 cents per Mcf price there specified could be made during their terms. This action was necessary since the alleged emergency conditions requiring the issuance of the temporary authorizations did not provide opportunity for engaging in the complex and time-consuming review needed to determine the potential effect that higher prices might have through the triggering of general price rises by means of favored nation clauses and price redeterminations. In our Opinion issuing permanent certificates to the applicants presently seeking revision of our order, we did not impair by appropriate condition their right to charge the full contract prices until such time as just and reasonable rates can be fixed for their sales. However, examination of existing prices in Texas Districts Nos. 2, 3 and 4 discloses that if we permit the applicants to file for the 20 cents per Mcf initial rate authorized under their contracts or for the first step periodic escalation to 22 cents per Mcf, which is contractually due between September 1, 1964 and February 1, 1965, depending on the date of initial delivery under each contract, there could be a substantial price impact on other gas purchase contracts in the area under price redetermination clauses.

---

[1] *Callery Properties, Inc., et al.*, v. *F.P.C.*, No. 20872, *et al.*, order issued October 17, 1963. [Commission reversed and case remanded August 14, 1964, 335 F. 2d 1004. Petitions for cert. pending.]

[2] *J. Ray McDermott & Co., Inc., et al.*, v. *F.P.C.*, No. 20967, *et al.* [Commission reversed and case remanded August 14, 1964, 335 F. 2d 1004. Petitions for cert. pending.]

In *Placid* and *United*, Opinions Nos. 398 and 399, we adopted the policy, for reasons adequately set forth therein, of imposing conditions in permanent certificates to prevent the collection of rates in excess of the level at which triggering of favored nation clauses will occur or which might serve as a basis for price redeterminations at a higher rate. The same policy is equally applicable with regard to the permanent certificates issued in this proceeding. Accordingly we shall at this time order a moratorium on all price increases in excess of 18 cents per Mcf for the sales in Districts Nos. 2 and 4 and 19 cents per Mcf for those in District No. 3, inclusive of tax reimbursement, pending our final decision in the recently initiated Docket No. AR64-2 area rate proceeding, which has as its purpose the fixing of just and reasonable rates on production in these Districts, or until January 1, 1968, whichever is earlier. Any rate increase filing by applicants to a level higher than the limits set forth above would have an adverse impact on the pricing structure in the areas involved.

We are aware that the Court of Appeals, in the orders referred to stayed the operation of the moratorium ordered by us in Opinion No. 398. Although we have followed the terms of those orders in this proceeding insofar as possible, we are unable, in view of the extensive repercussions which would flow from the very charging of rates higher than 18 cents in District Nos. 2 and 4 and 19 cents in District No. 3, even when collected subject to refund, to grant a stay of the moratorium herein ordered.

The Commission orders:

(A) The application for reconsideration of Opinion No. 412-A is granted.

(B) Ordering paragraph (C) of the order accompanying Opinion No. 412-A is amended to provide:

> (C) The completion of the acts and compliance with the requirements set forth in ordering paragraph (E) of the Order accompanying Opinion No. 412 are stayed pending judicial review of said Opinion or until the order otherwise becomes final, provided, however, that with respect to all amounts currently being charged in excess of the rates prescribed in paragraphs (B) and (C) of the Order accompanying Opinion No. 412 each applicant shall execute and file within 60 days an agreement and undertaking to comply with the refund requirement specified in paragraph (D) below.

(C) Ordering paragraph (E) of the Order accompanying Opinion No. 412-A is redesignated paragraph (F); a new ordering paragraph (E) is added to provide:

> (E) Each certificate issued in paragraph (A) of the Order accompanying Opinion No. 412 is further conditioned to provide for a moratorium on the filing of all price increases in excess of 18 cents per Mcf for the sales in District Nos. 2 and 4 (Docket Nos. G-19117, G-19118, G-19119, G-19123 and

G–19124) and 19 cents per Mcf for those in District No. 3 (G–19115, G–19116 and G–19125), inclusive of tax reimbursement pending the issuance of a final decision in the area rate proceeding in Docket No. AR64–2 or until January 1, 1968, whichever is earlier.

(D) In all other respects said Opinion No. 412–A and Order is confirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

IDAHO POWER COMPANY, DOCKET NO. E–7144

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued February 24, 1964)

Idaho Power Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Idaho, Oregon and Nevada, with its principal business office at Boise, Idaho, filed an application on December 16, 1963 and an amendment thereto on February 3, 1964 for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of unsecured Promissory Notes in an aggregate principal amount not to exceed $20,000,000 at any one time outstanding. Each Note will be issued prior to December 31, 1964, and will mature not later than one year after its date of issue, the final maturity of all Notes being not later than December 31, 1965, and will bear interest at the rate applicable in New York City, at the time of each borrowing, to commercial bank loans of such form and character. As of the date of the application, that interest rate was 4½%.

By order issued December 10, 1962, the Commission authorized Applicant to issue up to $30,000,000, principal amount of short-term promissory notes, the authorization to expire on December 31, 1963. As of December 17, 1963, Applicant had outstanding $3,800,000, aggregate principal amount of promissory notes.

The request herein for authorization to issue Notes in the maximum principal amount of $20,000,000 will cover the issuance of New Notes and the issuance of any renewal Notes, including renewal Notes for the payment of any Notes presently outstanding under the above-described authorization in Docket No. E–7067.

During 1964, Applicant expects to undertake permanent financing arrangements, including the issuance of equity securities, probably during the fall of that year; the exact form, amount and times of issuance of such long-term corporate securities necessarily will depend upon future market and other conditions. However, should market or other conditions cause a delay in or postponement of the contemplated permanent or long-term financing, Applicant states that it may be necessary to issue short-term notes up to the amount requested in order to avoid delay and additional cost in the construction of essential service facilities.

The proposed issuance of Notes will enable Applicant to (1) issue renewal or replacement Notes on or before December 31, 1964 for those presently outstanding; and (2) carry forward Applicant's construction program for 1964 which is currently estimated at $19,813,000, described as follows: $5,032,000 for completion of roads and preliminary work at Applicant's Hell's Canyon dam project; $3,493,000 toward the construction of Brownlee-Boise 230 kv line (total cost estimated at $4,500,000); $5,624,000 for generation; $4,762,000 for transmission lines; $3,840,000 for substations; $4,119,000 for distribution lines; and $1,468,000 for general equipment.

None of the proposed Notes will be resold to the general public, and no finder's fee or other negotiation fee, commission or remuneration will be paid in connection therewith to any third person.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Nevada Public Service Commission, the Oregon Public Utility Commissioner, and to the Governor of each of those States. Notice of the application was also given by publication in the Federal Register on December 28, 1963 (28 F.R. 14455), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest with the Federal Power Commission, Washington, D.C., 20426 on or before January 20, 1964. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Idaho Public Utilities Commission, by order dated January 17, 1964 authorized Applicant to issue up to an aggregate of $30,000,000 of Promissory Notes during the period ending December 31, 1964.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1957, *Idaho Power Company*, Docket No. E-6781 (18 FPC 603).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, would constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a state, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance is therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, is appropriate for and consistent with the proper performance by Applicant of service as a public utility and will not impair its ability to perform that service and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the maturity of all Notes to be issued pursuant thereto being within one year of their respective dates of issue and the final maturity of all such Notes being not later than December 31, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-144

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 24, 1964)

On December 23, 1963, Southern Natural Gas Company (Applicant) filed in Docket No. CP64-144 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place 10.72 miles of 4.5-inch pipeline extending from Eloi Bay Field to Point Comfort Field, Chandeleur Sound Area Offshore, St. Bernard Parish, Louisiana, all as more fully described in the application.

Phillips Petroleum Company, the only gas producer delivering natural gas to Applicant from Point Comfort Field, has advised Applicant that the only well in this field (Comfort No. 1) has been plugged and abandoned because of depletion and that no further development of the field is planned. As a result of this depletion the pipeline above described will not be used or needed in the future.

The original cost of the facilities to be abandoned was approximately $244,000.

Applicant states that inasmuch as the cost of salvaging the said facility would be greater than its value, it is proposed to leave the same in place.

No cessation or interruption of service to customers will result from the subject abandonment.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Southern Natural Gas Company, of the facilities hereinbefore described be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AUSTRAL OIL COMPANY, INC., DOCKET NOS. G–19831 AND RI60–365

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued February 25, 1964)

On January 2, 1964, Austral Oil Company, Inc. (Austral) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Austral. The offer relates to sales made under Supplement Nos. 6 and 7 to Austral's FPC Gas Rate Schedule No. 4 in San Patricio County, Texas (Texas R.R. Com. District #4). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Austral on April 1 and November 6, 1960.

Under the terms of the offer, Austral proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Austral's annual revenues will be decreased about $5,340 from the presently effective rates. No protests or objections have been filed to the offer.

Austral, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $17,500, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Austral's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Austral's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Austral on January 2, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

---

[1] Austral's FPC Gas Rate Schedule No. 4 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

The Commission orders:

(A) The order of settlement filed with the Commission by Austral January 2, 1964, is hereby approved in accordance with the provisions of this order.

(B) Austral shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and executed contractual amendment to its FPC Gas Rate Schedule No. 4 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Austral shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Austral has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Austral's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Austral, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DELANEY OIL COMPANY (OPERATOR), ET AL., DOCKET NOS. G-20556 AND RI60-458

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued February 25, 1964)

On January 6, 1964, Delaney Oil Company (Operator), *et al.* (Delaney) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Tranmission Company (TGT) by Delaney. The offer relates to a sale made under Delaney's FPC Gas Rate Schedule No. 1 in Duval County, Texas (Texas R.R. Com. District #4). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Delaney on July 6 and December 7, 1960.

Under the terms of the offer, Delaney proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from its rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Delaney's annual revenues will be decreased about $1,975 from the presently effective rates. No protests or objections have been filed to the offer.

Delaney, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $5,800, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Delaney's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Delaney's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Delaney on January 6, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Delaney on January 6, 1964, is hereby approved in accordance with the provisions of this order.

(B) Delaney shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Delaney shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, with simple interest at 7 percent, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Delaney has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

---

[1] Delaney's FPC Gas Rate Schedule No. 1 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

(E) The acceptance by the Commission of Delaney's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Delaney, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP64-135

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 25, 1964)

On December 10, 1963, East Tennessee Natural Gas Company (Applicant) filed in Docket No. CP64-135 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional submerged pipeline crossing of the French Broad River-Douglas Reservoir, Jefferson and Cocke Counties, Tennessee, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 3,465 feet of single 6-inch line, together with necessary appurtenances. The proposed crossing is located on a lateral line serving Jefferson-Cocke County Utility District which Utility District is the sole supplier of natural gas to White Pine and Newport, Tennessee.

Applicant states that the existing crossing is in danger of being washed out because of bank scouring and erosion and that, should said crossing fail, natural gas service would be lost in White Pine and Newport. Applicant states further that the design of the proposed crossing will guard against future scouring or erosion of the banks.

The estimated cost of the proposed facilities is $149,800, which cost will be financed from general funds and/or from short term loans.

On January 2, 1964, Applicant was granted a temporary certificate authorizing the proposed project.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 3, 1949, in Docket No. G-1065 (8 FPC 836).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, East Tennessee Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

RAVENCLIFFS DEVELOPMENT COMPANY, DOCKET NO. G-17312, RI60-341 AND RI62-67

ORDER REJECTING OFFER OF SETTLEMENT

(Issued February 25, 1964)

On September 9, 1963, Ravencliffs Development Company (Ravencliffs) filed an Offer of Settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. The offer relates to proposed increased rates involved in the above entitled proceedings ranging from 25¢ per Mcf to 26.5¢ per Mcf for gravity or uncompressed gas, and from 28¢ per Mcf to 29.5¢ per Mcf for compressed gas sold under its FPC Gas Rate Schedule No. 1 by Ravencliffs to United Fuel Gas Company in the Ravencliffs Field, Wyoming and Raleigh Counties, West Virginia.[1] The three successive proposed rate increases concerned herein were filed by Ravencliffs as Supplement Nos. 20, 21 and 22 under its FPC Gas Rate Schedule No. 1. Each was suspended by the Commission for the statutory period, and each was placed in effect, subject to refund, by Ravencliffs' motion at the expiration of the suspension period.

In its offer, Ravencliffs proposes a settlement rate of 26.5¢ per Mcf for all gas sold under its Rate Schedule No. 1, that it make no refunds of any monies collected subject to refund, and that it waive the right to file for any contractually authorized increases in rate until December 31, 1968.

---

[1] At the time the offer was filed, the purchaser was Amere Gas Utilities Co. However, United Fuel merged with Amere, and became the purchaser as of September 30, 1963.

Ravencliffs derived its proposed settlement rate of 26.5¢ per Mcf by considering gas produced from wells completed prior to June 7, 1954[2] as "old" gas to which the area increased rate ceiling was applied, and gas produced from wells completed subsequent to June 7, 1954 as "new" gas to which the initial rate ceiling was applied.

Ravencliffs received grandfather certificate authorization after the *Phillips* decision to continue the sale of natural gas under its FPC Gas Rate Schedule No. 1 at an initial rate of 15¢ per Mcf which was the effective rate under the contract comprising its rate schedule on June 7, 1954. That initial rate was applicable not only to all gas being sold under the contract on June 7, 1954, but also to all gas that might thereafter be sold from acreage then dedicated under the contract. The initial rate ceiling set forth in the policy statement issued on September 28, 1960 (24 FPC 818) did not purport to have any applicability to permanent certificates that had previously been granted.[3] It thus has no applicability to Ravencliffs' rates.

Ravencliffs' initial rate could only be changed in accordance with the rate changing procedures in Section 4 of the Act. To the extent that Ravencliffs filed for rate increases under Section 4 subsequent to the issuance of the policy statement the area increased rate ceiling set forth therein was considered applicable to the proposed rates and the proposed rates were suspended because they were in excess of the increased rate ceiling for pipeline quality gas. In approving settlements we have consistently adhered to the increased rate ceiling level as the proper level for settlement rates, except in special circumstances which are not involved here. No reason has been advanced by Ravencliffs that would justify our approval in this case of a settlement rate in excess of the increased rate ceiling. We must therefore reject Ravencliffs' offer.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject Ravencliffs' Offer of Settlement filed with the Commission on September 9, 1963.

The Commission orders:

The Offer of Settlement filed by Ravencliffs on September 9, 1963, in these proceedings, is hereby rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

H. R. SMITH (OPERATOR), ET AL., DOCKET NO. RI61-29

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued February 25, 1964)

On January 6, 1964, H. R. Smith (Operator), *et al.* (Smith), submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to Tennessee Gas Transmission Company (TGT) by Smith. The offer relates to a sale made under Smith's FPC Gas Rate Schedule No. 8 in Nueces County, Texas (Texas R.R. Com. District #4). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective by Smith on January 7, 1961.

---

[2] The date of issuance of the United States Supreme Court opinion in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, affirming the Commission's jurisdiction over producers of natural gas.

[3] In general rate settlements, however, we have not approved settlement rates in excess of the applicable initial rate ceiling, even if permanently certificated.

Under the terms of the offer, Smith proposes to eliminate the favored-nation, and the periodic escalation provisions from its rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Smith's annual revenues will be decreased about $920 from the presently effective rates. No protests or objections have been filed to the offer.

Smith, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $2,740 exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Smith's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Smith's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Smith on January 6, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Smith on January 6, 1964, is hereby approved in accordance with the provisions of this order.

(B) Smith shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 8, eliminating the favored-nation and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Smith shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, with simple interest at 7 percent, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

---

[1] Smith's FPC Rate Schedule No. 8 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

(D) Upon notification by the Secretary of the Commission that Smith has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Smith's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Smith, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-132

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 25, 1964)

On December 6, 1963, supplemented on January 10, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-132 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 30 feet of 4-inch pipeline, a positive meter and regulator station, heater and separator and appurtenant equipment to be located at approximately Milepost 6.07 on Applicant's 8-inch Allentown Field Line in Angelina County, Texas, all as more fully described in the application.

The proposed facilities will be used for the sale and delivery of natural gas from Applicant's system to the City of Alto, Texas, for resale and distribution through that City's proposed distribution system and to the community of Wells, Texas.

The estimated peak day and annual volumes for the third year are 524 Mcf and 39,650 Mcf respectively.

The total cost of the facilities proposed is $11,607, which cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942 in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction

of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-219

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 26, 1964)

On December 12, 1963, Northern Natural Gas Company (Northern) filed in Docket No. CP63-219, an application for temporary authorization and to amend an order of the Commission issued August 6, 1963, granting a certificate of public convenience and necessity authorizing, among other things, an increase in contract demand deliveries to the City of Sioux Center, Iowa. Northern seeks authorization to further increase contract demand deliveries from 920 Mcf to 955 Mcf daily, all as more fully set forth in the application to amend on file with the Commission. The additional 35 Mcf daily will be used by the City of Sioux Center to meet its system requirements during the present heating season. No additional facilities are required.

The Commission by letter of January 9, 1964 granted Applicant temporary authorization as requested on December 12, 1963.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 24, 1964 (29 F.R. 626). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued August 6, 1963, in Docket No. CP63–219 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued August 6, 1963, in Docket No. CP63–219 be and the same is hereby amended by authorizing Northern to further increase contract demand deliveries to the City of Sioux Center, Iowa, from 920 Mcf to 955 Mcf daily, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, COLUMBIA GULF TRANSMISSION COMPANY, UNITED FUEL GAS COMPANY, DOCKET NO. CP64–141

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 26, 1964)

On December 18, 1963, Tennessee Gas Transmission Company, Columbia Gulf Transmission Company and United Fuel Gas Company filed in Docket No. CP64–141 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two emergency interconnections between the pipeline systems of Tennessee and Columbia Gulf for the emergency exchange of natural gas under the terms of an exchange letter agreement dated November 15, 1963, all as more fully set forth in the application on file with the Commission.

The interconnections will be utilized on an emergency basis only, on a gas-for-gas exchange basis, with deliveries or receipts by Columbia Gulf being for the account of United Fuel, its only customer, for which it provides a transportation service. The proposed emergency interconnections will be located at the point where Columbia Gulf's 30-inch main Line 200 crosses Tennessee's 30-inch discharge header No. 4 in Morehead, Rowan County, Kentucky, and at the point where Columbia Gulf's 30-inch main Line 100 crosses Tennessee's 30-inch Kinder-Portland Line 800–1 in La Salle Parish, Louisiana.

The estimated cost of the interconnections is $41,285 and will be defrayed from cash on hand by Columbia Gulf for the facilities in La Salle Parish, Louisiana, and by Tennessee for the facilities in Rowan County, Kentucky.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant, Columbia Gulf Transmission Company, a Delaware corporation, having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G-15524 (20 FPC 681).

(3) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 9, 1958, in Docket No. G-13372 (20 FPC 347).

(4) The proposed emergency exchange of natural gas between the Applicants, and the construction and operation of the proposed facilities for the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed exchange and delivery of natural gas on an emergency basis, and the construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding, jointly, authorizing the exchange and delivery of natural gas as hereinbefore described, and the construction and operation of facilities for the transportation and sale of natural gas in interstate commerce, as more fully described in the joint application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7145

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued February 27, 1964)

Northern States Power Company (Minnesota) ("NSP-MINN") filed an application on December 20, 1963 for an order, pursuant to Sections 203 and 204 of the Federal Power Act, authorizing NSP-MINN (1) to acquire the electric distribution system and other properties and assets of Deichen Power, Inc. (Deichen), and (2) to issue not to exceed 19,000 shares of its Common Stock in connection with such acquisition. NSP-MINN is a corporation organized under the laws of the State of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota, with its principal business office at Minneapolis, Minnesota. NSP-MINN owns and operates utility properties and furnishes electric service at retail in 423 communities and adjacent territories and electric energy at wholesale for resale to 31 additional communities and at wholesale to rural electric cooperative associations and other utility companies. Of the 454 communities so served, 401 (including Minneapolis and St. Paul) are located in Minnesota, 18 in North Dakota, and 35 in South Dakota. NSP-MINN also furnishes natural gas at retail, steam heating service and telephone service in some communities in its electric service area. NSP-MINN is the parent company of Northern States Power Company (Wisconsin).

Deichen furnishes electric service at retail to 1317 customers from its electric distribution system which it owns and operates in parts of Blue Earth, Rice, Steele, and Waseca Counties in the State of Minnesota. Included in the area served are 4 unincorporated communities, Clinton Falls, Meriden, Smiths Mill, and Warsaw, but no incorporated communities are served. Deichen's electric distribution system consists of approximately 283 pole miles of distribution lines, together with approximately 100 pole miles of branch lines and other related equipment and appurtenances. These lines consist of 11 miles, 7200 volt, 3 phase; 83 miles, 7200 volt, single phase; 187 miles, 4800 volt; and 2 miles, 4000 volt.

Deichen purchases all of its energy requirements from the City of Waseca, which in turn purchases all of its energy requirements from NSP-MINN.

Pursuant to the provisions of an agreement between NSP-MINN, Deichen, and Harold F. Deichen, the sole stockholder of Deichen Power, dated November 27, 1963, NSP-MINN proposes to acquire and Deichen Power proposes to sell all of the latter company's properties at a base value of $800,000, as adjusted, in consideration of the delivery by NSP-MINN of shares of its Common Stock at $35 per share equal to the adjusted base price.

The Agreement provides for the addition to the $800,000 base value of: (1) additions to electric plant from October 31, 1963, to the closing date, at book cost; (2) cash on hand and in banks; (3) accounts and notes receivable; (4) materials and supplies; (5) twenty shares of Common Stock of Waseca Industrial Development Corporation; and (6) prepaid insurance. The Agreement also provides for the subtraction from the $800,000 base value of: (1) accounts and wages payable; (2) notes and contracts payable; (3) accrued Federal and Minnesota State Income Taxes; (4) accrued taxes other than income taxes; (5) accrued interest; (6) customers' deposits; and (7) balance ($156,500 at October 31, 1963) of outstanding Collateral Trust Bonds, due 1964.

Applicant states that there is no affiliation between NSP-MINN and Deichen and that the consideration which would be paid by NSP-MINN to Deichen was arrived at by negotiations between officers of NSP-MINN and Harold F. Deichen, both as President of Deichen and as its sole stockholder. Consideration was given to geographical location of Deichen's electric distribution system in relation to properties of NSP-MINN which surround and intermingle with it, its present and potential earning power, the average use per customer, market value and dividend record of NSP-MINN's Common Stock, and the income tax effect to Harold F. Deichen as well as other factors.

According to the application, Deichen electric system can readily be integrated into the NSP-MINN system and operating efficiencies improved and economies effected.

According to the application, Deichen's records do not reflect original cost and accumulated provision for depreciation. NSP-MINN has made a determination of estimated original cost by the application of representative unit costs to a detailed field inventory of units of property and has made a determination of estimated accumulation for depreciation "on a straight-line basis predicated upon present attained average age, estimated average life, dispersion type and net salvage for each plant account."

On the basis of estimated original cost less estimated accumulated provisions for depreciation and the balances in the several other accounts as of October 31, 1963, NSP-MINN would have acquired the following assets and assumed the following liabilities as of October 31, 1963:

Assets and Other Debits	
Utility plant	$820, 975
Provision for depreciation	(232, 245)
Net plant	588, 730
Other property and investments	2, 000
Current and accrued assets	135, 156
Total assets and other debits	725, 886

Liabilities and Other Credits	
Debt	250, 500
Current and accrued liabilities	63, 910
Total liabilities and other credits	314, 410
Net assets	411, 476

NSP-MINN, as of October 31, 1963, would have acquired the above net assets for a consideration of $600,950 ($800,000 base value referred to hereinbefore, plus and minus certain adjustments), payable in NSP-MINN's Common Stock at $35 per share. NSP-MINN proposes to record the consideration by credits to the following accounts:

Account 201, Common Stock, 17,170 shares, $5 par	$85, 850
Account 207, Premium on Capital Stock, 17,170 shares, @ premium of $30 per share	515, 100
Total	600, 950

On the basis of the estimated original cost of plant and estimated accumulated provision for depreciation, the consideration of $600,950 will be $189,474 in excess of the net assets of $411,476, and therefore, an acquisition adjustment of $189,474 will be created on the books of NSP-MINN. NSP-MINN proposes to eliminate the entire amount of the acquisition adjustment by a debit to Unappropriated Earned Surplus. The final accounting when rehabilitation costs are considered may increase the acquisition adjustment to be absorbed by surplus. Proposed Journal entries for such final accounting are required to be filed with the Commission under provisions of the Uniform Systems of Accounts.

According to the Applicant, the facilities to be acquired will be integrated into NSP-MINN's system, its power source strengthened and its voltage uniformity improved which will substantially improve operating efficiency in the area. The improvement and rehabilitation of the Deichen system is urgent. The Deichen substation is now loaded nearly to its limit and further growth in load will require its rebuilding to greater capacity. The additional capital expenditure to achieve these improvements in service if made by Deichen would probably result in general rate increases. Applicant states that an application of the present electric rates of NSP-MINN to Deichen customers would result in decreases to some customers and increases to others; however, no change in the Deichen rates will be made for a year or two during which time the rates of NSP-MINN will be reduced. Applicant has announced new and lower rates for residential, commercial and farm customers to become effective in March, 1964. Applicant also states that additional rate reductions will be made if the proposed federal income tax revisions are enacted all of which will make the comparison between NSP-MINN rates and the Deichen rates more favorable when the NSP-MINN rates are eventually applied to the Deichen customers.

After the consummation of the proposed transaction, Deichen's contract with the City of Waseca for the purchase of electric energy at wholesale will be terminated. Applicant states it is presently negotiating with the City as to the necessary changes in the contract between the City and NSP-MINN after Applicant acquires Deichen's electric distribution system.

Written notice of the application has been given to the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and to the governors of each of those States. Notice of the application was also published in the Federal Register on January 3, 1964 (29 F.R. 58) stating that any person desiring to be heard or to make any protest with reference to said application should, on or before the 27th day of January, 1964 file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petitions or protests have been received.

The Commission finds:

(1) NSP-MINN is a corporation, organized and operating under the laws of the State of Minnesota. It owns and operates facilities for the transmission and sale at wholesale of electric energy generated in the States of Minnesota, North Dakota, South Dakota, and Wisconsin, and consumed outside the State in which it is generated, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy, facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter, and NSP-MINN is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, as described above NSP-MINN will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Commission, the electric facilities of Deichen, another person within the meaning of and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of Deichen's electric facilities by NSP-MINN, as described above upon the terms and conditions specified in the application

and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

(4) The proposed issuance and sale of Common Stock as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of Deichen's facilities by NSP-MINN, all as described above are hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) The proposed issuance of a maximum of 19,000 shares of Common Stock by NSP-MINN for the purpose of acquiring the assets of Deichen upon the terms and conditions described above is hereby authorized subject to the provisions of this order.

(C) NSP-MINN shall record the transaction herein authorized and the facilities and properties described above as provided in the Commission's Uniform System of Accounts prescribed for public utilities and licensees.

(D) NSP-MINN shall dispose of the electric plant acquisition adjustment resulting from the proposed transaction by a debit to account 216, Unappropriated Earned Surplus.

(E) This authorization shall expire unless the transactions herein authorized are consummated within 90 days from the date of issuance of this order.

(F) The foregoing authorization and approval is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission, and nothing in this order shall be construed as an acquiescense by this Commission in any estimate or determination of cost, depreciation or valuation of the property to be transferred, claimed or asserted as a result of this transaction.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

POWER AUTHORITY OF THE STATE OF NEW YORK, PROJECT NO. 2000

ORDER REJECTING APPLICATION FOR REHEARING

(Issued February 27, 1964)*

On February 13, 1964, Power Authority of the State of New York (the Authority) filed an application for rehearing of the Commission's Opinion No. 415 and accompanying order issued January 13, 1964, in the above-entitled matter, in which the Commission denied the Authority's applications for exemption from annual charges in accordance with Section 10(e) of the Federal Power Act for the period from July 17, 1958, through December 31, 1961, except for partial exemptions totaling $9,621.70.

---

*Amended by Order issued April 20, 1964, 31 FPC 962.

The application for rehearing presents no new argument or citation of authority beyond that which was presented, and carefully considered by the Commission, prior to the aforesaid order of January 13, 1964. Upon full reconsideration, we believe the aforesaid order was correct, and should be adhered to, for the reasons stated in Opinion No. 415.

The application for rehearing must also be rejected upon the ground that it was not timely filed. Section 313(a) of the Federal Power Act and Section 1.34(a) of this Commission's Rules of Practice and Procedure provide that an application for rehearing is to be filed within 30 days after the issuance of the original order. The Authority did not file its application until the 31st day. Since the 30-day period is the maximum period prescribed by the statute, this Commission has no power to grant any extension of time.

The Commission finds:

(1) No new facts or principles of law have been presented by the Applicant in its application for rehearing which either were not fully considered by the Commission prior to its order herein or, having been now considered, warrant further hearing, modification, or revocation of said order.

(2) The application for rehearing in the present proceeding was not filed within 30 days of the issuance of the order as to which rehearing is sought.

The Commission orders:

The Application for Rehearing filed herein by Power Authority of the State of New York be and the same hereby is rejected and denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SOUTHERN NATURAL GAS COMPANY v. UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-7

ORDER INSTITUTING PROCEEDING, DESIGNATING PRESIDING EXAMINER AND FIXING DATE FOR PREHEARING CONFERENCE

(Issued February 27, 1964)

On February 21, 1963, Southern Natural Gas Company (Southern) filed a formal complaint against United Gas Pipe Line Company (United) requesting that the Commission recognize Southern's right to reduce the effective billing demand and the charges thereunder for transportation of gas by United for Southern, under United's Rate Schedule T-3. Such transportation is from Carthage Field, Texas to Perryville, Louisiana, pursuant to a contract between the two parties executed on May 7, 1951.

United filed an answer to the complaint on March 19, 1963, and Southern filed a reply thereto on April 3, 1963. Neither party to the dispute requested a hearing.[1]

---

[1] However, United requested that all of its customers who would be adversely affected by a decision favorable to Southern be given an opportunity to participate in any hearing which might be ordered.

Article VIII of the contract provided that the billing demand should be determined by the maximum daily volume of gas which Southern elected to deliver to United for transportation during the 12 months period ending with the last day of the billing month, up to a maximum of 55,000 Mcf per day. Southern contends that this contract provision affords it the option of reducing its billing demand below 55,000 Mcf as quantities of gas available to Southern for transportation over United's facilities decline. Southern states that since April 18, 1962 it has tendered a maximum of 35,000 Mcf per day to United for transportation under the contract and hereafter expects to tender no more than that amount.

On the other hand, United contends that it intended to permanently dedicate and assign 55,460 Mcf (55,000 Mcf at 15.025 psia) of the transmission capacity of its line for the purpose of transporting the maximum daily quantity allegedly specified in the contract. Thus, the parties are in disagreement as to whether their transportation contract provides a billing demand which is subject to change (depending upon the amounts of gas Southern elects to tender to United for delivery) or provides a fixed billing demand.

United further contends that the billing demand of 55,460 Mcf fixed by its Rate Schedule T-3, filed as part of its conversion tariff in accordance with Section 154 of the Regulations Under the Natural Gas Act, is in accordance with the contract. On July 2, 1952, United filed its contract as a rate schedule[2] which became effective on July 23, 1952. On the following day, July 3, 1952, United filed all of its rate schedules (including Rate Schedule T-3), in tariff form, along with an accompanying statement complying with Section 154.85. That section requires that each contract filed as a rate schedule be supplemented by a statement specifying those provisions of the contract which remain in effect as a service agreement and those which are superseded by or in conflict with the tariff provisions. Article VIII was not listed as a retained provision of the contract in United's filing. The Commission suspended Rate Schedule T-3 and the accompanying statement until January 3, 1953, upon which date they became effective, subject to refund. The issues raised by such suspension were resolved in a settlement agreement, covering numerous other matters as well, which was approved by the Commission on November 2, 1954.[3] Southern was a party to this agreement. For the purpose of implementing the terms of the settlement, United filed a revised tariff (including a modified Rate Schedule T-3), which became effective on August 1, 1954. United contends that this modified schedule provides for a fixed billing demand of 55,460 Mcf, in accordance with the contract and that Southern has no right to reduce it. Southern disputes United's claim that the conversion tariff was in accordance with the contract and contends that this tariff unlawfully abrogated its contractual right to change the billing demand, in violation of the *Mobile* doctrine.[4]

United rejoins that in any event, Southern is now estopped from challenging the tariff provisions relating to billing demand because of its past acquiescence in the changes in Rate Schedule T-3 made by the tariff.[5] Southern denies that there is such an estoppel on the ground that it may properly raise any question which was not expressly decided in the settlement proceeding.

---

[2] Designated Rate Schedule 126-B.

[3] Opinion No. 277, Docket No. G-1142, *et al.*, 13 FPC 398.

[4] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corporation*, 350 U.S. 332.

[5] There is some question as to whether United's tariff filed pursuant to the settlement agreement, effective August 1, 1954, provides the same billing demand as that contained in the conversion tariff, effective January 3, 1953.

Upon analysis of the pleadings, the Commission has concluded that Southern's complaint raises additional issues not specifically adduced by the parties. The most important of these issues is whether the provision relating to billing demand contained in United's Rate Schedule T-3, if determined to be fixed, is just and reasonable under the provisions of the Natural Gas Act. We do not believe therefore, that this case can be properly and adequately decided solely upon the basis of the formal pleadings and are instituting proceedings herein.

Nevertheless, it appears premature at this time to schedule an evidentiary hearing, since the issues here are primarily matters of law or regulatory policy and there should be few, if any, disputed questions of fact. Accordingly, we shall provide for the convening of a prehearing conference in order to afford the parties an opportunity to stipulate all relevant facts and permit the fixing of dates for the submission of briefs on the issues presented to the Examiner. Should this prove to be impossible the Presiding Examiner may, at his discretion, set a date for a trial-type hearing on the relevant, material and genuinely disputed matters not stipulated by the parties and issue such further procedural orders as may be appropriate.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act and the Regulations thereunder:

(1) That a proceeding be instituted as hereinafter ordered, for the purpose of resolving the following issues:

1. Whether the transportation contract between United and Southern provided a billing demand which was subject to change, depending upon the amounts of gas Southern elected to deliver to United up to 55,460 Mcf per day, or provided a fixed billing demand of 55,460 Mcf.

2. If it is determined that the contract provided a billing demand subject to change:

a. Whether United, in its conversion tariff, made a substantive change in the contract by providing a fixed billing demand and whether such a substantive change is within the intent and purpose of Section 154.85, and

b. Whether the tariff filed pursuant to the settlement changed the contract provision as to billing demand.

3. Whether United is free under the *Mobile* doctrine to seek a unilateral change in the transportation contract.

4. Whether Southern, by its past acquiescence and conduct with regard to the billing demand provision contained in United's Rate Schedule T-3, is now estopped from complaining of that provision.

5. If United's presently effective Rate Schedule T-3 specifies a fixed billing demand, whether that tariff provision is just and reasonable under the Natural Gas Act.

(2) That a prehearing conference be convened before a Presiding Examiner for the purpose of arriving at a stipulation of relevant and material facts, scheduling dates for the submission of briefs on the legal issues and considering such other matters as may be properly dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(3) That if all relevant and material facts are not stipulated the Presiding Examiner may, at his discretion, set a date for evidentiary hearing on the nonstipulated facts (including expert opinion thereon) and issue such further procedural orders as may be appropriate.

(4) That, following a stipulation of facts and/or an evidentiary hearing, if ordered, the parties submit briefs to the Presiding Examiner, and that he issue his decision on the matter in accordance with Section 1.30 of the Rules of Practice and Procedure.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 15 and 16 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a proceeding be instituted under the procedures set forth above on the issues stated in paragraph (1) above.

(B) Presiding Examiner Ewing G. Simpson, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose, shall preside at the prehearing conference and at any hearing which may be held on this matter, pursuant to the Rules of Practice and Procedure.

(C) Pursuant to the provisions of Section 1.18 of the Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EDT) on March 24, 1964, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the intent of the Commission, as set forth above.

(D) Petitions to intervene and notices of intervention may be filed with the Federal Power Commission, Washington, D.C., in accordance with the Commission's Rules of Practice and Procedure, Sections 1.18 and 1.37(f) [18 CFR 1.8 and 1.37(f)], on or before March 13, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NOS. 2344, 2345 AND 2349

ORDER PERMITTING WITHDRAWAL OF APPLICATIONS FOR LICENSES FOR MINOR PROJECTS

(Issued February 27, 1964)

On September 27, 1963, Wisconsin Power & Light Company, of Madison, Wisconsin, filed notices of withdrawal of applications for licenses for minor Project No. 2344 on Little Wolf River, Waupaca County, for minor Project No. 2345 on Yahara River, Rock County, and for minor Project No. 2349 on Rock River, Rock County—all within the State of Wisconsin. No lands of the United States are involved.

The projects have installed capacities of 320 kilowatts, 260 kilowatts and 320 kilowatts, respectively.

All of the projects are constructed and have served their economic usefulness. On or before May 27, 1963, Applicant discontinued the use of the project works for the generation of electric power and does not propose to again use the project works for power purpose. Applicant states that it is presently negotiating with units of local government with a view towards conveying ownership of the dam and real estate for recreational use and similar purposes.

The Commission finds:

In the circumstances recited above, permission to withdraw the subject applications will not be inconsistent with the public interest.

The Commission orders:

Wisconsin Power & Light Company is hereby permitted to withdraw its pending applications for licenses for minor Project Nos. 2344, 2345 and 2349.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NOS. 2283 AND 2284

ORDER AMENDING LICENSES (MAJOR)

(Issued February 28, 1964)

Applications were filed on January 13, 1964, by Central Maine Power Company, licensee for Project Nos. 2283 and 2284, for amendment of Article 20 of the respective licenses for the projects which provides for possible future obligation of the licensee in respect to fish and wildlife resources.

Specifically, the licensee requests that Article 20 of each license be deleted and that there be substituted in the license in lieu thereof the language of Article 15 of Form L-3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States." 30 FPC 1658

The Commission finds:

It will not be inconsistent with the public interest to amend our orders of July 5 and August 8, 1962, respectively, issuing licenses for Project Nos. 2283 and 2284 as hereinafter provided.

The Commission orders:

(A) The orders issued July 5 and August 8, 1962, in Project Nos. 2283 and 2284 are hereby amended by deleting Article 20 from each license order and substituting in lieu thereof the following new Article 20:

Article 20. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(B) This amendment in the manner set out above shall not operate to alter or amend the licenses in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the licenses.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the amended licenses. In acknowledgment of the acceptance of the amended licenses, this order shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued February 28, 1964)

Application was filed on June 10, 1963 and supplemented on August 1, 1963, by Sacramento Municipal Utility District, licensee for major Project No. 2101, for further amendment of its license for the project, which is under construction on tributaries of the American River in El Dorado County, California, affecting lands of the United States within Eldorado National Forest.

The application seeks to include in the license the proposed Robbs Peak Powerhouse with an installed capacity of 25,000 kilowatts in one generating unit on the shoreline of the completed Union Valley reservoir, and a penstock extending from the outlet portal of the completed Robbs Peak tunnel to the proposed powerhouse.

The Robbs Peak power plant is one of three power plants contemplated by Article 44 of the license for the project to develop the power potential between the Loon Lake and Union Valley reservoirs at such times as this Commission may direct, if such plants are economically sound and in the public interest. In this connection, the application points out that inasmuch as only 2,500 feet of penstock and a powerhouse are required to develop the approximately 400 feet of head between Robbs Peak dam and Union Valley reservoir, the resultant capacity developed is relatively inexpensive.

According to staff studies, the average annual gross generation of Robbs Creek power plant will be about 50 million kilowatt hours (about 48 million kwh at load center) at 23 percent average load factor on the plant, and the estimated annual costs of Robbs Creek penstock and powerhouse, together with those of a transmission line to be proposed by the licensee for future Commission approval, are considered reasonable at $366,000, as are the estimated annual benefits of $656,000.

No specific time was requested in the application for commencement or completion of construction of the Robbs Creek facilities covered in the application. However, it would appear that August 1, 1964 for commencement, and August 1, 1966 for completion, are consistent with the stated need for the capacity of Robbs Peak powerhouse on the licensee's system in the summer of 1965.

The Department of the Interior, in reporting on the application, recommended for inclusion in the license, a special condition in the interests of fish and wildlife or their habitat.

The Department of Agriculture, in reporting on the application, recommended for inclusion in the license, a special condition in the interests of the Department.

The California Department of Water Resources has reported that the Robbs Peak power plant (penstock and powerhouse) are not in conflict with any projects planned or under consideration by that Department and, therefore, it has no objection to the application.

The Commission finds:

(1) The license, further amended as hereinafter provided, will not interfere or be inconsistent with the purposes for which Eldorado National Forest was created or acquired, and construction of the proposed additional project works as hereinafter ordered is economically sound and is in the public interest.

(2) Public notice of the filing of the application has been given. No protests were received.

(3) The authorized installed horsepower capacity of the project under this amendment is increased to 545,000 horsepower, and the increased annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

(4) The exhibits designated and described in PARAGRAPH I and PARAGRAPH II below conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent therein indicated.

The Commission orders:

(A) The exhibits designated and described in PARAGRAPH I and PARAGRAPH II below are hereby approved as part of the license for Project No. 2101 to the extent therein indicated.

(B) The license for Project No. 2101 is hereby further amended, effective as of December 1, 1963, as follows:

Paragraph I. Paragraph (2)(a) of the license is further amended by adding thereto the following described exhibit:

Exhibit K-24 (FPC No. 2101-175) entitled "Robbs Peak Penstock & Powerhouse, Proposed Project Boundary" insofar as it shows the plan and location of the penstock and powerhouse.

Paragraph II. Paragraph (2)(b) of the license is further amended by redesignating subparagraph 10 thereof as 11, and inserting the following new subparagraph 10:

10. Robbs Creek Powerhouse located on the shore of Union Valley Reservoir and containing one generating unit of 25,000-kw capacity, served by a single penstock originating at the outlet portal of Robbs Creek Tunnel; and by adding thereto the following described exhibits:

Exhibit	FPC No.	Entitled
L-106	2101-176	"Robbs Peak Powerhouse, General Arrangement, Plans—Generator Turbine, & Valve Floors,"
L-107	2101-177	"Robbs Peak Powerhouse, General Arrangement, Section Thru Unit,"
L-111	2101-181	"Profile, Gerle Creek Dam to Robbs Peak Powerhouse," and
M-4		filed June 10, 1963, and consisting of one typewritten page entitled "Robbs Peak Power Plant, General Description of Equipment," except insofar as it specifies 4.6 miles of 60-kv transmission line.

Paragraph III. Article 25 of the license is further modified by adding thereto the following subparagraph (e):

(e) Commence construction of Robbs Peak Power Plant, which includes Robbs Peak Powerhouse and Penstock, within 7 years of the effective date of this license and shall thereafter in good faith and with due diligence prosecute such construction; and shall complete such construction within 9 years of the effective date of the license.

Paragraph IV. Article 27 of the license is further amended to read as follows:

Article 27. The Licensee shall, within one year from the date of completion of the project works in White Rock Division, in the Robbs Peak Powerhouse and Penstock, and in each stage of Stages I, II and III of the project, file with the Commission Exhibits F and K in accordance with the rules and regulations of the Commission.

Paragraph V. Article 46(a) of the license is further amended by substituting "(545,000 horsepower)" for "(512,000 horsepower)".

Paragraph VI. The license is further amended by adding thereto the following articles:

Article 57. The Licensee shall, during the construction and operation of the project, prevent the unnecessary entry into any affected waters of fines, gravel wash water, concrete effluent, oil, or any other substances which may be injurious to fish and wildlife or their habitat.

Article 58. The Licensee shall fill in the temporary diversion channel in the SW¼NE¼ of Section 11, T. 12 N., R. 14 E., Mount Diablo Meridian, utilizing tunnel rock from the adjacent disposal area and material from the penstock excavation, and shall restore both the channel area and the adjacent disposal area to a condition where they will forest naturally from nearby seed trees or by planting with tree seedlings.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E-7095

ORDER GRANTING REHEARING FOR FURTHER CONSIDERATION

(Issued March 2, 1964)

The Minnesota Power & Light Company (Applicant) on January 29, 1964 filed an application for rehearing upon the declaratory order issued December 30, 1963, 30 FPC 1618 requiring it to apply for a license on its Little Falls project on the Mississippi River in Morrison County in the State of Minnesota.

Applicant contends that the Congressional Act of July 3, 1886 (24 Stat. 123), exempts it under Section 23(a) of the Federal Power Act (16 USC 816) from having to take a license under Section 23(b) (16 USC 817).

The Commission finds:

It is appropriate and in the public interest in administering the Federal Power Act that the Minnesota Power & Light Company's application for rehearing on the order issued December 30, 1963, be granted as hereinafter provided.

The Commission orders:

(A) The Minnesota Power & Light Company's application filed on January 29, 1964, for rehearing of the order issued December 30, 1963, is hereby granted for the purpose of providing additional time for further consideration of the issues raised by the application.

(B) The aforesaid order issued on December 30, 1963, is stayed until further order of the Commission.

E. E. FOGELSON, DOCKET NO. G-19013; JAMES G. BROWN & ASSOCIATES, OPERATOR, ET AL., CI60-750; YUCCA PETROLEUM CORPORATION, CI60-768; JAMES G. BROWN & ASSOCIATES, OPERATOR, ET AL., CI60-770; MONSANTO CHEMICAL COMPANY, CI61-94; ARMOUR PROPERTIES, CI61-102; MARATHON OIL COMPANY (PLYMOUTH), CI61-169; CREE DRILLING CO., INC., CI61-193; WESTERN OIL FIELDS, INC., OPERATOR, ET AL., CI61-273; ANCHOR OIL COMPANY, CI61-292; CONTINENTAL OIL COMPANY, CI61-375; PAN AMERICAN PETROLEUM CORP., CI61-438; IRVIN PRODUCING CO., CI61-579; STUBBLEFIELD BROTHERS, CI61-605; CAROLINE HUNT SANDS & LLOYD B. SANDS, CI61-643; CRICKET OIL CO., ET AL., CI61-650; UNION OIL COMPANY OF CALIFORNIA, CI61-715; HAMILTON BROTHERS, LTD., CI61-849; CHAMPLIN OIL & REFINING CO., CI61-888; PETRO-ASSOCIATES, INC. (OPERATOR), ET AL., CI61-936; D. D. FELDMAN, CI61-1452; FOREE DRILLING CO., OPERATOR, ET AL., CI61-1726; SCHAFER OIL CORP., CI61-1774; CARL M. ARCHER, CI61-1782; DAN E. ARCHER, CI61-1783; TRANSWESTERN PIPELINE COMPANY, G-20464, ET AL.

ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, SEVERING AND CONSOLIDATING PROCEEDINGS

(Issued March 4, 1964) *

Syllabus

1. Commission is unable to issue permanent certificates to certain producers absent showing that facilities needed by pipeline to receive gas are permanently certificated. P. 477.

---

*Initial decision appears on p. 479.

2. Commission *issues* permanent certificates of public convenience and necessity to remaining producer applicants in proceeding arising under Section 7 of the Natural Gas Act. P. 479.

Joseph C. Johnson for Continental Oil Company.

Clifford D. Stone, Jr., J. P. Hammond, Norton Standeven, Harry Landt, William J. Grove and *Carroll Gilliam* for Pan American Petroleum Corporation.

Richard F. Generelly, Robert W. Henderson and *Thomas G. Grouch* for Caroline Hunt Sands and Lloyd B. Sands.

George D. Horning, Jr., and *George Bond* for Union Oil Company of California.

James W. McCartney for Transwestern Pipe Line Company.

John E. Holtzinger, Jr. and *John P. Egan* for Southern California Gas Company.

David Lichtenstein for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

These proceedings involve applications by a number of producers under Section 7 of the Natural Gas Act to sell gas to Transwestern Pipeline Company from acreage in the panhandle areas of Texas and Oklahoma. The presiding examiner granted all the applications conditioning them at 17 cents per Mcf at 14.65 psia. There is no issue as to the price, but an issue arises over whether certain of the applications should be granted in the absence of permanent authority to Transwestern for the necessary facilities to receive the gas. The only exceptions filed were those of the staff.

Each of the applicants here was granted a temporary certificate.[1] The only objection to the grant of permanent certificate was made by Transwestern. It contended that some of the wells involved in these consolidated proceedings have been connected to its system by facilities temporarily authorized in Docket Nos. G-20464, CP62-160 and CP61-168 and some of the wells have not been connected at all, and therefore the certificates issued the producers should be conditioned upon it obtaining permanent authorization to install and operate the facilities connecting wells involved in these proceedings. The staff argues that certificates should not be issued to Marathon Oil Company in Docket No. CI61-169 and Continental Oil Company in Docket No. CI61-375 because these two dockets are properly associated with Transwestern's expansion, Docket No. G-20464, rather than with Transwestern's original construction Docket No. G-14871, and were inadvertently consolidated with the instant proceeding. The staff also contends that the examiner bypasses the entire problem of whether Transwestern has permanent, temporary or any authorization to construct the facilities required to pick up the gas involved in the respective producer dockets.

Except for the seven dockets to which Transwestern takes objection (Nos. CI61-169, CI61-193, CI61-375, CI61-438, CI61-715, CI61-936, CI61-1774) there is no dispute that Transwestern has received permanent authorization to receive the gas in Docket No. G-14871, and we find that the public convenience and necessity requires that permanent certificates be issued. With respect to these seven dockets, however, the record does not show that the facilities needed by Transwestern to receive the gas are all permanently certificated. For deliveries of gas in Docket Nos. CI61-169, CI61-193, CI61-375, CI61-438 and CI61-715 Transwestern either has no facilities or may have facilities under temporary authorization in Docket Nos. G-20464 and CP62-160. For deliveries of gas in

---

[1] The temporary certificates provided that the price should not exceed 17 cents per mcf or such higher price that might be found to be required by the public convenience and necessity in the supplemental proceeding involving Opinion No. 328 (*Transwestern Pipeline Co.*, 22 FPC 391). No higher price was in fact permitted by the Commission (28 FPC 109).

Docket Nos. CI61-936 and CI61-1774 Transwestern may have facilities under temporary authorization in Docket No. CP61-168. While a budget-type permanent certificate has been issued in the latter docket on February 28, 1961, Transwestern later sought to amend the certificate to include further facilities, and such an amended certificate has not been issued. The present record does not show whether the facilities necessary to receive the gas in Docket Nos. CI61-936 and CI61-1774 are covered by the permanent certificate. Under these circumstances we are unable to issue permanent certificates to the producers in these seven dockets at this time although temporary certificates will remain outstanding. The fact that the gas will flow into Transwestern's facilities permanently certificated in Docket No. G-14871 is immaterial, for the connecting facilities are not shown to be so. To grant permanent certificates to the producers now would be prejudging the proceedings in Transwestern's Docket Nos. G-20464, CP61-16 and CP62-160, even if we conditioned the certificates as proposed by Transwestern. Since the issuance of certificates in these seven dockets cannot be granted until permanent certificates are granted in G-20464, CP61-168, CP62-160, which are consolidated, we shall order the seven dockets severed from the present proceeding and consolidated with the proceedings in Docket No. G-20464, *et al.*

The Commission further finds:

(1) Each applicant in the dockets to which this decision relates is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each applicant except those listed in (6) below is able and willing properly to do the acts and perform the services proposed, and to conform to the requirements of the Natural Gas Act and the requirements of the rules and regulations of the Commission under that Act.

(4) The proposed sales, except those involved in the dockets listed in (6), together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The public convenience and necessity require that the total initial price shall not in any instance exceed 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner and to the extent provided by the Natural Gas Act.

(6) Marathon Oil Company (Plymouth) in Docket No. CI61-169, Cree Drilling Co. in Docket No. CI61-193, Continental Oil Company in Docket No. CI61-375, Pan American Petroleum Corp. in Docket No. CI61-438, Union Oil Company of California in Docket No. CI61-715, Petroleum Associates, Inc. *et al.* in Docket No. CI61-936, and Schafer Oil Corp. in Docket No. CI61-1774 are not shown to be able and willing properly to do the acts and perform the service proposed and their proposed sales are not shown to be required by the public convenience and necessity.

(7) The docket numbers listed in (6) above should be severed from the present proceedings and consolidated with the proceedings in Docket No. G-20464, *et al.*

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to each applicant in the dockets in which this decision is entitled, except those listed in (6) above, subject to the terms and conditions of this order, but otherwise in accordance with the respective applications.

(B) The certificates are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, in excess of 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The proceedings in Marathon Oil Company (Plymouth) Docket No. CI61-169, Cree Drilling Co. Docket No. CI61-193, Continental Oil Company Docket No. CI61-375, Pan American Petroleum Corp. Docket No. CI61-438, Union Oil Company of California Docket No. CI61-715, Petroleum Associates, Inc. *et al.* Docket No. CI61-936, and Schafer Oil Corp. Docket No. CI61-1774 are hereby severed from the present proceedings and consolidated with those in Docket No. G-20464, *et al.*

INITIAL DECISION

OF THE PRESIDING EXAMINER ON ISSUANCE OF CERTIFICATES

(Issued December 19, 1963)

FRIBOURG, *Presiding Examiner:* This proceeding concerns applications by various producers to sell gas to Transwestern Pipeline Company from acreage in the panhandle areas of Texas and Oklahoma. In each case the producer has received a temporary certificate. The applications were filed subsequent to August 10, 1959, the date of Commission Opinion No. 328, 22 FPC 391, but before July 11, 1962, the date of the Commission's final order in the reopened proceedings, Docket No. G-14871, *et al.*, 28 FPC 109.

By order issued August 10, 1959 in *Transwestern Pipeline Company*, Docket No. G-14871, *et al.*, the original proceedings, the Commission certificated sales to Transwestern but conditioned certain of the proposed initial rates. Thereafter the proceedings in those dockets were reopened to give producer applicants an opportunity to justify higher proposed initial prices. On July 11, 1962, the Commission reaffirmed the conditioned price levels found to be necessary and required by the public convenience and necessity in paragraphs (D) and (E) of its original order of August 10, 1959, 22 FPC 391, 404.

The present applicants had applied for permanent certificates prior to July 11, 1962 and each was granted temporary authorization to sell at 17 cents until a higher price is approved by the Commission under the particular rate schedule applicable to that producer. With exceptions hereinafter noted, the facilities necessary for these sales are among the facilities which the Commission has already found, in Docket No. G–14871, to be subject to its jurisdiction and subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act. 28 FPC 109, at p. 112, finding (3).

There is no issue here as to price. None of the producers requests a price in excess of the 17-cent level at which temporary authorization has been granted them. Those who appeared at the hearing expressed willingness to accept certificates at 17 cents. The others did not make or attempt to make any showing to the effect that the 17-cent price is unsatisfactory. Their contracts call for 17 cents or such higher price "as may be approved by the Commission in the supplemental proceedings" or, in some cases, 17 cents or such higher price as the Commission may approve in "a certificate proceeding of the Commission covering seller's application to sell gas to buyer (Transwestern) as provided for herein." The principal purpose of this proceeding was to give them an opportunity to justify a higher price. In the absence of any price evidence, consent to a 17-cent price is, in these circumstances, presumed.

It is usual, in an uncontested proceeding, for a motion to be made that the application, and any exhibits thereto, be received in evidence. None was made with respect to any of the applications herein, except that Pan American Petroleum Corporation's counsel, who also submitted a helpful brief, did so with respect to that company's docket, No. CI61–438. His motion was granted. The examiner takes official notice of each of the other applications and the exhibits thereto annexed.

The only objection to the grant of permanent certificates comes from Transwestern. It would have the certificates issued only on the condition that it be given permanent authorization to operate the facilities connecting the respective wells to its pipeline system. Transwestern has connected to its system wells in fields where it was authorized to construct other facilities but where it has not obtained authorization for certain of the individual connections here involved.

Transwestern's objections apply to seven of the dockets in this proceeding, Nos. CI61–169, CI61–193, CI61–375, CI61–438, CI61–715, CI61–936 and CI61–1774. As to the other dockets, there is no dispute that Transwestern has received permanent authorization, in Docket No. G–14871, to serve the respective wells, nor is there, in any of those other dockets, any dispute in any other respect.

As to two of the seven disputed dockets, the staff admits that the gas would flow into facilities for which Transwestern has no permanent authorization. Those are Docket Nos. CI61–375 (Continental Oil Co.), and CI61–169 (Marathon Oil Co.). As is shown by the Notice of Applications and Date of Hearing dated September 13, 1963, the entire scope of the present proceeding was intended to relate to wells connected with facilities for which permanent authorization had been issued. It is evident, as the staff asserts, that Docket Nos. CI61–375 and CI61–169 were included in the present proceeding as the result of inadvertence.

The other five disputed dockets all concern sales to Transwestern through facilities other than or in addition to those permanently authorized in Docket No. G–14871. Some of these were temporarily or permanently authorized in Docket Nos. G–20464, CP62–160 or CP61–168, the two latter being dockets in which budget-type applications of Transwestern were granted. Transwestern connected field facilities under both of these budget authorizations. The legality of some of these connections is in issue, but not in the present proceedings. All of the gas with which Docket Nos. CI61–193, CI61–438, CI61–715, CI61–936 and

CI61-1774 are concerned flows from the field facilities into facilities permanently authorized in Docket No. G-14871.

Transwestern states that its position in favor of conditioning the producers' certificates arises from its unwillingness to assume that permanent certification of its facilities in Docket No. G-20464 and in the budget-type proceedings, CP61-168 and CP62-160, is not required. This is the only reason it gives. It states in its reply brief that if the examiner finds that the CP61-168 and CP62-160 facilities have been permanently authorized, the condition it requests is inappropriate. The examiner makes no finding in this regard.

Transwestern appears to believe that to impose the condition it asks for on the certificates in the disputed producer dockets here will affect its position in the proceedings relating to the legality of certain of the field connections it has established. If it is correct in that belief, the instant proceeding is not the place to impose a condition which could prejudice a decision there. If it is not correct, no reason appears for the condition.

In the examiner's view it is not correct. The gas is now flowing into facilities permanently authorized in Docket No. G-14871. The field connections through which it flows are legal or illegal, and their status in that regard will not be changed if the producers are granted permanent certificates. Thus Transwestern, which otherwise supports the instant applications, has shown no convincing reason for the condition it wishes imposed. It is true that if Transwestern is denied permanent authority to establish any of the facilities needed it will be legally unable to pick up some or all of the gas, but that is equally true whether the producers operate under their present temporary authorizations or under unconditioned permanent certificates or under permanent certificates conditioned as Transwestern desires. The entire question of whether Transwestern's field facilities have been permanently or temporarily authorized, so vigorously disputed by the parties, is outside the area necessary to the decision in this proceeding. The Commission is under no duty to condition producer certificates upon its issuance of pipeline certificates for the operation of the facilities to which the wells will be connected. Indeed, there is no requirement that such facilities be within the Commission's certificating authority at all, see *Medina Gathering Corporation*, Opinion 397, July 16, 1963, 30 FPC 227, or, as Continental Oil Company points out in its briefs, that the facilities even be in existence.

In *The California Company*, Docket No. G-16680, the Commission permanently certificated a large sale for future delivery from the Lake St. John field in Louisiana although the pipeline, Southern Natural Gas Co., had no facilities built to receive it. 22 FPC 211, 239. It did so in the expectation that Southern would apply for a certificate at an appropriate time but the Commission did not, and probably could not legally, commit itself in advance to issue a certificate whenever the pipeline's application might be made. The producer there was granted a permanent certificate to sell gas at a time when the pipeline buyer had neither the authority, the obligation or the physical capacity to take it. It seems plain that the issuance of a permanent certificate to sell gas is independent of the issuance of a certificate to the buyer for the construction of facilities through which the gas can flow. There is no reason to tie the two together in the present case.

Transwestern does not argue that its contractual relations with the producers would in any way be affected by the proposed condition, and there is no reason to suppose that it would not candidly so have argued were that the case. In any event, it makes no claim that anything in the record indicates any such effect. In the absence of a showing on this record, or even a claim, of any adverse effect, it is at least questionable whether a denial of its proposal would enable Transwestern to qualify as a "party aggrieved" within the meaning of the Natural Gas Act.

As to the two dockets, Nos. CI61-375 (Continental Oil Co.) and CI61-169 (Marathon Oil Co.), which the staff admits were included in this proceeding as the result of staff inadvertence, there has been no objection on the merits to the issuance of permanent certificates, save for Transwestern's demand for the same condition that it urges in the five dockets previously discussed. In the Marathon case, the facilities to take the gas have been temporarily authorized in Docket No. G-20464. In Continental's case there are no facilities going to the well. However, the well could be connected with the Transwestern line permanently certificated in Docket No. G-14871. The record shows, and it is not disputed, that the public convenience and necessity require authorization of the sales in both dockets.

At one point Continental moved that its docket be severed from the others and a permanent certificate issued at once with a 17-cent price condition. Staff did not oppose the severance, nor did any other party. Neither was there any objection to an immediate grant of a permanent certificate so conditioned, though staff appeared to favor the severance without the grant, solely because the docket should not have been included in the notice of hearing. But as Continental cogently points out, neither the Act nor the Regulations nor the Rules of Practice and Procedure contains any bar to the issuance.

In these circumstances there is reason to overlook the inadvertence which led to the consolidation of the Continental and Marathon dockets into this proceeding. The staff does not show any harm, or even suggest any inconvenience, that might arise from the issuance of the certificates at this time. Administrative convenience is often a perfectly valid factor for an agency to consider in deciding whether or not to act. Administrative symmetry rarely is. These producers, who have concededly made all the showing they need make, should not be required to make it all over again in some other proceeding merely because it would include dockets more like their own.

Staff counsel submitted a letter to the examiner under date of December 10, 1963 calling attention to alleged misstatements in Transwestern's reply brief, and presenting some additional argument. The content of the letter does not form any portion of the basis for this decision and in the examiner's view, does not bring forth any new material on the real issues. For that reason the examiner has chosen to promulgate this decision without awaiting the possible receipt of any documents in which other counsel may fight the battle of the supplemental memorandum.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and briefs filed in these proceedings, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Each applicant in the dockets to which this decision relates is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Each applicant is able and willing properly to do the acts and perform the services proposed, and to conform to the requirements of the Natural Gas Act and the requirements, rules and regulations of the Commission under that Act.

(3) The sale of natural gas as proposed by each applicant is required by the public convenience and necessity and a certificate should issue to each of them upon the terms and conditions which the public convenience and necessity require.

(4) The public convenience and necessity require that the total initial price shall not in any instance exceed 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner and to the extent provided by the Natural Gas Act.

(5) Intervenor Transwestern Pipeline Company, which proposes that the certificates should be further conditioned upon Transwestern obtaining permanent certificates to construct and operate facilities to connect the wells covered by the respective producer certificates, has not shown that such a condition is or will be required by the public convenience and necessity.

ORDER

WHEREFORE, *it is ordered*, that:

(A) A certificate of public convenience and necessity is hereby issued to each applicant in the dockets in which this decision is entitled, subject to the terms and conditions of this order, but otherwise in accordance with the respective applications.

(B) The certificates are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, in excess of 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates issued herein are not transferable. The grant of the certificates shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any provisions in the gas contracts here involved.

ARTHUR H. FRIBOURG,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

THE NARRAGANSETT ELECTRIC COMPANY AND NEW ENGLAND POWER COMPANY, DOCKET NO. E-7153

ORDER PROVIDING FOR HEARING AND FOR SUSPENSION AND INVESTIGATION OF RATE SCHEDULES

(Issued March 4, 1964)

New England Power Service Co. (Service Company) filed on February 3, 1964, on behalf of Narragansett Electric Company (Narragansett), incorporated under a law of the State of Rhode Island, as a supplementary rate schedule, an agreement which amends an existing transmission agreement between Narragansett and its corporate affiliate the New England Power Company (Nepco). The agreement was filed pursuant to Section 205 of the Federal Power Act with the request that it be given an effective date of January 1, 1964. The proffered filing has been tentatively designated in the Commission's files as Supplement No. 3 to the Narragansett Electric Company's Rate Schedule FPC No. 19.

Narragansett, Nepco and Service Company are subsidiaries of the New England Electric System. Narragansett is engaged in the generation, purchase, transmission and sale of electric energy in the State of Rhode Island. Nepco is engaged in the generation, purchase, transmission and sale of electricity in the States of Massachusetts, New Hampshire and Vermont.

The present rate schedule provides for Narragansett's transmission of electricity over its facilities for Nepco. Narragansett, pursuant to the present schedule, wheels power and energy over its system for certain customers of Nepco other than Narragansett. For this service Nepco pays a flat monthly fee of $25,134 or $301,608 annually.

Prior to 1960, Narragansett sold excess firm power to Nepco under Naragansett Rate Schedule FPC No. 18. During 1960 and under changed operating conditions, Nepco through its Rate Schedule FPC No. 106, incorporating its W-3 rate, undertook to supply Narragansett on a capacity deficiency basis. Nepco's FPC No. 106 is identical to Narragansett's FPC No. 18, Supplement No. 1 and incorporates by reference definitions in Narragansett's FPC No. 18 as initially filed.

Under the proposed Narragansett rate for wheeling services, in addition to the wheeling service described above, recognition is given to the use of Narragansett's transmission facilities in transmitting to Narragansett's subtransmission system the primary power purchased by Narragansett from Nepco at the Massachusetts-Rhode Island border. Nepco asserts that such delivery by Nepco is required to comply with its standard delivery policy under its W-3 rate and would place Narragansett on a uniform basis with its other W-3 customers. The proposed rate schedule provides for a flat monthly charge for both types of service of $59,333 or $711,996 annually, an increase of 136% over the present rate schedule.

In support of the proposed increase the Service Company filed cost data indicating annual costs of the Narragansett transmission facilities used by both companies at 15.56% of gross investment. The annual costs are allocated in the study to Narragansett and Nepco in proportion to their respective uses, as estimated by the Service Company. Calculations supporting these estimated uses are based upon load flows in the inter-connected Narragansett-Nepco system under assumed system conditions and upon estimated primary deliveries to Narragansett at the time of Narragansett's hour of yearly peak demand.

The proposed changes in Narragansett's currently filed rate schedules have not been shown to be justified; may result in excessive rates or charges; may place an undue burden upon ultimate consumers; and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful within the meaning of the Federal Power Act. Unless suspended by order of the Commission, the proposed supplemental rate schedules will become effective March 5, 1964, pursuant to the provisions of the Federal Power Act and the Commission's Regulations thereunder.

As shown above, the proposed increase includes a charge for services related to the services performed by Nepco under its Rate Schedule FPC No. 106. Under the circumstances it appears appropriate that there be instituted an investigation of Nepco Rate Schedule No. 106 as supplemented as it may have a bearing on the determination of fair and reasonable charges for the use of each party's facilities by the other party. Insofar as the definitions of Narragansett's Rate Schedule No. 18 as supplemented are incorporated in Nepco Rate Schedule No. 106 as supplemented, and are applied to services performed thereunder, it is appropriate that Narragansett's Rate Schedule No.18 as supplemented be included in such investigation.

The Commission finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act that the Commission, pursuant to the authority of that Act, and particularly Section 205 thereof, enter upon a hearing concerning the lawfulness of Narragansett's Rate Schedule FPC No. 19 as proposed to be changed by Supplement No. 3 thereto and that the operation of such proposed supplemental rate schedule be suspended and the use thereof deferred as hereinafter provided. Review and analysis of pertinent data available to the Commission indicates that Narragansett's Rate Schedule No. 19 as supplemented, Nepco's Rate Schedule No. 106 and Narragansett's FPC No. 18 as supplemented, insofar as it applies to service under Nepco's FPC No. 106, may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Additional factual data necessary for a resolution of those questions must be obtained. Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206 and 309 thereof, that the Commission staff conduct an investigation and that a hearing be held as hereinafter provided.

The Commission orders:

(A) A public hearing be held concerning the lawfulness of Narragansett's Rate Schedule No. 19 as proposed to be changed by supplement No. 3 thereto, the lawfulness of Nepco's Rate Schedule FPC No. 106 as supplemented, and the lawfulness of Narragansett's present Rate schedule No. 19 as supplemented and No. 18 to the extent it applies to service under Nepco's FPC No. 106, at a time and place and in the manner all to be fixed by Notice of the Secretary.

(B) Pending such hearing and decision thereon, the operation of Supplement No. 3 to Narragansett's Rate Schedule FPC No. 19 hereby is suspended and the use thereof deferred until August 5, 1964. On that date the proposed supplemental rate schedule shall take effect in the manner prescribed by the Act, subject to further order of the Commission.

(C) During the period of suspension, Narragansett's Rate Schedule FPC No. 19 and Supplements No. 1 and 2 thereto, now on file with the Commission, shall remain and continue in effect.

(D) Narragansett (or Service Company) shall file, within 45 days from the date of issuance hereof, six copies of a cost of service study upon which it proposes to justify the filed increase in charges. Such study shall include a narrative sufficient to explain the derivation thereof and detailed references to any back up material relied on in the study.

(E) The foregoing showing shall not preclude or limit any additional showing by Narragansett, Nepco, or others and shall be without prejudice to future action taken by the Commission or its staff, or to any future position Narragansett, Nepco, or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(F) Interested State Commissions may participate in this proceedings as provided by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)].

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2322

ORDER ISSUING LICENSE (MAJOR)

(Issued March 5, 1964)

Application was filed on September 27, 1963, by Central Maine Power Company (Applicant) of Augusta, Maine, for a license under the Federal Power Act (Act) for constructed Project No. 2322, known as the Shawmut Project, located on the Kennebec River in Kennebec and Somerset Counties, Maine, in the vicinity of Shawmut.

According to the application, power has been developed at the subject project site for over 125 years. The first mill of record was built about 1835. Thereafter, the site passed through a series of owners, involving the construction of a grist mill, several sawmills and wood pulp mills. In 1912, a wood pulp manufacturer, Shawmut Manufacturing Co., started redevelopment of the site with the construction of a new dam a short distance downstream from the old dam incorporating the headworks of the old dam, increasing the head from 12 to 19 feet. The new plant, placed in service in March 1913, included an initial hydroelectric installation of three 750 kilowatt generators, each connected to a 1200 horsepower turbine, and a fourth turbine mechanically connected to a pulp grinding machine. In 1915, a fourth 750 kilowatt generator replaced the pulp grinder. A fifth generating unit of 750 kilowatts was installed in 1918 and a sixth unit of 900 kilowatts was installed in 1921. These hydroelectric facilities were transferred to Applicant in 1924.

Applicant requests a 50-year license effective from the date of its issuance. In its order issued May 21, 1954 in Docket No. E-6456, the Commission found the Kennebec River to be a navigable water of the United States. In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 and Order issuing license to Public Service Company of New Hampshire for Project No. 2288 (27 FPC 830), the license herein granted shall have an effective date of June 1, 1954 and a termination date of December 31, 1993.

The Secretary of the Army and the U.S. Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned, and the plans were approved pursuant to Section 4(e) of the Act.

The Department of the Interior recommended for inclusion in any license issued for the project certain conditions in the interest of fish and wildlife resources.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of the license.

(3) Public notice of the application has been given as required by the Act. No protests have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(6) The step-up transformers mentioned in paragraph (B) below, which were included in the application for license, are part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 6,200 horsepower, and the energy generated by the project is fed into Applicant's electric utility system for distribution and sale for public utility purposes.

(8) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The exhibits described and designated in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Central Maine Power Company, of Augusta, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective June 1, 1954 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2322 on the Kennebec River, Maine and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2322 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 1 (FPC No. 2322-1) General Map, Flowage, Dam & Power Plant Areas;

Exhibit K: Sheets 1 to 5 incl. (FPC Nos. 2322-3 to -7, inclusive) Detail Map, Reservoir.

(ii) Project works consisting of:

A fixed crest concrete gravity type overflow section about 1,135 feet in length including a 25 foot gated log sluice, with 4 foot flashboards; headworks section; concrete retaining walls and short earthen dike; a reservoir of about 1,310 acres in area at normal full pool elevation 112.0 (USGS), extending upstream about 12 miles; a forebay; a powerhouse containing six, 1,200 horsepower turbines connected to five 750-kilowatt generators and one 900-kilowatt generator; step-up transformers; a gate and future intake section at the downstream end of the forebay, and adjacent to the powerhouse; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2322-8) Dam, Plan-Elevation-Sections
Sheet 2 (FPC No. 2322-9) Forebay, Plan-Sections
Sheet 3 (FPC No. 2322-10) Powerhouse, Plan-Sections

Exhibit M: Six typewritten pages, "General Description and Specifications of Equipment and Appurtenances", filed in the Commission September 27, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; are subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall, from the effective date of this license, pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity, plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration. The authorized installed capacity for such purpose is 6,200 horsepower.

Article 29. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license.

Article 30. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–82

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 5, 1964)

On October 1, 1963, as amended on January 2, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP64–82 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction or relocation during the calendar year 1964 and the operation of certain miscellaneous natural gas transmission facilities as hereinafter described and as more fully described in the application.

Applicant states that it may become necessary or desirable to move, relocate, alter or reconstruct existing facilities, or to construct and operate substitute facilities for existing facilities, in order to accommodate the desires or activities of others, including federal, state and local authorities, landowners and direct industrial and resale customers. For the most part, such changes will be made in response to requests from others. The cost of relocating or altering Applicant's facilities in such instances will usually be borne entirely or partly by the party desiring the change and will not ordinarily involve any increase or decrease in the designed capacity of the particular facilities being altered or replaced nor any essential change in the character of Applicant's service to any of its customers.

Applicant states further that it will not undertake more than fifteen (15) projects of the type referred to in said application during the calendar year 1964. No single project is to exceed a cost of $40,000, nor will the total cost of all such projects exceed a maximum of $300,000, which amounts may be reduced or offset entirely by reimbursement from others.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 27, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction or relocation and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 90 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) actual final costs, (b) description of the project or projects, (c) location of facilities constructed or relocated, and (d) reason for such work to be performed.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction or relocation during the calendar year 1964, and the total expenditures for facilities so constructed or relocated thereunder should be limited to a maximum of $300,000, with no single project to exceed a cost of $40,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct or relocate during the calendar year 1964 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate said facilities as may be necessary in the related transportation of natural gas.

(B) Applicant shall submit within 90 days after the expiration of the authorization granted by paragraph (A) above a statement showing by projects: (a) actual final costs, (b) description of the project or projects, (c) location of facilities constructed or relocated, and (d) reason for such work to be performed.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted by paragraph (A) above is hereby limited to construction or relocation during the calendar year 1964, and the total expenditures for facilities constructed or relocated thereunder are hereby limited to a maximum of $300,000, with no single project to exceed a cost of $40,000.

(E) The authorization granted hereby shall not be construed as authorizing applicant to construct facilities to deliver natural gas to any new customer or to increase deliveries to any existing customer.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-138

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 5, 1964)

On December 18, 1963, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64-138 an application pursuant to Section 7(c) of the Natural Gas

Act for a certificate of public convenience and necessity authorising the construction and operation of certain facilities in Texas County, Oklahoma, in order to continue the exchange deliveries of natural gas with Panhandle Eastern Pipe Line Company (Panhandle) pursuant to Applicant's FPC Gas Rate Schedule X-19, all as more fully set forth in the application.

Applicant states that it has been unable to deliver exchange gas to Panhandle because of a permanent increase in pressure in Panhandle's line in Texas County, Oklahoma. Thus, Applicant proposes herein to construct and operate a skid-mounted 453 horsepower package compressor unit in order to effect continued deliveries.

Applicant has been delivering to Panhandle a quantity of gas equal to that quantity delivered by Phillips Petroleum Company to Cabot Corporation for Applicant's account. Upon the expiration of the subject exchange arrangement at 12:01 a.m., January 1, 1965, Applicant proposes to install permanently the subject compressor unit in its Panhandle Field gathering system.

The estimated cost of the proposed facilities is $82,000, which cost will be financed from current working funds on hand.

On December 23, 1963, Applicant was granted a temporary certificate authorizing the construction and operation of the proposed facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 27, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the described facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should terminate at 12:01 a.m., January 1, 1965.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the subject facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above shall terminate at 12:01 a.m., January 1, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-136

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING SERVICE AGREEMENT

(Issued March 5, 1964)

On December 11, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-136, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the sale and delivery of an additional Daily Contract Quantity of 2500 Mcf of natural gas to Interstate Power Company (Interstate), and existing customer, increasing the total Daily Contract Quantity to 22,734 Mcf, all as more fully set forth in the application on file with the Commission.

The Applicant states Interstate requires the additional volume of gas for the Hawkeye Chemical Company, an industrial customer, which will use the additional quantity of gas as raw material in the manufacture of agricultural fertilizers. Applicant further states it has unallocated system capacity sufficient to supply the additional volume, and that no additional facilities will be required.

A proposed superseding service agreement dated November 29, 1963, has been filed concurrently with the application reflecting the proposed increase in contract demand to Interstate. The proposed service agreement calls for the additional sale to be made at the present rates under Applicant's Rate Schedule CD-1.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 27, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Interstate Power Company, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The public convenience and necessity requires that the superseding service agreement with Interstate Power Company dated November 29, 1963, be accepted for filing to become effective concurrently herewith; and Applicant's request for an effective date of December 1, 1963, be denied.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Interstate Power Company, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (c) (4) and (e) of Section 157.20 of such Regulations.

(C) Natural's superseding service agreement with Interstate Power Company dated November 29, 1963, is hereby accepted for filing to become effective concurrently herewith.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

YADKIN, INC., PROJECT NO. 2197

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL COST, INITIAL ACCRUED DEPRECIATION AND PROJECT NET INVESTMENT; AND CHANGES IN PROJECT COST AND ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued March 5, 1964)

Yadkin, Inc., Licensee for Project No. 2197,[1] filed its initial cost statement on February 6, 1959 pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act, claiming as of the effective date of the license, May 1, 1958, (1) an actual legitimate original cost for the existing Yadkin Narrows, Yadkin Falls, and High Rock Developments the sum of $18,571,553[2] and (2) applicable project accrued depreciation in the credit amount of $10,908,338 resulting in a claimed project net investment of $7,663,215.

The Commission's staff completed a field examination of the books and records of Licensee and other data for the purpose of ascertaining: (1) the initial actual legitimate original project cost, the initial project accrued depreciation and the net investment of Licensee in the project as of May 1, 1958, the effective date of the license; (2) the changes in project plant accounts and accrued depreciation during the period from May 1, 1958 through June 30, 1961; and (3) the resulting actual legitimate original project cost and project accrued depreciation as of June 30, 1961.

---

[1] The project is located on the Yadkin River in the vicinity of Badin, North Carolina, in Stanly, Montgomery, Davidson and Rowan Counties. It consists of four developments, three of which were in existence at the effective date of the license. The fourth was constructed thereafter. The three developments in existence at the effective date of the license are known as Narrows, placed in operation in 1917, Falls Development placed in operation in 1919, High Rock placed in operation in 1927; and related transmission, communication and other facilities. The fourth development, Tuckertown, was not constructed at the effective date of the license.

[2] Article 14 of the license provides that the Commission shall determine the actual legitimate original cost of the project and accrued depreciation applicable thereto as of the effective date of the license, the difference being the net investment of Licensee in the project as of that date. Those provisions also provide for the determination of changes in the actual legitimate original cost of project and related depreciation thereafter.

Following that examination, an agreement, subject to Commission approval, was reached between the staff and representatives of Licensee with respect to certain reclassifications and other adjustments to claimed and recorded costs and project depreciation, and the accounting disposition thereof, as follows: (a) gross reclassifications of $1,684,090 within recorded project plant accounts, $66,632 of which, were incorporated in the filed claimed cost; (b) adjustment in the credit amount of $1,198,838 to claimed project cost, $482,767 of which, is required to reconcile claimed cost to recorded cost, resulting in a net credit adjustment of $716,071 to recorded project cost thereby conforming claimed and recorded costs, respectively, to staff recommended cost as of May 1, 1958, and the accounting disposition thereof; (c) the exclusion of $82,800 from claimed accrued depreciation thereby conforming claimed accrued depreciation to recorded project depreciation and staff recommended project depreciation as of May 1, 1958; (d) net reclassifications of $34,291 within project cost of net additions for the period from May 1, 1958 through June 30, 1961; (e) net debit adjustments in the amount of $473,413 to recorded project cost changes for the period from May 1, 1958 through June 30, 1961, and the accounting disposition thereof; and (f) adjustment in the credit amount of $615 to recorded project accrued depreciation for the period from May 1, 1958 through June 30, 1961, other than the accounting disposition of amounts involved in staff adjustments to project plant accounts.

The proposed Staff reclassifications and other adjustments to claimed plant cost are summarized below:

Number	Description		Amounts
	Reclassification of claimed cost to recommended cost as of May 1, 1958		
1	Production plant land from Narrows to Falls	$100	
2	High Rock land from production to transmission	60	
3	Relocation costs—High Rock	1, 278, 305	
4	Powerhouse substructure cost—Falls and High Rock	338, 993	
	Reclassification of books to claimed cost		
5	General plant to developments	66, 632	
	Adjustment of claimed cost to recommended cost as of May 1, 1958		
6	Nonproject land transferred		$(605, 512)
7	Transfer of Tuckertown land costs		(62, 661)
8	Elimination of transmission plant land costs		(14, 106)
9	Spare parts capitalized in error		(33, 792)
10	Construction work in progress		(127, 925)
11	Electric plant acquisition adjustments		(354, 842)
	Total adjustment to claimed cost		$(1, 198, 838)

	Net additions through June 30, 1961		Amount
	Reclassifications		
12	Reclassification of net recorded additions to general plant	$34, 291	
	Adjustments		
13	Transfers of nonproject land—Yadkin Narrows		$(5, 867)
14	Sales and transfer of nonproject land—High Rock		11, 517
15	Reversal of transfer of nonproject lands		666, 115
16	Additional land value—Yadkin Narrows		1
17	Spare parts capitalized in error		(1, 441)
18	Nonproject plant costs eliminated		(196, 912)
	Total adjustments to net additions		473, 413

The accounting necessary for the correction of Licensee's recorded project cost and accrued depreciation as well as the accounting disposition of staff adjustments as of June 30, 1961, are to be accomplished by the following composite journal entry:

Account			As of May 1, 1958	Changes May 1, 1958–June 30, 1961	Net as of June 30, 1961
No.		Title			
Old	New				
		(1)			
100.1	(101)	Electric plant in service project No. 2197	$(716,071.00)	$473,413.00	$(242,658.00)
100.4	(105)	Electric plant held for future use	62,661.00	(1.00)	62,660.00
100.5	(114)	Electric plant acquisition adjustments	11,818.00		11,818.00
110	(121)	Nonutility property	640,754.00	192,703.00	833,457.00
126.2	(146)	Accounts receivable from associated companies, Aluminum Co. of America		(666,115.00)	(666,115.00)
250.1	(108)	Accumulated provision for depreciation, project No. 2197, production plant:			
		Narrows	10,310.00	3,131.00	13,441.00
		Falls	5,332.00	1,990.00	7,322.00
		High Rock	13,150.00	840.00	13,990.00
		Transmission	838.00	169,662.00 (77.00)	170,423.00
		General		11,760.00 (538.00)	11,222.00
253	(122)	Accumulated provision for depreciation and amortization of nonutility property	(28,852.00)	(187,323.00)	(216,175.00)
401	(434)	Miscellaneous credits to surplus		615.00	615.00

( ) Denote credits.

The Licensee by letter dated December 1, 1961, concurred in the staff recommendations for the adjustment of the recorded project plant cost and accrued depreciation as well as in the accounting disposition thereof as set forth above.

The Chairman of the State of North Carolina Utilities Commission by letter dated May 29, 1961 in response to this Commission's invitation for that Commission's representatives to participate in the examination of Licensee's books and records, replied that, that Commission does not exercise jurisdiction over the Licensee.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, accounting dispositions and the resulting project costs and depreciation and the North Carolina Utilities Commission by its letter dated May 29, 1961, advising that that Commission does not exercise jurisdiction over Licensee, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the constructed plants of Project No. 2197 as of May 1, 1958, the effective date of the license, is $17,372,715.00 classified by developments and by primary accounts as shown in column (6) of Schedule I of the appendix to this order, sheets 2, 3 and 4.

(4) The accumulated provision for depreciation applicable to in-service project properties of the constructed plants as of May 1, 1958, the effective date of the license, is $10,795,848.00, classified by developments and by functional groups as shown in Column (5) of Schedule II of the appendix to this order.

(5) The net investment of the Licensee in the project as of May 1, 1958, is $6,576,867.00.

(6) As of June 30, 1961, (1) the project actual legitimate original cost is the debit amount of $17,314,923.00 classified by developments and by primary plant

accounts as shown in column (11) of Schedule I; Sheets 2, 3 and 4; and (2) the project accrued depreciation applicable to in-service project and properties in the credit amount of $11,793,973.00 classified by developments and functions as shown in Schedule II of the appendices to this order.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22, and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by staff and agreed to by the Licensee are hereby approved and directed to be made the Licensee.

(C) Licensee, to the extent that it has not already done so, shall:

(a) Establish and maintain control and detailed project plant accounts showing the amounts of $17,372,715.00 and $17,314,923.00 as the actual legitimate original cost of the project as of May 1, 1958, and June 30, 1961, respectively, classified by developments and primary plant accounts as set forth in Schedule I of the appendices to this order.

(b) Establish a project accrued depreciation account in the amount of $10,795,848.00 as of May 1, 1958 and $11,793,973.00 as of June 30, 1961 classified by developments and functions as shown in Schedule II of the appendices to this order.

(D) Licensee shall within 90 days from the date of issuance of this order file three certified copies of its journal entries and FPC Form No. 7 showing compliance with this order.

SCHEDULE I

YADKIN, INC., PROJECT NO. 2197 (YADKIN)

ACTUAL LEGITIMATE ORIGINAL COST SUMMARY

Project developments	Initial cost				Net additions for period May 1, 1958 through June 30, 1961				Cost as of June 30, 1961
	Claimed as of Apr. 30, 1958	Reclassifications	Adjustments	Cost as of May 1, 1958	Recorded	Reclassifications	Adjustments	Cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Yadkin Narrows Development	$8,456,997.00	($100.00)	($260,469.00)	$8,196,428.00	($109,767.00)	$41,941.00	$76,244.00	$8,418.00	$8,204,846.00
Yadkin Falls Development	2,418,346.00	100.00	(42,934.00)	2,375,512.00	(9,785.00)	(781.00)	4,069.00	(6,497.00)	2,369,015.00
High Rock Development	7,213,443.00		(412,668.00)	6,800,775.00	(445,314.00)	(7,499.00)	393,100.00	(59,713.00)	6,741,062.00
General plant not classified by developments					33,661.00	(33,661.00)			
Construction work in progress	127,925.00		(127,925.00)						
Electric plant acquisition adjustments	354,842.00		(354,842.00)						
Total project	18,571,553.00		(1,198,838.00)	17,372,715.00	(531,205.00)		473,413.00	(57,792.00)	17,314,923.00

SCHEDULE I—continued

ACTUAL LEGITIMATE ORIGINAL COST—continued

Account		Initial cost				Net additions for period May 1, 1958 through June 30, 1961				
Number	Title	Claimed as of Apr 30, 1958	Reclassifications	Adjustments	Cost as of May 1, 1958	As recorded	Reclassifications	Adjustments	Allowed	Total allowed as of June 30, 1961
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	NARROWS DEVELOPMENT									
	Production Plant—Hydraulic									
320 (330)*	Land and land rights	$1,277,502	($100)	($246,217)	$1,031,185	($273,106)		$273,494	$388	$1,031,573
321 (331)	Structures and improvements	278,638			278,638	1,088			1,088	279,726
322 (332)	Reservoirs, dams and waterways	5,203,317			5,203,317					5,203,317
323 (333)	Water wheels, turbines and generators	1,068,565		(733)	1,067,832					1,067,832
324 (334)	Accessory electric equipment	93,194			93,194	(1,994)			(1,994)	91,200
325 (335)	Miscellaneous power plant equipment	47,731		(12,681)	35,050	576		(338)	238	35,288
326 (336)	Roads, railroads and bridges	130,955			130,955	(20,159)			(20,159)	110,796
	Total production plant—hydraulic	8,099,902	(100)	(259,631)	7,840,171	(293,595)		273,156	(20,439)	7,819,732
	Transmission Plant									
340 (350)	Land and land rights	838		(838)						
341 (351)	Clearing land and rights-of-way	620			620					620
343 (353)	Station equipment	76,367			76,376	183,828		(183,879)	(51)	76,316
344 (354)	Towers and fixtures	97,036			97,036					97,036
345 (355)	Poles and fixtures									
346 (356)	Overhead conductors and devices	170,563			170,563					170,563
	Total transmission plant	345,424		(838)	344,586	183,828		(183,879)	(51)	344,535
	General Plant									
371 (390)	Structures and improvements						$8,200	(8,200)		
372 (391)	Office furniture and equipment	2,352			2,352		3,114	(387)	2,727	5,079
373 (392)	Transportation equipment	4,756			4,756		30,546	(4,370)	26,176	30,932
374 (393)	Stores equipment	212			212					212
376 (395)	Laboratory equipment	168			168		252	(76)	176	34
377 (394)	Tools, shop and garage equipment	741			741					741
378 (399)	Communication equipment	3,442			3,442		(171)		(171)	3,271
	Total general plant	11,671			11,671		41,941	(13,033)	28,908	40,579
	Total Narrows Development	8,456,997	(100)	(260,469)	8,196,428	(109,767)	41,941	76,244	8,418	8,204,846

	FALLS DEVELOPMENT									
	Production Plant—Hydraulic									
320 (330)*	Land and land rights	48, 554	100	(34, 256)	14, 398	(4, 163)		4, 163		14, 398
321 (331)	Structures and improvements	371, 983	(255, 171)		116, 812	(292)			(292)	116, 520
322 (332)	Reservoirs, dams and waterways	1, 038, 465	255, 171		1, 293, 636					1, 293, 636
323 (333)	Water wheels, turbines and generators	605, 806			605, 806					605, 806
324 (334)	Accessory electric equipment	63, 507			63, 507					63, 507
325 (335)	Miscellaneous power plant equipment	44, 734		(7, 228)	37, 506	86		(94)	(8)	37, 498
326 (336)	Roads, railroads and bridges	6, 903			6, 903	(5, 416)			5, 416	1, 487
	Total production plant—hydraulic	2, 179, 952	100	(41, 484)	2, 138, 568	(9, 785)		4, 069	(5, 716)	2, 132, 852
	Transmission Plant									
340 (350)	Land and land rights	1, 450		(1, 450)						
343 (353)	Station equipment	76, 612			76, 612					76, 612
344 (354)	Towers and fixtures	61, 510			61, 510					61, 510
345 (355)	Poles and fixtures	7, 710			7, 710					7, 710
346 (356)	Overhead conductors and devices	65, 738			65, 738					65, 738
	Total transmission plant	213, 020			211, 570					211, 570
	General Plant									
372 (391)	Office furniture and equipment	1, 512			1, 512		259		259	1, 771
377 (394)	Tools, shop and garage equipment	19, 059			19, 059					19, 059
378 (397)	Communication equipment	4, 803			4, 803		(1, 040)		(1, 040)	3, 763
	Total general plant	25, 374			25, 734		(781)		(781)	24, 593
	Total Falls Development	2, 418, 346	100	42, 934	2, 375, 512	(9, 785)	(781)	4, 069	(6, 497)	2, 369, 015
	HIGH ROCK DEVELOPMENT									
	Production Plant—Hydraulic									
320 (330)*	Land and land rights	2, 164, 081	1, 278, 245	(387, 700)	3, 054, 626	(394, 109)		394, 109		3, 054, 626
321 (331)	Structures and improvements	214, 592	(83, 822)		130, 770	(35, 808)			(35, 808)	94, 962
322 (332)	Reservoirs, dams and waterways	3, 362, 996	(1, 194, 483)		2, 168, 513					2, 168, 513
323 (333)	Water wheels, turbines and generators	926, 920			926, 920					926, 920
324 (334)	Accessory electric equipment	96, 629			96, 629					96, 629
325 (335)	Miscellaneous power plant equipment	73, 201		(13, 150)	60, 051	(19, 753)		(1, 009)	(20, 762)	39, 289
326 (336)	Roads, railroads and bridges	6, 204			6, 204					6, 204
	Total production plant—hydraulic	6, 844, 623	(60)	(400, 850)	6, 443, 113	(449, 670)		393, 100	(56, 570)	6, 387, 143

SCHEDULE I—continued

ACTUAL LEGITIMATE ORIGINAL COST—continued

Account		Initial cost				Net additions for period May 1, 1958 through June 30, 1961				
Number	Title	Claimed as of Apr 30, 1958	Reclassifications	Adjustments	Cost as of May 1, 1958	As recorded	Reclassifications	Adjustments	Allowed	Total allowed as of June 30, 1961
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	HIGH ROCK DEVELOPMENT—Con.									
	Transmission Plant									
340 (350)	Land and land rights	$19,928	$60	($11,818)	$8,170					$8,170
341 (351)	Clearing land and rights-of-way	6,770			6,770					6,770
343 (353)	Station equipment	186,359			186,359	$4,356			$4,356	190,715
344 (354)	Towers and fixtures	51,594			51,594					51,594
346 (356)	Overhead conductors and devices	74,582			74,582					74,582
	Total transmission plant	339,233	60	(11,818)	327,475	4,356			4,356	331,831
	General Plant									
371 (390)	Structures and improvements	3,395			3,395		($1,328)		(1,328)	2,067
372 (391)	Office furniture and equipment	2,239			2,239		(820)		(820)	1,419
373 (392)	Transportation equipment	2,747			2,747					2,747
375 (394)	Shop equipment	477			477		195		195	672
376 (395)	Laboratory equipment	6,642			6,642		(4,937)		(4,937)	1,705
378 (397)	Communication equipment	14,087			14,087		(609)		(609)	13,478
	Total general plant	29,587			29,587		(7,499)		(7,499)	22,088
	Total High Rock Development	7,213,443		(412,668)	6,800,775	445,314	(7,499)	$393,100	(59,713)	6,741,062
	General Plant—Not Classified by Developments									
371 (390)	Structures and improvements					6,872	(6,872)			
372 (391)	Office furniture and equipment					2,553	(2,553)			
373 (392)	Transportation equipment					30,546	(30,546)			
374 (393)	Stores equipment									
375 (394)	Tools, shop and garage equipment					195	(195)			

376 (395)	Laboratory equipment					(4, 685)	4, 685			
378 (397)	Communication equipment					(1, 820)	1, 820			
	Total general plant not classified					33, 661	(33, 661)			
	Construction work in progress	127, 925		(127, 725)						
	Electric plant acquisition adjustments	354, 842		(354, 842)						
	Total Project No. 2197	18, 571, 553		(1, 198, 838)	17, 372, 715	(531, 205)		473, 413	(57, 792)	17, 314, 239

*Account number shown in parentheses are those of the Uniform System of Accounts effective Jan. 1, 1961.

SCHEDULE II

Yadkin, Inc., Project No. 2197

ACCUMULATED PROVISION FOR DEPRECIATION

Developments and functions (1)	Balance Apr. 30, 1958, per claimed cost statement (2)	Elimination of acquisition adjustments (3)	Plant adjustments (4)	Balance May 1, 1958, as adjusted (5)	Recorded net increases from May 1, 1958 to June 30, 1961 (6)	Adjustments (7)	Balance as of June 30, 1961 (8)
Narrows Development hydraulic production	$4, 228, 008		($10, 310)	$4, 217, 698	$371, 544	($3, 131)	$4, 586, 111
Falls Development hydraulic production	1, 831, 685		(5, 392)	1, 826, 293	166, 561	(1, 930)	1, 990, 924
High Rock Development hydraulic production	3, 926, 796		(13, 150)	3, 913, 646	412, 859	[2] (763)	4, 325, 742
Transmission, Narrows-Falls-High Rock	779, 562		(838)	[1] 778, 724	196, 409	(169, 662)	805, 471
General plant, Narrows-Falls-High Rock	59, 487			[1] 59, 487	37, 460	[3] (11, 222)	85, 725
Acquisition adjustments	82, 800	($82, 800)					
Totals	10, 908, 338	(82, 800)	(29, 690)	10, 795, 848	1, 184, 833	(186, 708)	11, 793, 973

( ) Denotes reductions.

[1] Not recorded by separate developments.

[2] Includes credit adjustment of $77 for improper accounting for salvage in 1961 by credit to surplus.

[3] Includes credit adjustment of $538 for improper accounting for salvage in 1961 by credit to surplus.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–16842, ET AL.

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1964)

On December 5, 1963, Tennessee Gas Transmission Company (Applicant) filed an application to amend the Commission's opinion and order issued September 19, 1963, in Docket No. G–16842, *et al.*, 30 FPC 759, by authorizing the reallocation of volumes of natural gas to be sold and delivered to Connecticut Gas Company (Connecticut) by Applicant, all as more fully set forth in the application to amend.

The opinion and order of September 19, 1963, (specifically with reference to Docket No. CP60–94 therein) authorized Applicant, among other things, to sell and deliver a total volume of 19,900 Mcf of natural gas to Connecticut under four separate gas sales contracts, each relating to a separate service area. By the Commission's order issued May 16, 1963, in Docket No. CP63–247 Applicant was authorized to increase further its deliveries to Connecticut to a total volume of 20,374 Mcf or an increase of 474 Mcf.

Applicant proposes herein to reallocate, as follows, the volumes of natural gas delivered to Connecticut for each of the four service areas involved:

Service area	Authorized at docket No. CP60–94	Proposed reallocation		CP63–247 authorized increase	Total
		Increase (decrease)	Total		
Derby Shelton	12,083	(533)	11,550		11,550
Norwalk	2,670	320	2,990	230	3,220
Wallingford	3,836	247	4,083	244	4,327
Winsted	1,311	(34)	1,277		1,277
Total	19,900		19,900	474	20,374

(All volumes Mcf at 14.73 psia.)

Applicant states that the proposed reallocations will permit Applicant and Connecticut to meet their peak-day requirements through the 1964–65 winter heating season in the most economical manner.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 4, 1964 (29 F.R. 1705). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's opinion and order issued September 19, 1963, in Docket No. G–16842, *et al.*, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's opinion and order issued September 19, 1963, in Docket No. G–16842, *et al.*, be and the same is hereby amended by authorizing the reallocation of volumes of natural gas to be sold and delivered to Connecticut by

Applicant in accordance with the table hereinabove set forth, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said opinion and order shall remain in full force and effect.

OPINION NO. 414–A

UNION PRODUCING COMPANY, DOCKET NOS. G–13811, G–13820, G–14114, G–14352, G–14553, G–16725, G–17589, G–17606; UNION PRODUCING COMPANY (OPERATOR), ET AL., G–18354

OPINION AND ORDER CLARIFYING OPINION 414 AND DENYING REHEARING AND MOTIONS

(Issued March 6, 1964)[1]

Syllabus

1. **It is well settled that particular elements of a pipeline's costs may be determined in a proceeding separate from over-all pipeline rate proceeding. P. 504.**
2. **Where affiliated producer sells to pipeline the certificated rate for such sales cannot be binding in determining pipeline's gas purchase costs in rate proceeding. P. 504.**
3. **In remanded proceeding on Union, issue to be determined is cost which pipeline should properly include in its cost of service for purchases from producer-affiliate. P. 504.**
4. **Just and reasonable rates for Union's sales to non-affiliated purchasers will be determined in appropriate area rate proceeding. P. 504.**
5. **Fact that cost determination has been made for off-system sales controls question of refunds for sales to non-affiliates consolidated herewith- -failure to justify specific rates at issue in cost-of-service type proceeding requires disallowance of such rates—*i.e.* H. L. Hunt. P. 504.**
6. **Commission *clarifies* prior opinion; *denies* application for rehearing and motions for stay and interim order. P. 505.**

Commissioner O'Connor *dissenting*.

Commissioner Ross *concurring generally*.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SWIDLER, *Chairman:*

Applications for rehearing of our Opinion No. 414, issued January 9, 1964, 31 FPC 41, in the above captioned proceeding were filed by Union Producing Company (Union) on February 5, 1964, and jointly by the Memphis Light, Gas and Water Division and Mississippi Valley Gas Company (Memphis) on February 10, 1964. Memphis also filed a motion for interim order and other relief which would immediately require reduction of all of Union's rates. On February 11, 1964, Union filed a motion for stay of our orders accompanying Opinion No. 414.

In its application for rehearing Union continues to urge that it should be regulated entirely as an independent producer and that certain of the principles to be applied to its cost were improperly determined. On these matters Union has raised no arguments with respect to the facts or the law which were not fully considered by us in our Opinion No. 414 and there is no reason for modification of the opinion as to these matters.

***[Ed. Note: Union's Petition to Review filed in CA5 (#21339) was withdrawn on February 2, 1965, following settlement order—See 31 FPC 1506]**

Union has raised questions as to how, if it is to be regulated as an affiliate, such regulation should be conducted. Union points out that it has been included in area rate proceedings for most of its sales but that our orders in proceedings involving other pipeline affiliates indicate that the proper costs for Union's sales to United Gas Pipe Line (United) should be determined in a pipeline rate case. Union is correct in its contention that under our present policy for regulating sales by pipeline producers or affiliates its rates for sales to United are relevant primarily in a pipeline rate proceeding, but it is not correct in arguing that this element of United's cost cannot be determined in a proceeding separate from the pipeline rate proceeding. It is well settled that particular elements of a pipeline's costs may be determined in a proceeding separate from the overall pipeline rate proceeding. (See *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145.) We should, however, clarify the issue which is to be determined in the remanded proceeding.

Union's sales fall into two categories. As to its sales to United we have consistently held that where an affiliated producer is selling to a pipeline the certificated rate for such sales cannot be binding on the Commission in determining gas purchase costs in the pipeline's rate proceedings. Thus, in the remanded proceeding on Union the issue to be determined is the cost which United should properly include in its cost of service in Docket No. RP63-1 for purchases from Union.

Union's rates for sales to non-affiliated purchasers have been, or will be, consolidated into the appropriate area rate proceedings and the just and reasonable rates for those sales will be determined in such proceedings. This is the same treatment of rates for off-system sales which is being used for other producers affiliated with pipelines.[1]

With respect to Union's telegraphic motion for a stay of our orders in Opinion No. 414, it is apparently based on its contentions (a) that certain of the rates involved in this proceeding were determined for Union in United's settlement proceeding in 1961, and (b) that for off-system sales the area rates should be controlling. As to the first point, in issuing Opinion No. 414 we were aware that certain of the dockets involved locked-in periods covered by the settlement and that the matter of refunds to United would to some extent be a mere book transaction between affiliates. However, since a cost determination for the past period has been made in which Union did not justify these past rates it is appropriate that such refunds be made and that United's costs (in Docket No. RP63-1) be reduced immediately by the amounts not found justified in the open dockets in this proceeding. Of course, provision will also be made in RP63-1 for a further reduction in United's rates if the remanded proceedings indicate overpayments to Union on the basis of a current test year.

As to the second point, the fact that a cost determination has been made for these specific sales also controls the question or refunds for the sales to non-affiliates which were consolidated in this proceeding. Although Union's non-affiliated rates will be fixed prospectively in area proceedings and suspension dockets not included in this proceeding will be similarly determined, failure to justify specific rates which are in issue in a cost of service type proceeding requires the disallowance of such rates, see *H. L. Hunt*, 28 FPC 897.

The application and motion of Memphis require denial because they are based on the contention that the 1958 test year should be applied to all of Union's

---

[1] We are not finally determining here whether Union, or any other pipeline or pipeline affiliate should secure the same rate for its off-system sales as would accrue to independent producers for comparable gas. To the extent that there is any question as to this matter it could properly be raised for consideration in the area proceedings. Nor are we suggesting that we would agree to the automatic certification of off-system sales by pipelines or their affiliates where the gas reserves lie adjacent or close to their pipeline facilities.

4(e) proceedings without any further adjustment in the depreciation and depletion allowance or the rate of return. This contention overlooks the fact that our holding that even with additional allowances Union could not justify the increases, was limited to the increases involved in these dockets alone. Such a finding was not made and could not be made on this record for all of Union's increases. In the remanded proceeding all of Union's sales to United will be in issue. Any further relief to which Memphis is entitled will come through an adjustment to United's rates after the remanded proceeding rather than through a change in the contractual filings of Union for sales to United which thus far have not been determined in this proceeding.

The Commission orders:

(A) Except as discussed above, the applications for rehearing filed in this proceeding present no issues of fact or law which were not fully considered by the Commission, or which upon now being considered require any change or modification of Opinion No. 414, and the applications are hereby denied.

(B) The Motion for Interim Order and Other Relief filed by Memphis is hereby denied.

(C) The Motion for Stay filed by Union is hereby denied.

Commissioner O'Connor *dissents* to the denial of Union's application for the reasons stated in his dissenting statement in Opinion 414.

Commissioner Ross *concurs* generally with exception of that portion of the decision relating to the application and motion of Memphis. He *concurs* in the result but does not join in that portion of the opinion.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63–230

ORDER AMENDING ORDER ISSUED NOVEMBER 12, 1963

(Issued March 9, 1964)

On December 11, 1963, Michigan Wisconsin Pipe Line Company (Applicant) filed an application to amend the Commission's order issued November 12, 1963, 30 FPC 1239, in Docket No. CP63–230 (Phase I) by authorizing Applicant to deliver to Iowa Electric Light and Power Company (Iowa Electric) a maximum daily quantity of 6,315 Mcf of natural gas under Applicant's FPC Gas Rate Schedule ACQ–1 in lieu of the presently authorized maximum daily quantity of 6,000 Mcf under Applicants' FPC Gas Rate Schedule SGS–1, all as more fully set forth in the application to amend.

The order of November 12, 1963, affirmed the examiner's decision and issued a conditioned certificate wherein Applicant was authorized, among other things, to increase its system capacity so as to enable it to deliver additional maximum daily quantities of natural gas to existing customers.

Applicant states that during the contract year ending August 31, 1963, Iowa Electric's purchases were in excess of 102 per cent of 6,000 Mcf; accordingly, pursuant to the provisions of Section 8 of the General Terms and Conditions of Applicant's FPC Gas Tariff a new service agreement was executed providing for a maximum daily quantity of 6,315 Mcf under Applicant's FPC Gas Rate Schedule ACQ–1. Applicant states further that this increase was not reflected in its original application in this proceeding since Iowa Electric then estimated that its requirements could be adequately met by deliveries under the SGS–1 Rate

Schedule. Therefore, Applicant requests that the order of November 12, 1963, be amended to authorize the delivery of the additional 315 Mcf in maximum daily quantity.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on January 29, 1964 (29 F.R. 1489). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 12, 1963, in Docket No. CP63-230 (Phase I) be amended as hereinafter ordered.

(2) The authorization hereinafter granted should be conditioned upon no additional facilities being required by Applicant to render the subject increased service and upon Applicant filing with the Commission a new revised service agreement executed in accordance with the Commission's Regulations reflecting the subject increased service.

The Commission orders:

(A) The Commission's order issued November 12, 1963, in Docket No. CP63-230 (Phase I) be and the same is hereby amended by authorizing Applicant to deliver to Iowa Electric a maximum daily quantity of 6,315 Mcf of natural gas under Applicant's FPC Gas Rate Schedule ACQ-1 in lieu of the presently authorized maximum daily quantity of 6,000 Mcf under Applicant's FPC Gas Rate Schedule SGS-1, all as hereinbefore described and as set forth in the application to amend.

(B) The authorization granted in paragraph (A) above is hereby conditioned upon no additional facilities being required by Applicant to render the subject increased service and upon Applicant filing with the Commission a new revised service agreement executed in accordance with the Commission's Regulations reflecting the subject increase in maximum daily quantity to 6,315 Mcf under Applicant's FPC Gas Rate Schedule ACQ-1.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY (OPERATOR), ET AL., DOCKET NOS. G-18168,[1] G-20435,[1] AND G-20577[2]

DECLARATORY ORDER REQUIRING PAYMENT OF LEGALLY EFFECTIVE RATES

(Issued March 9, 1964)

On October 25, 1963, as supplemented on November 5, 1963, Trunkline Gas Company (Trunkline) filed a petition for a declaratory order, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, in Docket No. RI64-273 requesting the Commission to determine that the favored-nation clauses upon which The Superior Oil Company (Superior) has relied in filing the proposed increased rates involved in Docket Nos. G-18168, G-20435 and G-20577 are contrary to the public interest and do not provide sufficient justification for these rates. Trunkline further requests that pending determination of the just and reasonable rates for the instant sales by Superior, it be permitted to pay Superior on the basis of the applicable increased rate ceilings set forth in our Statement of General Policy No. 61–1. Superior filed answers thereto on November 1, 1963, and December 5, 1963, respectively.

---

[1] Consolidated with the area rate proceeding in Docket No. AR64-2, *et al.*, by order issued November 27, 1963.

[2] Consolidated with the area rate proceeding in Docket No. AR61-2, *et al.*, by order issued May 10, 1961, 25 FPC 942.

The dispute between Superior and Trunkline arises under Superior's FPC Gas Rate Schedule No. 1, involving the jurisdictional sale of natural gas by Superior to Trunkline from the Lake Creek, Pinehurst, and Altair Fields, in Montgomery and Colorado Counties, Texas (Texas Railroad Commission District No. 3), and under Superior's FPC Gas Rate Schedule No. 3, involving the jurisdictional sale of natural gas to Trunkline from the Lakeside, Grand Lake, and Pecan Lake Fields, Cameron Parish, Louisiana (South Louisiana).

The initial rate under Superior's FPC Gas Rate Schedule No. 1 was 8.49758¢ per Mcf at 14.65 psia. Superior tendered a notice of change to a favored-nation proposed increased rate of 15.0¢ per Mcf at 14.65 psia, designated as Supplement No. 12 to Superior's FPC Gas Rate Schedule No. 1, which became effective subject to refund on September 9, 1959, in Docket No. G–18168. Subsequently, Superior tendered a further favored-nation proposed increased rate of 20.0¢ per Mcf at 14.65 psia. The proposed increased rate, designated as Supplement No. 13 to Superior's FPC Gas Rate Schedule No. 1, was suspended and thereafter became effective subject to refund on May 24, 1960, in Docket No. G–20435.

On December 3, 1959, Superior tendered a notice of change in its FPC Rate Schedule No. 3. The favored-nation proposed increased rate, from 11.26176¢ per Mcf at 15.025 psia, to 24.05¢ per Mcf at 15.025 psia, designated as Supplement No. 19 to Superior's FPC Gas Rate Schedule No. 3, was suspended and thereafter became effective subject to refund on June 9, 1960, in Docket No. G–20577.

In support of its petition, Trunkline contends that favored-nation provisions are contrary to the public interest, and are an artifical reason for Superior's rate increases, constituting insufficient justification for the increased rates involved here. Trunkline also asserts that there was a lack of arm's-length bargaining with respect to the contracts with Superior, claiming that there was affiliation between the two parties at the time of execution of the contracts. Trunkline further states that Superior has collected large sums subject to refund over the periods the increased rates have been in effect. In order to reduce the amounts collected, effective with the payment to Superior for gas delivered in September 1963, Trunkline states it has computed its payments to Superior at 15.5¢ per Mcf at 15.025 psia under Superior's FPC Gas Rate Schedule No. 3 and at 14.0¢ per Mcf at 14.65 psia under Superior's FPC Gas Rate Schedule No. 1.

In the *Pure Oil* case, Opinion No. 341, 25 FPC 383, affirmed 299 F. 2d 370 (7th Circuit, 1962), we rejected the contention that favored-nation clauses should be stricken from rate schedules on file with the Commission.[8] The Supreme Court in *Wisconsin* v. *F.P.C.* 373 U.S. 294, rejected a similar argument by California with respect to spiral escalations. The Court stated (373 U.S. at 304):

> Further, we see no merit in California's contention. It is true that the Commission has announced prospectively that it would not accept for filing contracts containing such clauses,[12] but it would have been quite a different matter for the Commission to have declared that past rate increases were ineffective simply because they were based on spiral provisions. The effect of a contract clause of this type, of course, is only to permit the producer to resort to the filing provisions of § 4(d) of the Act. If the increase is challenged, the producer must still establish its lawfulness wholly apart from the

---

[8] *Cf.* Opinion No. 382 issued March 15, 1963, 29 FPC 498, *Shell Oil Company, et al.* See also *Texaco Inc., et al.,* Docket No. G–17613, *et al.,* order issued November 19, 1963, 30 FPC 1316.

> terms of the contract. Thus we have sustained the right of a seller to file an increase under a contract which, in effect, authorized him to do so at any time. *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103. The spiral clauses here are far more limited in scope depending as they do on the occurrence of external events. [Footnote omitted.]

Trunkline's allegation of lack of arm's-length bargaining appears to be founded on its contention that Superior at the time of execution of the contracts had the option to buy future issues of Trunkline stock. Trunkline also claims that some 10 months after the execution of the contracts Superior owned approximately 20 percent of Trunkline but no where does it allege that Superior in fact owned any stock at the time of the contractual transactions. The difficulty with this argument, aside from the question whether the lack of arm's-length bargaining alone would prevent Superior from collecting its contract price, is that at the time the original sales contract was negotiated, containing not only the two party favored-nation clause here in issue, but a third party favored-nation clause as well,[4] Superior had no option nor any other affiliation or basis for such claim with Trunkline. It is true that it appears that Superior was able to extract such an option as the consideration for extending the contract when the Commission failed to grant a certificate within the period originally prescribed, but there is no showing or even claim that this option had anything to do with the fact that the renewed contract contained the same favored-nation clauses as before. Taking official notice of the fact that such clauses were a common feature of gas sales contracts at the time and by no means limited to special situations in which intercompany relationships were involved, we must conclude that there has been no showing of any affiliation which could cause us to reach a different result.

In view of the foregoing, we must deny the relief requested in Trunkline's petition. There is also no justification for Trunkline's action of computing payment for gas purchased from Superior under the subject rate schedule on the basis of a lower rate than is presently on file with this Commission and in effect subject to refund. *Hope Natural Gas Company* v. *F.P.C.*, 134 F. 2d 287, reversed on other grounds, 320 U.S. 591. We shall therefore also order Trunkline to discontinue this practice at once and to recompute any previous improper payments.

The Commission orders:

(A) The relief requested in the petition for a declaratory order filed by Trunkline on October 25, 1963, as supplemented on November 15, 1963, is denied.

(B) Trunkline shall, effective as of the date of issuance of this order, make payments for gas purchased from Superior under the subject rate schedules computed on the basis of the rates in effect, subject to refund, in Docket Nos. G–20435 and G–20577, unless or until such increased rates are changed in accordance with the provisions of the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Trunkline shall recompute any previous payments it has made to Superior which were computed on the basis of lower rates than those described in paragraph (B) above, and shall make any additional payments to Superior that may be required based on such recomputation.

(D) Within 45 days from the date of issuance of this order, Trunkline shall report to the Commission in writing the details of its calculation resulting in any payments which may be required pursuant to paragraph (C) above, together with a copy of a release from Superior with respect to such payments.

---

[4] This third party favored-nation clause was eliminated by mutual consent of Superior and Trunkline during the subsequent period of alleged affiliation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

DORN & MILLER COMPANY

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 10, 1964)

On February 10, 1964, Dorn & Miller Company (Dorn) filed an application for rehearing of the Commission's letter-order issued January 14, 1964, rejecting the Notice of Producer Rate Change tendered by Dorn on December 16, 1963, for a proposed rate increase under its FPC Gas Rate Schedule No. 2 from 19.5¢ per Mcf to 21.4¢ per Mcf for gas presently being sold by Dorn, pursuant to conditioned temporary authorization issued in Docket No. CI62–897, to Transcontinental Gas Pipe Line Corporation from the Vermilion Area Block 129 Field, offshore Louisiana.

The basis for the rejection was that the proposed increase was not in conformity with the express condition in the temporary authorization that the 19.5¢ rate shall remain in effect until changed by further Commission order in the certificate proceedings in Docket No. CI62–897.

Dorn relies upon the fact that a similar condition has been held to be invalid by the Fifth Circuit Court of Appeals, *Hunt* v. *F.P.C.*, 306 F. 2d 334. However the Supreme Court has granted certiorari on appeal by the Commission from this decision (*F.P.C.* v. *Hunt*, No. 273, October Term 1963) and, pending such review, the decision of the circuit court is not controlling as a precedent, even with respect to new applications. *A fortiori* we cannot give effect to it here where (unlike *Hunt* which in accepting the temporary expressly reserved the right to seek review and did so after denial of a petition for rehearing) Dorn accepted the temporary authorization as tendered and allowed the Commission's letter-order granting the temporary to become final.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application of Dorn present no new facts or principles of law which were not considered by the Commission when it issued its letter-order of January 14, 1964, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The application for rehearing filed by Dorn on February 10, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

CITY OF SEATTLE, WASHINGTON, PROJECT NO. 2144

ORDER APPROVING EXHIBIT L DRAWINGS

(Issued March 10, 1964)

On October 29, 1963, the City of Seattle, Washington, licensee for Project No. 2144, known as the Boundary Project, filed for Commission approval Exhibit L Drawings showing the final design of the project structures. The drawings were submitted pursuant to Articles 38 and 41 of the license for the project.

In a detailed Commission staff study of a computer-analysis of the stresses in the Boundary Arch Dam and of laboratory and rock tests at the project site conducted by consultants to the licensee, the staff concludes that the Boundary Arch Dam, spillways, and sluiceways are safe and adequate.

The Chief of Engineers, Department of the Army, has advised that the project structures affecting navigation are satisfactory and that the tracings showing such structures have been approved in accordance with the provisions of Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Commission finds:

The following described Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L-B sheet	FPC No. 2144-	Entitled
2	-61	Arch Dam—General arrangement.
11	-62	Electrical one line diagram.
20	-66	Arch Dam—Plan.
21	-67	Arch Dam—Downstream elevation.
22	-68	Arch Dam—Vertical sections.
23	-69	Arch Dam—Section through sluices.
24	-70	Spillways—Left abutment—General arrangement.
25	-71	Spillway—Right abutment—General arrangement.

The Commission orders:

The Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2144.

OPINION NO. 420

TURLOCK IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT, PROJECT NO. 2299

OPINION AND ORDER ISSUING LICENSE

(Issued March 10, 1964)*

Syllabus

1. **Subject to conditions for fish water releases and other conditions set forth in license, Commission *finds* applicant's proposed project best adapted to comprehensive plan for development of Tuolumne river. P. 515.**
2. **Commission *rejects* applicant's contention that no fish water releases should be required in license. P. 515.**
3. **Prescribed fish water releases will maintain fishery for 20-year period without depriving applicants or San Francisco of water needed to meet essential irrigation and municipal requirements. P. 515.**
4. **20-year limitation on fish water releases found justified by circumstances of this case. P. 519.**
5. **20-year limitation should provide parties sufficient opportunity to study and work out alternative solution to fish problem before water situation becomes critical. P. 520.**
6. **Motion to reopen proceedings to require additional evidence and make San Francisco a party is denied. P. 521.**
7. **Commission *issues* major license under Section 4(e) of the Federal Power Act. P. 524.**

***Initial decision appears on p. 535. Modified; rehearing denied by order issued May 6, 1964, 31 FPC 1128. Affirmed, 345 F. 2d 917 (CA9–1965); cert. denied 382 U.S. 941 (1965).**

Robert L. McCarty, Jeremy Cook, Warren Gant, and *Charles Wheatley, Jr.* for Turlock Irrigation District and Modesto Irrigation District

Stanley Mosk and *J. M. Sanderson* for State of California, Department of Fish and Game

Frank J. Barry, Frank B. Horne and *William J. Costello* for Department of the Interior

George A. Huberty for Tuolumne County, California

Philip Cavalero for Banta Carbona Irrigation District

Daniel Goldstein for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

O'CONNOR, *Commissioner:*

This case involves a joint application by Turlock Irrigation District (Turlock) and Modesto Irrigation District (Modesto) for a license for a multipurpose project on the Tuolumne River in California to be known as New Don Pedro. The project will affect lands of the United States, and is subject to the licensing provisions of Part I of the Federal Power Act.

The applicants are two of the largest irrigation districts in California, serving irrigation water and electric power to customers in the vicinity of Turlock and Modesto in California's San Joaquin Valley. New Don Pedro will provide additional irrigation storage and hydroelectric power for the applicants. It will provide additional flood control storage desired by the Corps of Engineers. It will also provide municipal water benefits for the City and County of San Francisco, which will purchase exchange storage in the New Don Pedro reservoir for the purpose of releasing to the applicants at New Don Pedro the irrigation water required under the Raker Act (38 Stat. 245, 1913),[1] and thereby permitting it to increase its diversions of water for municipal purposes from its Hetch Hetchy and other reservoirs located upstream on the Tuolumne in the High Sierra county.[2] In addition to these primary benefits, New Don Pedro's reservoir will provide extensive recreational benefits. The project will be constructed by the applicants, who will own, operate and maintain it; however, its initial cost will be shared with San Francisco and the United States, based on the storage benefits indicated above.[3]

---

[1] The Raker Act gave San Francisco rights of way in Yosemite National Park and Stanislaus National Forest for the purpose of constructing its Hetch Hetchy municipal water supply system. A condition of the authorization so granted was a specified release of water to the applicants for irrigation purposes. Section 29 of the Federal Power Act makes the provisions of the Raker Act immune to modification or repeal by reason of any language in the Federal Power Act.

[2] San Francisco furnishes water for domestic and urban use in San Francisco County and portions of San Mateo, Santa Clara and Alameda Counties, a major portion of which is obtained from the upper Tuolumne River watershed. The consumption of water by San Francisco was at the rate of 178 mgd (million gallons per day) or about 199,000 acre feet for the fiscal year 1961–1962. San Francisco anticipates that it will require diversions of 210 mgd by 1968, 295 by 1985, and 400 mgd by 2015, and that it will ultimately require a maximum diversion of 471 mgd (528,000 acre feet per year) from the Tuolumne River watershed.

[3] New Don Pedro will provide 2,030,000 acre feet of gross storage, of which 340,000 acre feet will be available for flood control, 811,000 acre feet will be for irrigation, and 570,000 acre feet will be for San Francisco's Raker Act releases to the applicants. Total cost of the project is estimated to be $92,415,850. The applicants' share of this cost is approximately $49,234,060. San Francisco's is approximately $43,181,790. The applicants and San Francisco will be reimbursed, however, for the flood control storage to the extent of approximately $14,200,000 to be contributed by the Federal Government. In non-flood seasons this flood control storage will be available to the applicants and San Francisco for conservation storage on an equal sharing basis.

New Don Pedro will be located about one and one-half miles downstream from the applicants' existing Don Pedro dam and power house. The existing facilities, which were constructed in 1923, will be flooded out by the new project.[4] Four miles below the existing project are the La Grange dam and reservoir, which were completed in 1894. The La Grange dam is used by the applicants to divert water into their respective irrigation systems. The reservoir has no significant storage, although under certain conditions it offers some pondage. Turlock owns a powerhouse at La Grange which utilizes water in excess of its needs for irrigation purposes. That portion of the water used for power generation is discharged back into the natural streambed below La Grange dam. The applicants will continue to operate these facilities after construction of New Don Pedro.

The basic question presented in this case is whether the Commission should condition its license to Turlock and Modesto to require specified releases of water from New Don Pedro for the protection of the fall run of King salmon which spawn in the Tuolumne below La Grange dam. The State of California, through its Department of Fish and Game (California), intervened at the outset of the proceeding to request such a condition for protecting the existing salmon fishery. Formal hearing was postponed while the applicants and California sought to work out a settlement with respect to the release of fish water. A tentative agreement was reached, but the California Fish and Game Commission (an independent California agency) declined to ratify the agreed-upon settlement. Thereafter, the case was set for formal hearing. Upon petitions to intervene, filed out of time, the Secretary of the Interior, Tuolumne County, and Banta Carbona Irrigation District were granted limited intervention for the purpose of making an opening statement, cross-examining witnesses, and filing briefs and exceptions. The Secretary requests releases of water for the protection of fish similar to California's but with summer flows somewhat greater than those requested by California.

The applicants contend that New Don Pedro, without fish water releases, will provide a definite improvement over fish conditions in the Tuolumne as they are under existing Don Pedro. They contend that a license condition requiring the fish water releases requested by California or the Secretary would impair and infringe their vested rights to water for irrigation which are protected by Section 27 of the Power Act.[5] They further contend that the requested releases would reduce the dependable power capacity of the project to zero after 1985, when San Francisco's upstream diversions will exceed 295 mgd (million gallons per day), thus making the project economically unfeasible as a power project.

The Commission's staff takes the position that the license should be conditioned to require California's recommended releases, with some modification, for a period of 20 years, during which continuing studies of the fish problem would be made by the applicants in cooperation with the fish interests, and after which minimum releases would be made as prescribed by the Commission upon re-examination of the question.

Both California and staff construe Section 27 as imposing no restriction on the Commission's authority to condition the license to require minimum water releases for fish preservation. They contend that the vested rights protected are not those of applicants for licenses under the Act, but the rights of others whose interests might be affected by the issuance of a license. They argue that if the necessary water releases required to make the project best adapted to a comprehensive plan as contemplated by Section 10(a) should result in interference with the applicants' vested water rights under state law, the applicants are at liberty to accept the license as so conditioned or to reject it.

---

[4] Some of these facilities were placed under a minor part license (Project No. 1086) in 1930 when higher spillway gates were installed and some Federal lands were affected for the first time.

[5] "Sec. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein."

The examiner issued his decision on June 4, 1963. He recommends the issuance of a license subject to conditions which are generally favorable to the applicants. His conclusions, however, reflect neither acceptance nor rejection of the positions taken by the several parties to the proceeding.

In capsule, the examiner concludes that Section 27 of the Act preserves the irrigation and municipal water rights of the applicants and of San Francisco under state law to the extent that those rights have vested by use. Thus, he finds that the Commission cannot impose conditions under Section 10(a) which would result in diversions of water by the applicants and San Francisco less than those possible with their existing facilities or which would burden or impair their rights to such diversions. On the other hand, to the extent that the new project will permit diversions in excess of those presently possible, he finds that the Commission may impose such conditions in the license as it deems necessary to make the project best adapted to a comprehensive plan. Because the proposed fish water releases would, in his judgment, have the effect, *inter alia*, of reducing the irrigation supply available to the applicants in critical years below that available from the existing Don Pedro project, a result which he says is clearly within the ban of Section 27, he finds it unnecessary to pass upon the fish contentions of California and makes no findings with respect to the river conditions required to preserve the fall salmon run. However, he would impose a condition requiring the applicants to maintain a minimum stream flow based on the additional waters to become available to them and to San Francisco as a result of the construction of New Don Pedro, thus maintaining stream flow to the extent possible to assist in preserving the fish runs; but he finds that he is unable to make a computation of the waters available on the basis of the present record. He therefore includes Article 30 in his recommended license requiring applicants to maintain minimum stream flows as may be prescribed hereafter by the Commission upon its own motion or the recommendation of the Secretary or California, after notice and opportunity for hearing and upon a finding that such minimum flows are available, are necessary and desirable, and are consistent with the provisions of the Act.

In addition to the foregoing findings with respect to fish water releases, the examiner makes several findings of special note. First of all, he would require the applicants and San Francisco to construct, pay for, and maintain facilities for fishing, hunting, camping, picnicking, bathing, boat-launching, etc. This requirement is set out in his Article 38, which also requires the applicants to cause a master plan for recreational use of the reservoir to be prepared in cooperation with interested Federal, State, and local agencies, and which requires this plan to be submitted to the Commission for approval before construction of the project can commence. His Article 39 further provides that the applicants must "acquire such additional lands as will be necessary for recreation, fish and wildlife purposes."

The examiner notes that San Francisco is not a joint applicant, or even a party to the proceeding, and states that this in no way hampers the exercise of the Commission's jurisdiction.[6] He finds that sufficient control over San Francisco's plans can be exercised by requiring the applicants and the city to file an agreement relating to the allocation of project costs for the Commission's approval prior to commencing construction of the project. This provision is set forth in his Article 41.

---

[6] In August of 1960, San Francisco inquired of the Commission whether it should join in the application for New Don Pedro. The Commission, by the Secretary, advised San Francisco that it was not necessary for it to join in the application.

Exceptions to the examiner's decision have been filed by the applicants, by California, by staff, and by the Secretary of the Interior. Replies to the exceptions have been filed by the applicants and by staff. In addition, the Secretary has filed a motion for institution of an investigation to determine the benefits which San Francisco will derive from this project and for an order directing San Francisco to show cause why it should not file a declaration of intention or file an application for joinder in the pending application before the Commission in this proceeding.

The applicants' exceptions reiterate their position that under Section 27 and the Raker Act the Commission may not curtail their rights to water for irrigation purposes or San Francisco's rights to water for municipal purposes in order to provide water for fish. They argue that the Raker Act contemplates the diversion of up to 400 mgd (million gallons per day) by San Francisco and not merely 210 mgd as found by the examiner. To the extent that the examiner's Article 30 can be construed as permitting an impairment of the project dependable supply for irrigation or the diversion of water for municipal purposes, the examiner, they argue, is in error. Such a construction of Article 30, they say, would veto the project. They also take exception to the unlimited scope of the examiner's recreation requirements and to the conditions which would require approval of their recreation plan before commencing construction of the project and the acquisition by them of additional lands for such purposes.

California, staff, and the Secretary take exception to the examiner's failure to make a finding on the releases required to preserve the fish runs in the Tuolumne River. This, they argue, was the primary purpose of the hearing, and the record is adequate to permit such a finding. Article 30, they contend, merely ducks the issue. These parties find no limitation in the provisions of the Power Act or the Raker Act upon the Commission's authority to require the necessary fish water releases as a condition of the license for New Don Pedro. They contend that the project cannot be found to be best adapted to a comprehensive plan for development of the river under Section 10(a) without a condition for fish water releases.

California and the Secretary also question the examiner's finding of economic feasibility in the absence of evidence of the benefits flowing to San Francisco. They contend that the contract between the applicants and San Francisco should be in evidence if a proper determination of costs and benefits is to be made. They further argue that San Francisco's upstream reservoirs will be operated in conjunction with the New Don Pedro facilities of the applicants and that San Francisco should be a party to the license application. Both request a reopening of the proceeding, although only the Secretary has filed a motion which would have that effect.

Staff and the Secretary take exception to the examiner's requirement that San Francisco contribute to recreational facilities in connection with the project since San Francisco is not a party to the proceeding or an applicant for license. The Secretary would remedy this error by making San Francisco a party. Staff would require the full burden to be borne by the applicants, Turlock and Modesto.

Oral argument of the exceptions to the examiner's decision was held before the Commission on December 5, 1963.

Upon review of the record presented at the hearing, the parties' briefs, the examiner's decision, the exceptions thereto, and the oral argument before the Commission, it is our judgment that a license should be issued to Turlock and Modesto upon the conditions for fish water releases recommended by staff.[7] Subject to these conditions and such other conditions as are hereinafter set forth in the license, we find the applicants' proposed New Don Pedro project to be best adapted to a comprehensive plan for the development of the river as required by Section 10(a) of the Act.

In concluding that releases for fish should be required as a condition of the license, we do not seriously question the applicants' contention that even without such a condition the salmon runs would be preserved longer with New Don Pedro than with existing Don Pedro. On the basis of the record, we would expect that New Don Pedro could be operated without adverse effect on the salmon runs until after 1985, when San Francisco's upstream diversions reach 295 mgd; whereas without New Don Pedro it appears that the fish would be seriously affected, if not destroyed, after 1968, when San Francisco's diversions reach 210 mgd. This evidence, however, does not substantiate the applicants' contention that no fish water releases should be required in the New Don Pedro license. In our judgment such releases are required as hereinafter prescribed if the project is to be found to be best adapted to a comprehensive plan for development of the waterway, since only by making the releases a condition of the license can we be sure that the project will be operated so as to utilize the available water in the best interest of all parties and provide the best plan for comprehensive development for all public uses.

Assuming the hydrologic cycle of the past 39 years as a generally representative pattern for the future, and assuming the operation of the project so as to maximize the availability of water for fish requirements, it is our judgment that the prescribed releases will maintain the fishery for at least a 20-year period without depriving the applicants or San Francisco of the water needed to meet their essential irrigation and municipal requirements.[8] The license therefore prescribes such releases for a 20-year period. We are not now, however, prescribing releases beyond the first 20 years of project operation, since it is our intention that the parties be encouraged to cooperate in continuing studies of the fish problem and to coordinate their efforts in seeking a mutually satisfactory solution for the future. Further releases will therefore be determined only after further hearing to consider the results of the parties' own efforts to solve the problem. As will be seen below, the need for some modification of the releases after San Francisco's diversions reach 295 mgd, and the possibility that the parties can find an economical and feasible solution to the problem through the use of alternative sources of water or artificial propagation facilities justify a re-examination of the release requirements by the Commission at the end of the first 20 years of operation.

---

[7] In oral argument, California and the Secretary indicated that staff's recommendations would be generally acceptable to them as a basis for disposing of the fish problem.

[8] The examiner erred in finding that after six years of project operation under California's requested releases the dependable minimum irrigation yield from New Don Pedro would be less than that obtainable from the existing project. Examination of the record reveals that the applicants have diverted water for irrigation purposes at an annual average of about 845,000 acre feet for the 39-year period, varying from a minimum of 570,544 acre feet in 1961 to a maximum of 1,027,136 acre feet in 1956. Examination of the record further indicates that with the fishery releases hereinafter provided the applicants' average irrigation yield will be 1,088,000 acre feet with upstream diversions of 210 mgd, decreasing to 1,051,000 acre feet with upstream diversions of 295 mgd after 1985. The examiner also erred in finding that the Raker Act limits San Francisco's upstream diversions to no more than 210 mgd. Our review of the Raker Act and its legislative history reveals no such limitation.

No question has been raised with respect to the engineering soundness of the applicants' New Don Pedro project. Nor is there any doubt that the applicants' electric systems will be able to absorb the entire output of the project by the time of its completion. The record also shows that the project is financially feasible. With respect to the financing, both applicants have paid off all outstanding indebtedness. They have been authorized by the California Districts Securities Commission and by the people of the Districts to issue general obligation bonds in the amount of $34,000,000 for Turlock and $18,500,000 for Modesto. There is evidence that these bonds can be sold at not more than 4.25 percent interest, and can be paid off in 35 years commencing in 1966 at an annual cost of $1,885,000 for Turlock and $1,025,000 for Modesto. To pay its share of the cost of New Don Pedro, San Francisco has obtained authorization for the issuance of bonds in the total amount of $115,000,000, of which approximately $45,000,000 is earmarked for New Don Pedro. We are requiring as a condition of the license herein issued that the applicants file with the Commission for its approval prior to the commencement of construction their agreement with San Francisco setting forth the final formula for allocating the cost contribution to be made by San Francisco and other details of the exchange storage arrangement. As for the economic feasibility of the project, there would be no question in the absence of fish water releases. The license as conditioned, however, assures the economic feasibility of the project. The impact of such releases on economic feasibility is discussed later in this opinion.

The bulk of the evidence of record in this proceeding concerns fish and the flows in the river required to preserve them. The fall salmon spawn in the reach of the river extending about 20 miles below La Grange. The record shows the fish runs in the river by actual count for the years 1940, 1941, 1942, 1944, and 1946, and by estimate for the years 1947 through 1961. The average run of salmon for these years was 40,000, the largest run being 130,000 in 1944, and the smallest run being 500 in 1961. The recommendations for fish water releases made by California are based on maintaining an average run of 40,000 salmon. California's evidence shows that in order to maintain this average, spawning grounds must be provided for up to 80,000 adult fish each year, of which about 40 percent will be females. It further shows that 31 percent of the females are expected to be on the spawning beds during the peak of the spawning season, and that as much as 200 square feet of spawning gravel may be required for each female. By relating the gravel required for the spawning females to the flow of the river necessary to cover the gravel to the proper depth for spawning, California has calculated the flows set forth in its recommended release schedules, making suitable allowance for differing conditions in the natural flow of the river.

Our analysis of the record shows California's studies to be reasonable, although somewhat conservative. For example, California's estimates of the number of adult fish to be accommodated and the amount of gravel required for each female are higher than the comparable estimates of the applicants' experts. Also, its studies do not take into account accretions in the river due to the return flow of irrigation water. Under these circumstances, we find it appropriate to adopt the release schedules recommended by California, but with the modification in their use suggested by staff and discussed below. This modification, as will be seen, results in a greater incidence of California's dry-year schedule and a consequent over-all reduction in the releases to be required.

California's recommended schedules of releases are as follows:

Period	Schedule A (normal year)		Schedule B (dry year)	
	Cfs	Acre-feet*	Cfs	Acre-feet*
Preseason flushing flow	2,500	4,960		
October 1–15	200	5,950	50	1,490
October 16–31	250	7,930	200	6,350
November	385	22,900	200	11,900
December 1–15	385	11,450	200	5,950
December 16–31	280	8,880	135	4,280
January	280	17,210	135	8,300
February	280	15,550	135	7,500
March	350	21,520	200	12,300
April	100	5,950	85	5,060
May–September	3	910	3	910
Total acre-feet		123,210		64,040

*One cfs day equals 1.983 acre-feet.

These are the normal and dry-year releases recommended by staff. They are also similar to those recommended by the Secretary of the Interior, except that the Secretary would require releases during the summer months of 85 cfs in normal years and 50 cfs in dry years. The 3 cfs for normal and dry years shown in California's schedules is about the leakage through La Grange dam at the present time.

The criteria formulated by California for the use of Schedule A and Schedule B are based on the computed natural inflow of the Tuolumne River at La Grange dam. Whenever the flow equals or exceeds 1,000,000 acre feet in the preceding water year, ending September 30, Schedule A would apply. When the flow is less than 1,000,000 acre feet, Schedule B would apply. Proportionately reduced releases would apply in years of unusually low flows below 750,000 acre feet. By utilizing the computed natural flow of the river at La Grange, California would require normal-year releases regardless of the upstream diversions made by San Francisco. Thus, even though the water available at New Don Pedro would be reduced by San Francisco's increasing diversions, and even though there is no assured correlation between the natural flow of the river as computed without any diversions and the amount of water actually flowing into New Don Pedro, California would require releases for fish to be based on the computed natural flow. Staff, on the other hand, recommends the use of criteria which would be based on the flow available to the applicants. Thus, under staff's criteria, Schedule A would apply when the inflow into New Don Pedro reservoir equals or exceeds 1,000,000 acre feet, and Schedule B would apply when the inflow into the reservoir is less than 1,000,000 acre feet. Under Staff's criteria, Schedule B would, apply in about one year out of four, based on discharges recorded over the past 65 years. Under California's criteria. Schedule B would apply in about one year in ten. For the reasons indicated here and above, we adopt staff's modification of California's proposal.

California has recommended that provision be made for modification of the monthly stream flow schedules within the limits of the total quantities of water involved. These modifications would be made upon California's request when found to be desirable for optimum fishery producton and permissible without infringing upon prior project commitments. Recognizing California's desire to provide for modifications of the monthly flows from time to time, and acknowledging the wisdom of such flexibility in the license, staff would eliminate an itemization of monthly flows under Schedules A and B in the license. Instead, staff would have us prescribe only the total quantity of water to be released during the water year, leaving the monthly flows for optimum fishery production to be determined by California in cooperation with the applicants. We agree that the flexibility to modify the river flows within the limits of the total quantities prescribed is a desirable feature of the license, and we do not see the necessity of requiring Commission approval of such modifications where California and the applicants agree to the changes to be made. However, in order to provide for the orderly release of fish waters in the absence of agreement between the parties on the monthly flows to be released in any year, we shall include the itemized schedules in the license, subject to such modifications as may be agreed upon with respect to scheduling the total quantities of water to be released.

There was conflicting testimony as to what fluctuations in the flow of the river below La Grange dam would be safe for the spawning and incubating fish and be permissible in the operation of the project. California's recommendations are based on an allowance of fluctuations above the base flows provided in the schedules for the spawning period of no more than 0.2 feet in the depth of the river. Where project conditions would require flows during the spawning period higher than those recommended in the release schedules, California would limit the fluctuations to no more than 0.2 feet above or below such higher flows. California would also limit the reductions in flow from the spawning period to the incubation period to no more than 0.4 feet in the depth of the river.

The applicants, on the other hand, offered evidence to show that the fluctuation limitations recommended by California would be unduly severe, if not impossible to maintain. One of the applicants' witnesses testified that the proposed limitations would have an adverse impact on the peaking capability of the project, and would reduce the average useful capability by as much as 20,000 kilowatts during the period November 1 to December 15 under certain anticipated conditions. Another expert testified that peaking generation would occur during periods of four to six hours, and that for such short periods a rise of 1.5 feet in the stream level would not cause major harm to the spawning population. He also testified that a safe level of downward fluctuation during spawning would be 0.3 feet in a day, and that under base flows of 450 to 500 cfs the fluctuations could be as much as 0.5 feet. He would limit downward fluctuation during incubation to 0.3 feet. There is no need for a limit on upward fluctuations during incubation.

In our judgment the limitation of 0.2 feet recommended by California is too severe. There should be a more flexible arrangement for fluctuations to allow for peak generation of power and for normal variations in river flows resulting from the operation of the project, provided the base flows established under Schedules A and B for the spawning period are maintained. We think that staff's recommendation of a daily upward fluctuation of 10 inches with a further allowance of up to 18 inches for periods not exceeding two hours per day is reasonable, as is its recommendation of not more than a 4-inch reduction in river height from the spawning period to the incubation period. These recommendations are incorporated in the license as hereinafter set forth.

Two other conditions urged by California concern the temperature of the water to be released from New Don Pedro and the removal of willow growth and other vegetation in the spawning area. California would have us require the construction and operation of the project so as to maintain water temperatures below 56 degrees at La Grange bridge from October through March. However, the record does not convince us that such a rigid requirement is necessary.

The evidence as to the effect of water temperatures over 56 degrees is conflicting and inconclusive. At the same time, there is evidence to show that the applicant's project has been designed to release water from the reservoir at levels which will provide suitable water temperatures for fish, and that in fact the water released through power generation will closely approach the temperature conditions sought by California. In any event, the record is clear that water temperatures with New Don Pedro will be more favorable to the fish runs than those possible with existing Don Pedro. We think that California and the applicants can cooperate to see that waters of suitable temperature for successful salmon spawning are provided, and the license so requires.

Similarly, with respect to the encroachment of willow growth and other vegetation on the spawning areas, the evidence of record is not sufficiently conclusive to justify the license condition requested by California.

As noted before, staff recommends that the fish releases required by the license be prescribed only for the first 20 years of the project operation, and that minimum flows to be maintained thereafter be determined only after further hearing, either upon the Commission's own motion or upon the recommendation of California or the Secretary of the Interior. In our opinion the 20-year limitation on the releases of water for fish is justified by the circumstances of this case. It is a reasonable limitation which is both appropriate and necessary to serve the best interests and legitimate needs of all of the parties, and of the public as well. There are basically three reasons for this conclusion. First, it appears that some modification of the prescribed releases from New Don Pedro will be necessary at the end of 20 years if the economic feasibility of the project for power is to be preserved. Second, there are a number of factors bearing on the need for fish releases in the future which cannot now be properly evaluated and which should be considered before requiring the applicant to make releases from New Don Pedro beyond the 20-year period. Third, it appears that there will be sufficient water available in the Tuolumne River for 20 years to meet the essential requirements of all interests. We shall consider these reasons in order.

The record shows that shortly after San Francisco's upstream diversions exceed 295 mgd which should occur in 1985, the dependable capacity of the New Don Pedro project will drop to zero if the applicants are required to continue the fish releases as requested by California. This we cannot allow. As suggested by staff, the parties can utilize the 20-year period to cooperate in continuing studies to determine the most economic and feasible manner for maintaining the salmon fishery. It will serve the best interests of California to seek alternative solutions in such cooperative studies, since it will be necessary for the Commission to modify the fish release conditions at the end of the 20-year period to whatever extent may be required to assure the economic feasibility of the applicants' project and to preserve its dependable capacity.

It is expected that the dependable capacity of the project will be 73,000 kilowatts in 1985, which is the capacity of the plant at minimum pool. Staff studied the economic feasibility of the project on the assumption that a plan could be worked out which would enable the project to retain a dependable capacity of 73,000 kilowatts. This study shows that on the basis of a cost of money of 4.5 percent, which is conservative, there would be an annual deficit over the entire license period of $51,000. If, however, lower interest rates are obtained, as is likely,[9] this small deficit would be wiped out, since a reduction of only 0.5 percent in the interest rates would result in a reduction of $190,000 in annual project costs. Moreover, any such small deficit would be more than counter-balanced by the economic value of the augmented irrigation drafts to be realized from New Don Pedro.

---

[9] The applicants estimated their costs using an interest rate of 4.25 percent.

Apart from the vagaries of the weather, which could always affect the available supply of water as well as the needs of the various interests involved, there are a number of factors which over the next 20 years might have a bearing on the necessity for continuing fish releases from New Don Pedro. For example, there is testimony with respect to other reclamation propects being developed for California which might well provide alternative sources of water for the purpose of preserving the fish runs in the Tuolumne. This testimony reveals that the East Side Canal, projected as an extension of the Folsom South Canal under the Auburn-Folsom Project, would cross the Tuolumne River near La Grange. Although this canal is only in the planning stage, and may be 10 to 15 years in the future, it represents one of several possibilities for alternative sources of water which could become available for the Tuolumne fishery from California's developing water program and the Central Valley Project. Another possibility for a solution of the fish problem in the Tuolumne lies in the development of other techniques for preserving the fish runs. Thus, through further study, it might be found that the fish run can effectively be preserved by the use of spawning channels designed to use less water than is now thought necessary for maintaining the runs in the natural river gravels. It might also be found that the use of a fish hatchery would provide the most economical and feasible solution. Other factors which dictate the wisdom of a new look at the problem in 20 years are the possibility that the fishery might be destroyed by changes in the flow of the river downstream from La Grange by natural or other causes wholly beyond the applicants' control; and also the possibility that the applicants' irrigation requirements might be reduced due to increased urbanization and industrialization, or by the development of more efficient methods of utilizing the water available for irrigation purposes.

The applicants put into evidence a reservoir operation study covering a 39-year period based on the historical flows of the Tuolumne and showing operations under conditions of diversions by San Francisco of 210 mgd, 295 mgd and 400 mgd. If the water which this study shows to be available or permissible for uses other than irrigation is applied to meet the fish releases herein required, either through current use or through storage for use in subsequent years, the applicants could operate the project as outlined in the study without limitation of their planned irrigation uses for a period of at least 20 years, i.e., until after San Francisco commences the diversion of 295 mgd. Thus the 20-year limitation on the schedule of releases required by the license should provide the parties with sufficient opportunity to study and work out alternative solutions to the fish problem before the water situation becomes critical. At the same time, the 20-year limitation assures the applicants that no releases beyond that time will be required without further hearing to consider the need therefor and the legal and operational consequences resulting therefrom.[10]

---

[10] Inasmuch as the license herein issued does not presently require fish releases which interfere with the water rights of the applicants or San Francisco under state law, or which are expected to interfere with such rights during the first 20 years of operation, it is not necessary at this time, and it may never be necessary in this case, to pass upon the legal question of the Commission's authority under the Power Act to require releases which would interfere with vested state water rights. We note, however, the recent decision of the Court of Appeals for the Ninth Circuit construing Section 27 insofar as it relates to the Commission's authority to impose navigational conditions under Section 11, and upholding a Commission determination that Section 27 is not a limitation on the Commission's exercise of the authority vested in it by Section 11. *Portland General Electric Co.* v. *F.P.C.*, decided February 7, 1964, 328 F. 2d 165.

As we have pointed out, both California and the Secretary of the Interior question whether New Don Pedro can be found to be economically feasible in the absence of evidence showing the benefits flowing to San Francisco. They contend that the contract between the applicants and San Francisco should be in evidence to determine the proper relationship of costs to benefits. They would have us reopen the proceeding, although only the Secretary has filed a motion to that effect; and the Secretary would have us make San Francisco a party.

The history of the efforts of the applicants and San Francisco to develop the resources of the Tuolumne River on a coordinated basis is clear from the record, as is the basic understanding reached by these parties in contracts executed in 1940 and 1949, even though these contracts are not part of the record. San Francisco is contracting with the applicants for 570,000 acre feet of storage at New Don Pedro, plus one-half of the 340,000 acre feet of flood storage capacity when not needed for flood control. In consideration of its right to this storage, San Francisco has agreed to contribute to the cost of New Don Pedro the equivalent of what it would cost to build a reservoir at that site to a capacity of 1,200,000 acre feet. Thus, San Francisco will pay for sufficient storage (1) to replace for the applicants the 290,000 acre feet of storage which will be destroyed at existing Don Pedro, (2) to provide the 340,000 acre feet of flood control storage agreed to with the Corps of Engineers, and (3) to provide the 570,000 acre feet of storage required for its own use. As noted above, it is expected that San Francisco's share of the cost of the project on this basis will be about $43,181,790.[11] Apart from the land, the applicants will have to provide only the power facilities and the incremental storage in the amount of 830,000 acre feet, of which 811,000 acre feet will be usable for irrigation.

It appears that New Don Pedro reservoir is the most economical source of additional storage to meet San Francisco's increasing municipal water needs. San Francisco here is buying water storage. It is not buying power, nor will it share in the power benefits of New Don Pedro. It is to pay for this storage on a cost basis, and we find no justification for seeking additional evidence on this question.

We likewise find no justification for seeking additional evidence of the upstream power benefits which San Francisco might realize through the construction of New Don Pedro, and which California and the Secretary contend should be considered in determining San Francisco's proper share of the project cost. No reasonable cause has been shown for believing that any substantial upstream benefits will be realized. It appears that the same amount of water will flow through San Francisco's upstream facilities regardless of the construction of New Don Pedro, and that its power head will remain unchanged. The only possible difference in its operations would be in the scheduling of its releases, which in turn might have some slight effect on its dependable capacity and energy output. This, however, does not alter our judgment that San Francisco's share of the cost of New Don Pedro is properly based on the cost of its storage, which will be finally determined in accordance with its contract with the applicants.

At the outset of this proceeding, we advised San Francisco that it was not necessary for it to join in the license application for New Don Pedro.[12] We do not deem it necessary or appropriate at this time to reopen the proceedings to make San Francisco a party or to require additional evidence of the costs and benefits relating to its interest in the project. It is our expectation, however, that San Francisco will cooperate with the applicants and California in their efforts to find a solution to the fish problem on the Tuolumne, and that it will be a party to any further hearing before the Commission to determine the minimum fish release requirements at the end of the 20-year period. Moreover, as a condition of the license herein issued, we shall require the applicants to file their final contract with San Francisco relating to the allocation of the total cost of the project and San Francisco's acquisition of storage space in the reservoir. Construction of the project will not be permitted to commence until this agreement has been approved by the Commission.

---

[11] See footnote 3, above. This cost will be reduced by the Federal Government's contribution of approximately $14,200,000 for flood control storage.

[12] See footnote 6, p. 513.

The Commission further finds:

(1) Turlock Irrigation District and Modesto Irrigation District, irrigation districts organized under California law, filed a joint application on May 9, 1961, as later amended on March 30, 1962 and May 18, 1962, for license under the Federal Power Act to construct, operate and maintain a hydroelectric project known as the New Don Pedro project, located on the Tuolumne River at river mile 54.5.

(2) The applicants are municipalities as defined in Section 3(7) of the Federal Power Act.

(3) Public notice was given of the instant application. No conflicting application is before the Commission.

(4) A public hearing was held on the application in San Francisco, California, commencing on October 16, 1962, and concluding on October 26, 1962.

(5) Construction, operation and maintenance of the proposed Project No. 2299 would affect public lands of the United States. Consequently, under the provisions of Section 23(b) of the Federal Power Act, the applicants may not construct, operate or maintain the proposed works upon those lands of the United States until they shall have received a license under the provisions of the Federal Power Act.

(6) The exhibits filed by the applicants pertaining to the New Don Pedro project conform with the Commission's rules and regulations and should be approved as part of the license, but there shall be filed, as hereinafter provided, Exhibits F and K showing and describing the project boundary and project lands.

(7) The New Don Pedro project as outlined in the applicants' plans conforms to sound engineering practice and will be safe and adequate.

(8) The New Don Pedro project, constructed, operated and maintained as hereinafter ordered and conditioned, will not affect any Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(9) The Tuolumne River has a large annual variation in flow, ranging from 600,000 acre feet to 3,200,000 acre feet over the 39-year representative hydrologic cycle, namely 1923-1961, and storage is essential in order to provide dependable supplies for irrigation and domestic use, permitting the carryover of waters from wet years to dry years.

(10) The New Don Pedro project will provide storage to conserve water for irrigation and domestic supplies, and will provide for the generation of hydroelectric power, for flood control, and for recreation and other public benefits.

(11) The New Don Pedro project, as herein authorized, is best adapted to a comprehensive plan for the improvement and utilization of water power development and other beneficial public uses, including recreational purposes.

(12) The construction cost estimated by the applicants for the New Don Pedro project is reasonable.

(13) Pursuant to principles laid down in a 1949 agreement between the applicants and the City and County of San Francisco, it is anticipated that the

aforesaid parties will enter into a binding agreement fixing San Francisco's contribution to the overall cost of the New Don Pedro project. Under the 1949 agreement, San Francisco agreed to pay the actual cost of constructing the New Don Pedro project to a reservoir capacity of 1,200,000 acre feet, excluding the cost of land and generating facilities.

(14) Construction of the New Don Pedro project should not commence until the applicants and San Francisco enter into a new agreement, which shall be filed with and approved by the Commission, allocating the total costs between the parties and obligating San Francisco to pay its share of those expenditures. Such agreement should entitle San Francisco to a maximum of 740,000 acre feet of storage in the New Don Pedro reservoir consisting of 570,000 acre feet of municipal exchange storage and 50 percent of the 340,000 acre feet off-season flood control space.

(15) The existing Don Pedro project, under minor part license to the applicants as Project No. 1086 and located at river mile 56.0, will be submerged by the New Don Pedro project.

(16) The proposed New Don Pedro project will utilize the head and stream flow of the Tuolumne River to the maximum extent for power purposes.

(17) The New Don Pedro project will have an installed capacity of 130,440 kilowatts and an estimated average annual output of 527,000,000 kilowatt hours, with a peaking capability of 150,000 kilowatts.

(18) The combined loads of joint applicants' electric systems will be sufficient to absorb the entire output of the proposed project by the date of its completion.

(19) The at-market power value of the New Don Pedro project is estimated at $19.55 per kilowatt year for capacity plus 4.06 mills per kilowatt hour for energy.

(20) The financial feasibility of the New Don Pedro project has been established.

(21) The installed horsepower capacity of the New Don Pedro project for the purpose of computing annual charges is 174,000 horsepower.

(22) It is desirable to reserve for future Commission determination the question of what lands of the United States are affected by the New Don Pedro project and the amount of annual charges to be fixed for the use thereof.

(23) The amount of annual charges to be paid under the license for the New Don Pedro project for the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act is reasonable.

(24) It is appropriate for the Commission to reserve the right hereafter to determine the transmission facilities to be included in the license.

(25) The New Don Pedro project, as proposed to be operated by the applicants, is economically feasible as a power plant; and its economic feasibility will not be destroyed by the fish releases herein prescribed as a condition of the license. Moreover, the economic feasibility of the project will be enhanced by the additional amounts of irrigation water which New Don Pedro will make available to the applicants.

(26) Major upstream and downstream migration and spawning activity of King salmon takes place in the stretch of the Tuolumne River from La Grange bridge at river mile 50.5 to Hickman bridge at river mile 31.7 during the months of October through April.

(27) The applicants' planned operation of the New Don Pedro project does not provide for any minimum flow in the natural streambed below La Grange dam in a critical year. Therefore, conditions should be prescribed to assure the maintenance of the fishery resources of the Tuolumne River downstream from La Grange dam.

(28) It is reasonable and proper that the applicants be required for the first 20 years of project operation to release into the natural stream-bed below La Grange dam the amounts of water set forth in California's Schedules A and B. However, in determining which schedule shall apply the applicants should select the proper schedule on the basis of the actual inflow into New Don Pedro reservoir during the water year immediately preceding October 1 of each year.

(29) The Office of the Chief of Engineers has reported that the Army has no objection to the issuance of a license to the applicants provided they and the representatives of the Secretary of the Army can reach a suitable agreement to satisfy the needs of flood control under the Flood Control Act of 1944. That report also states that no special terms and conditions in the interest of navigation are needed in the license.

(30) The issuance of a license for the New Don Pedro project will not interfere or be inconsistent with the purposes of any reservations or withdrawals of public land.

(31) The applicants as public agencies of the State of California have submitted satisfactory evidence of compliance with requirements of all applicable state laws insofar as necessary to effect the purposes of a license for the New Don Pedro project.

(32) The motion of the Secretary of the Interior, filed herein on July 23, 1963, for institution of investigation and issuance of order to show cause should be denied.

The Commission orders:

(A) This license is issued to the Turlock Irrigation District and the Modesto Irrigation District (hereinafter referred to as the Licensees) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of the first day of the month in which the acknowledgment of acceptance thereof is filed with the Commission by Turlock Irrigation District and Modesto Irrigation District, for the construction, operation and maintenance of major Project No. 2299, to be known as the New Don Pedro project, on the Tuolumne River and its tributaries, located upon public lands of the United States, subject to the terms and conditions of the Flood Control Act of 1944 (58 Stat. 887) and the Federal Power Act which are incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Federal Power Act: *Provided*, however, that the Licensees shall surrender their license for Project No. 1086 upon completion of the New Don Pedro project.

(i) The proposed project consists of:

All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicants or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

Exhibit J; sheet	FPC No. 2299	Title, New Don Pedro Project
1............	4	General Map—Project location.
2............	5	General Map—Reservoir area.
3............	53	Reservoir capacity and area curves—Profile.

(ii) An earth and rock-fill dam 580 feet high with impervious center core and pervious shells at river mile 54.5 on the Tuolumne River; a spillway on the right abutment comprised of a gate-controlled section and an ungated broad-crested weir section discharge into Gasburg Creek; a reservoir extending 22 miles up the Tuolumne River having a gross storage capacity of 2,030,000 acre feet and an area of 12,960 acre feet at elevation 830 feet; low level intake discharging through Howell-Bunger valves; a power tunnel 2800 feet long through the left abutment and a penstock extending to a powerhouse located across the river adjacent to the toe of the dam; a powerhouse containing three 69,000-horsepower turbines operating under a rated head of 425 feet connected to three 43,480-kilowatt generators, making a total of 130,440 kilowatts; a switchyard; transmission lines extending to Turlock and Modesto, California; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works—the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L; sheet	FPC No. 2299	Title New Don Pedro Project
2	38	General project layout.
3	39	Rock-fill dam.
4	40	Diversion tunnel.
5	41	Outlet works—Inlet works.
6	55	Power tunnel.
7	43	Spillway.
8	44	Powerhouse—Service area and longitudinal section.
9	45	Powerhouse—Generator floor and transverse section.
10	46	Powerhouse—Turbine and valve floors.
11	47	Powerhouse main single line diagram.
12	48	Switchyard main single line diagram.
13	49	Switchyard layout.

Exhibit M "General Description of Equipment" in 3 sheets revised Mar. 12, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use of possession of which is necessary or appropriate in the maintenance or operation of the project.

(B) This license is also subject to the terms and conditions set forth in Form L–2, February 1, 1964, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," [*infra.*, p. 528] which terms and conditions designated as Articles 1 through 33 are attached hereto and made a part hereof, except for Articles 6, 7, 12 and the last sentence of Article 27 thereof, and subject to the following special conditions set forth herein as additional-articles:

Article 34. The Licensees shall commence construction of the project works within one year of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within four years from the effective date of this license.

Article 35. The Licensees shall within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary including transmission line rights-of-way in accordance with the rules and regulations of the Commission.

Article 36. The Licensees shall, prior to impounding water, dispose of all temporary structures, unused timber, brush, refuse, or other inflammable material resulting from the clearing of the land or from the construction and maintenance of the project works, and shall clear all lands in the reservoir area up to normal water level; except that all lands in the reservoir area shall be cleared according to a plan to be prescribed by the Commission upon the recommendation of the California Department of Fish and Game and the United States Fish and Wildlife Service. The clearing of the lands and the disposal of the material shall be done with due diligence by the Licensees and to the satisfaction of the authorized representative of the Commission.

Article 37. For the first 20 years of project operation, the Licensees shall maintain minimum stream flows in the Tuolumne River at La Grange bridge (river mile 50.5) for fish purposes in accordance with the schedules set forth below or with such monthly schedules as may, with the approval of the Licensees, be prescribed by the California Department of Fish and Game; *Provided*, that the total volume under Schedule A shall not exceed 123,210 acre feet per water year and the total volume under Schedule B shall not exceed 64,040 acre feet per water year.

Period	Schedule A (normal year)		Schedule B (dry year)	
	Cfs	Acre-feet*	Cfs	Acre-feet*
Preseason flushing flow	2,500	4,960		
October 1-15	200	5,950	50	1,490
October 16-31	250	7,930	200	6,350
November	385	22,900	200	11,900
December 1-15	385	11,450	200	5,950
December 16-31	280	8,880	135	4,280
January	280	17,210	135	8,300
February	280	15,550	135	7,500
March	350	21,520	200	12,300
April	100	5,950	85	5,060
May-September	3	910	3	910
Total acre-feet		123,210		64,040

*Cfs day equals 1.983 acre-feet.

The schedule to apply shall be governed by the water year immediately preceding October 1 of each year. Flows under Schedule A shall apply when the inflow into New Don Pedro reservoir equals or exceeds 1,000,000 acre feet. Schedule B shall apply in like manner if the inflow is less than 1,000,000 acre feet; *Provided*, that in a water year when the inflow is less than 750,000 acre feet, the amount of water provided under Schedule B shall be reduced by a percentage of the total acre feet equivalent to the percentage reduction in the gravity diversion at La Grange by the Licensees. For this purpose, the diversion shall be defined as 900,000 acre feet to Licensees.

After the first 20 years of project operation, the Licensees shall maintain minimum stream flows in the Toulumne River at La Grange bridge as may be prescribed hereafter by the Federal Power Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the California Department of Fish and Game, after notice and opportunity for hearing and upon a finding based on substantial evidence that such minimum flows are available and are necessary and desirable and consistent with the provisions of the Act.

Article 38. (a) Flows below La Grange bridge may be altered by the Licensees at any time in connection with the operation of the project for flood control purposes or other emergencies provided that in the 45-day period of November 5 to December 20 (or such other 45-day period between October 15 through December 31 as may be specified on two weeks prior notice by the California Department of Fish and Game), if such flood control or other operations are required, flows shall be increased to 4,500 cfs within 24 hours and shall be reduced as soon as possible after flood control criteria are met.

(b) Subject to the provisions of paragraph (a), so long as fluctuations do not result in reduction of flows below those in the applicable schedule prescribed in Article 28, or such higher minimum daily base flows as may be established in the 45-day period described in paragraph (a) above, fluctuations may be made at any time; *Provided:*

(1) Fluctuations shall be controlled as closely as possible during such 45-day period so as not to cause a daily increase of river height in excess of 10 inches; *Provided, however*, for a period not to exceed two hours per day, the increase may exceed 10 inches but not more than a total of 18 inches.

(2) From the end of such 45-day period until March 31 reduction in river height shall not exceed 4 inches below the average height established in the 45-day period, excluding heights reached as a consequence of the daily fluctuation in excess of 4 inches provided in paragraph (b)(1) and those resulting under paragraph (a).

Article 39. The Licensees in cooperation with the California Department of Fish and Game shall make necessary studies aimed at assuring continuation and maintenance of the fishery of the Toulumne River in the most economical and feasible manner. Such studies shall be completed prior to the end of the 20-year period for which minimum stream flows have been provided in Article 28.

Article 40. In the event water temperatures during the critical months of the spawning season are too high for successful salmon spawning, the Licensees and the California Department of Fish and Game shall confer to determine whether project operations may be adjusted to assist in correcting the situation. If no agreement can be reached, the Commission, upon request and after notice and opportunity for hearing, may order such adjustment as it finds to be necessary and desirable, reasonably consistent with the primary purpose of the project.

Article 41. The Licensees shall, prior to the filling of New Don Pedro reservoir, provide for free passage of water through the existing Don Pedro dam either by opening the low-level outlets or breaching the dam near streambed.

Article 42. Gravels of the river channel downstream from La Grange dam shall not be disturbed during the construction of project facilities except in accordance with a plan developed by the Licensees after consultation with the California Department of Fish and Game and the United States Fish and Wildlife Service with a view toward maintaining the pre-project value of the gravels for salmon spawning. The Licensees shall take all reasonable measures to prevent silt, fines and other construction debris from being released into the Toulumne River.

Article 43. The Licensees shall, prior to commencement of construction of the New Don Pedro project works, enter into an agreement with the Secretary of the Army or his designated representative providing for the operation of the project for flood control in accordance with rules and regulations prescribed by the Secretary of the Army. A conformed copy of the agreement shall be filed with the Commission for its information and records prior to commencement of construction of the project works.

Article 44. The Commission expressly reserves the right to determine at a later date what transmission lines and appurtenant facilities, if any, shall be included in the license as part of the project works.

Article 45. The Licensees shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modification thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or interested State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. The Licensees shall within one year from the date of issuance of the license, file with the Commission for approval their proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate, Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensees plan to provide.

Article 46. The Licensees shall acquire sufficient interest in lands of Sections 20 and 21, T. 2 S., R. 15 E., M.D.M., to provide parking and road access to National Land Reserve in Sections 19 and 20, T. 2 S., R. 15 E., M.D.M.

Article 47. The Licensees shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 174,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.

Article 48. The licensees shall, prior to commencement of construction of the New Don Pedro project, enter into an agreement with the City and County of San Francisco relating to the allocation of the total cost of the project and the acquisition of storage space in the reservoir. A conformed copy of the agreement shall be filed with the Commission for its approval prior to commencement of construction.

(C) The exhibits described in paragraph (A) above are approved as part of the license for the project.

(D) The motion for institution of investigation and issuance of order to show cause, filed July 23, 1963, by the Secretary of the Interior, is hereby denied.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

FORM L–2

(REVISED FEBRUARY 1, 1964)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING LANDS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project land and project works in the performance of their official duties.

Article 5. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 6. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 7. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 8. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 9. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 10. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 11. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under license.

Article 12. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 14. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 15. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 16. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statement shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 17. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 18. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 19. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 20. The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 21. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 22. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on land occupied under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use of the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road after construction of the project works is completed.

Article 27. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 28. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 29. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 30. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 31. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 32. The right of the Licensee and of its transferees and successors to use or occupy lands of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 33. **The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.**

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR LICENSE

(Issued June 4, 1963)

HALL, *Presiding Examiner:* This case concerns the joint application filed by Modesto Irrigation District and Turlock Irrigation District (Districts) for a major license to construct, operate and maintain a multi-purpose project on the Tuolumne River,[1] designated Project No. 2299, and known as the New Don Pedro project, to replace Districts' existing Don Pedro project located immediately upstream from the site of the proposed New Don Pedro development. The application was filed under Part I of the Federal Power Act (Act).[2]

The Districts are two of the largest irrigation districts in the State of California and are public agencies of that State. They have been engaged in the irrigation business since 1894 and the power business since 1924—following completion of the existing Don Pedro dam and power house. They

---

[1] The Tuolumne River rises in the Sierra-Nevada Mountains, the highest point from which drainage flows west into the Hetch Hetchy Valley being Mt. Lyell at elevation 13,000 feet. Other streams such as Cherry and Eleanor Creeks join the main river from the surrounding area constituting a total drainage of approximately 1,540 square miles at the point where the river flows past the Districts' La Grange diversion dam located below the New Don Pedro site. At this point the river, having dropped to about elevation 175, flows about 50 miles between the two Districts to its confluence with the San Joaquin River. The river has a highly variable annual runoff, making it necessary to provide storage to regulate the river for substantial beneficial use.

[2] The Federal Water Power Act of June 10, 1920, which created the Commission, was amended, expanded and made Part I of the Federal Power Act of 1935 by Title II of the Public Utility Act of 1935 (49 Stat. 838).

Under Part I of the Act it is unlawful to construct, operate or maintain any dam over which the Commission has jurisdiction except under and in accordance with a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Act.

Part I of the Act, providing a comprehensive scheme of national regulation for the improvement or navigation, the development of water power, and the use of public lands in relation thereto, vests in the Commission jurisdiction over the licensing, regulation and control of hydroelectric projects on streams subject to Federal jurisdiction and on public lands or reservations. The act gives preference to States and municipalities; limits licenses to not more than fifty years; and reserves to the United States the right of recapture at the end of the lease period. Upon expiration of franchises the Government has the option of (1) taking over the license upon payment of the net investment not to exceed fair value, plus reasonable severance damages; (2) renewing the old license; or (3) granting a new one. In short, the Act "proceeds on the theory of private development with ultimate public ownership possible" (Senate Rep. No. 180, 66th Cong., 1st Sess. (1919)).

With the establishment of the Commission in 1920 it was no longer necessary for Congress to consider each and every proposal separately and enact special legislation in granting the consent of Congress, where appropriate, to construct and operate each individual hydroelectric project. Once the Commission's jurisdiction to issue a license has been determined (as it has been with reference to New Don Pedro since it will occupy public lands), the only questions remaining are whether a license should issue, and, if so, the conditions under which it should be issued, the intention of the Act being to assure, through the imposition of conditions, if necessary, the accomplishment of the purposes of the Act. All licenses are conditioned upon the acceptance by the licensee of all the terms and conditions of the Act and such further conditions as the Commission may prescribe in conformity with the Act.

"The grant of a license under the act is a gratuity, a privilege from the sovereign, and can only be justified on the theory of the benefit to inure to the public" (*Clarion River Power Co. v. George Otis Smith et al.*, 59 F. 2d 861, 863, cert. den. 287 U.S. 639.)

own and operate extensive facilities for the distribution of irrigation water and electric power in Stanislaus and Merced Counties in the vicinity of Modesto and Turlock, California, an area once stunted by water shortage but now vigorous and strong, having made great advances agriculturally and industrially because its inhabitants had the foresight and determination to make beneficial use of its water resources.

The history of the Districts dates back to 1887. They are pioneers in California irrigation through the use of the La Grange diversion dam completed by them in 1894. This diversion dam is located about three and a half miles below the site of New Don Pedro. New Don Pedro will enhance but not change the function of the La Grange dam. That is to say the La Grange dam will continue to raise the waters of the Tuolumne River (below New Don Pedro) to a sufficient height to be carried by gravity's free delivery through extensive canals and connected irrigation systems to the fertile area irrigated by the Districts.[3] Such area, nourished by the irrigation water diverted from the Tuolumne River—and also by low cost power—that brought it to life, is extremely prosperous and in a high state of improvement and cultivation, producing under irrigation highly profitable and important agricultural products and income from substantial industrial and other sources. The economy of the area is based on irrigated agriculture with virtually every job, livelihood and activity being totally dependent upon water. New Don Pedro, by making much more of the Tuolumne River water usable, will improve the base of this economy in a real and important way. It will, in short, better rearrange and retime nature to more adequately meet the water needs of those served by the Districts. And, as will be shown, the project is also designed to enable San Francisco to meet its estimated water needs and to provide for flood control. In fact it clearly appears that San Francisco's desire to have the project constructed is a dominant, if not the dominant, purpose for its construction.

The Tuolumne River, on which the New Don Pedro dam and powerhouse are to be located, flows through the two Districts and is their common source of supply. The headwaters of this stream is also one of the primary sources of water supply for the San Francisco Bay area[4] through the Hetch Hetchy system constructed and operated by the City and County of San Francisco, California (San Francisco) pursuant to Congressional authorization—at least in part, viz.,

---

[3] Turlock's irrigation system begins with a main canal extending 9 miles from the left end (facing downstream) of the La Grange dam to its offstream reservoir having a capacity of about 50,000 acre feet, with water being carried below this point by a canal and subsidiary laterals comprising a 250-mile system which in turn feeds some 1,600 miles of community pipelines and ditches.

The Modesto system, beginning at the right end of the La Grange dam, extends 21 miles to the Modesto offstream reservoir, with a capacity of about 28,000 acre feet, and beyond through a system of canals and laterals with a combined total length of about 165 miles, which system feeds community ditches and pipelines in the same fashion as in the Turlock District. The Waterford Irrigation District, an adjacent small irrigation District, draws its Tuolumne River water from six points on Modesto's main canal.

The Districts serve water to some 9,200 irrigators. The annual water requirements of the farms within their boundaries can vary from over 1,000,000 acre feet to 1,200,000 acre feet, depending upon climatic conditions, the type of crops and the acreage under irrigation. The present insufficient regulatory storage of the Districts has rarely made it possible for them to come within this range of river diversion.

[4] The service area of the San Francisco Water Department includes all the northern end of the San Francisco peninsula; extends south along the shores of San Francisco Bay to include the Cities of Mountain View and Sunnyvale, easterly to include the City of Milpitas and northerly along the eastern shores of the Bay to include the City of Hayward. More than 30 other cities, districts, and agencies are supplied with water from the San Francisco system.

38 Stat. 242 (Raker Act of December 19, 1913). The Raker Act, however, prohibits San Francisco from ever interfering with the water rights acquired by the Districts under California law,[8] and from selling Hetch Hetchy power to a private individual or utility. That Act also requires San Francisco to conform to the laws of California relating to the control, appropriation, use, or distribution of water and vested rights acquired thereunder. Therefore, in this case the Commission is dealing with the use and diversion of water and the generation of power concerning which the Districts and San Francisco—which are acting in friendly cooperation insofar as the construction and operation of New Don Pedro is concerned—already have fixed rights and obligations under the Raker Act. Thus this case presents not only the question of fact as to the benefits to be derived from the construction of New Don Pedro, but also the legal question of whether what is proposed conforms with the rights, duties and responsibilities arising by virtue of the Raker Act.

While the needs of the Districts and San Francisco call for the fullest possible assistance on the part of the Commission, it is apparent that for them to attain their goal, new rights, new obligations, new machinery, not contemplated by the Raker Act, must be created to give effect to their updated experience, thinking and arrangements. Although the intent of their proposed arrangement is clearly to improve, make more effective and less costly the whole of their undertaking, and reflects the natural diligence of reasonable, prudent and responsible officials, it must nevertheless likewise reflect complete consistency with, and not be a departure from, the obligations of San Francisco under the Raker Act.

The Districts and San Francisco treat the rearrangement here proposed as being wholly consistent with the Raker Act, their position apparently being that the changed arrangement is simply the selection, after thorough study in the light of their needs, of an economical and effective means for accomplishing a greater diversion and use of water of the Tuolumne River. That is to say, they appear to be proceeding upon the assumption that the present and prior method of operation is not the exclusive method permitted by the Raker Act.

---

[8] Subsections (b), (c) and(d) of Section 9 of the Raker Act (1) require San Francisco to recognize the rights of the Districts to 2,350 second feet of water measured at the La Grange diversion dam (the existing Don Pedro project not being constructed until ten years after the passage of the Raker Act); (2) required San Francisco to release the the necessary amount of water to assure the flow of 2,350 second feet included in the priorities of the Districts; (3) recognized the rights of the Districts to take free of charge 4,000 second feet of water out of the natural flow of the river during the 60 days beginning April 15 of each year; and (4) requires San Francisco to sell to the Districts, under the various conditions and circumstances recited in Section 9(d), additional "amounts of stored water as may be needed for the beneficial use of said irrigation districts at such a price as will return to [San Francisco] the actual total costs of providing such stored water."

House Report No. 41, 63d Congress, 1st Session, which accompanied H.R. 7207, that became the Raker Act, explains that "The provision relating to the 4,000 second-feet above referred to is to provide for the beneficial use by the irrigationists of water which otherwise goes to waste. In the period mentioned, April 15 to June 15, the Tuolumne River is a torrential flood. Fifty miles of watershed intervene between the Hetch Hetchy Dam and the dam of the irrigationists at La Grange. It is proposed that the irrigationists may take up waste waters, store them, and thus lessen the possible draft upon stored waters of the city. It should be borne in mind that San Francisco does not contemplate interfering with the natural flow of the Tuolumne. The intent is to store flood waters which come from melting snows and leave the normal flow of the river uninterrupted. The benefit to the irrigation districts in this provision is that the landowners will receive the benefit of an investment of approximately $50,000,000 without being compelled to put up any part of the cost, and the construction of the system will insure the priorities of the irrigationists and they will receive water in the dry period when it is most needed. Without the construction of the Hetch Hetchy Dam there can be no flow in the river during the summer and fall."

The Raker Act authorization for the construction and operation of the Hetch Hetchy water supply and power system, located in the Yosemite National Park and the Stanislaus National Forest, was given at a time when San Francisco faced a water famine and in recognition of the fact that any alternative water supply would cost millions of dollars more, with no credit for power development.

It is claimed that New Don Pedro, through the exchange storage arrangement proposed herein, will enable San Francisco to meet its increasing municipal water requirements—again becoming a matter of urgency—until the year 2015 when it is anticipated that demand will have reached 400 mgd. It will also make it possible for San Francisco and the Districts to generate and sell greater quantities of hydroelectric power. The Districts expect to recover their portion of the capital cost of New Don Pedro through the sale power generated by this project and have demonstrated its economic feasibility on this basis. San Francisco may also be able to recover its contribution to the project's cost through the sale of additional power.

As indicated, the increased diversions to the San Francisco water system will not be made physically from the New Don Pedro reservoir. Rather San Francisco's maximum storage space of 740,000 acre-feet in the New Don Pedro reservoir[6] will be operated to store water credited to San Francisco, thus permitting San Francisco to make additional diversions upstream to the extent that a credit exists in the reservoir, such exchange arrangement enabling San Francisco to divert water which the Raker Act obligates it to release for the Districts' use.

The problem now faced by the Districts and San Francisco is that since they cannot add water to full cups they need a new and larger cup—the New Don Pedro reservoir which will have seven times the 290,000 acre-foot capacity of the existing Don Pedro reservoir—to catch and hold water in times of abundance and release it in times of storage.[7] This new venture requires the issuance of a license to the Districts and San Francisco's continued adherence to the terms and conditions of the Raker Act until modified by Congress. The requirements and Congressional policy embodied in that Act are therefore to be considered as being superimposed upon any license issued by the Commission for New Don Pedro.

Based on project completion by November 15, 1965, and using April 1962 prices, the estimated cost of New Don Pedro is $92,415,850. The construction period will cover about three years. The site selected for the project is located about a mile and a half below the existing Don Pedro dam and about three and a half miles above the Districts' La Grange diversion dam. This site was chosen for two reasons: (1) It permits the optimum reservoir. (2) The geologic conditions were found to be superior. The plans for the structure conform to accepted engineering and standard practice. Some additional testing and design analysis will, however, be necessary to establish the final design for the structure.

New Don Pedro will consist of a dam 580 feet high; spillways; a reservoir with a gross capacity of 2,030 acre-feet[8] with the water surface at elevation 830, such reservoir to extend about 22 miles upstream and to flood approximately 12,960 acres at full pool; a power tunnel about 2800 feet in length; a powerhouse containing three 69,000-horsepower turbines connected to three 45,766 KVA generators; a switchyard; and transmission lines extending to receiving stations near Turlock and Modesto, California. It will have an installed capacity of 130,440 kilowatts and a plant capacity of 150,000 kilowatts (15 percent overload). The hydraulic capacity of the powerplant will be about 4,500 cfs which corresponds to that of the Districts' canals extending from the ends of the La Grange dam. The maximum gross head will be 530 feet (elevation 830 to elevation 300); minimum gross head will be 300 feet at maximum drawdown.

---

[6] There will be available to San Francisco in the New Don Pedro reservoir 570,000 acre feet of exchange storage space, plus one-half of the 340,000 acre foot flood control space whenever such space is available under flood control criteria.

[7] Construction of the 580-foot New Don Pedro project immediately below the existing Don Pedro dam will result in the top of the 284-foot existing Don Pedro dam being more than 200 feet below the surface of the enlarged reservoir.

[8] An acre foot is the amount of water required to cover one acre to a depth of one foot. One cubic foot per second (cfs) flowing continuously for one day equals slightly less than 2 acre feet.

New Don Pedro will make available to the Districts a substantially greater, more predictable and longer lasting water supply for irrigation and domestic uses and for power generation. In addition to recreational benefits, the project, as proposed would accomplish four purposes: (1) Power generation—with a plant capability of 150,000 kilowatts. (2) 811,000 acre-feet of irrigation storage. (3) 340,000 acre-feet of flood control storage. (4) A maximum of 740,000 acre feet of exchange storage (see *supra*, p. 538, note 6).[9]

Because of the uncertainty of future construction costs the precise contribution which it is contemplated San Francisco will make to the project's cost is presently unascertainable. However, on the basis of current cost estimates, San Francisco's contribution is calculated to be $43,181,790—less the applicable portion of the Federal payment for flood control space.[10] San Francisco proposes to make this contribution in consideration for the exchange storage and other benefits which include additional revenue from the sale of power.

The facts relating to the flood control purposes to be served by the project are hereinafter set forth (see *infra*, pp. 548, 550). The costs of providing this flood control have already been paid by the Federal Government in substantial measure through the payment to the Districts of $4,600,000 and to San Francisco of $4,400,000, all of which monies were applied to the construction by San Francisco of the Cherry Valley dam and reservoir completed in 1956 without, insofar as the Examiner is able to ascertain, a license from the Commission or expanded Congressional authorization under the Raker Act (see *infra*, pp. 548, 550). The total to be paid for flood control on the basis of present estimated costs is about $14,200,000, leaving a balance of approximately $5,200,000—deducting the $9,000,000 already advanced. These monies, according to an agreement entered into between the Districts and San Francisco, may be utilized by San Francisco in meeting its portion of the cost of New Don Pedro. In this regard it should be borne in mind that the total payment to be made for flood control was made for the purpose of 340,000 acre-feet of flood control space ultimately to be provided in the New Don Pedro reservoir. No agreement between the Districts and San Francisco can alter this fact which becomes of some significance in the subsequent determination of the actual legitimate cost of this project to the Districts.

---

[9] Although ownership and control of New Don Pedro will be vested in the Districts, it is to be constructed and operated under a cooperative arrangement with San Francisco and the Federal Government.

[10] San Francisco's portion of the cost is to be based on the ratio of the cost to San Francisco to build a dam having a reservoir capacity of 1,200,000 acre-feet as related to the 2,030,000 capacity of New Don Pedro, which 1,200,000 acre-foot capacity comprises the present storage of the existing Don Pedro (290,000 acre-feet), the desired flood control storage of 340,000 acre-feet and San Francisco's exchange storage of 570,000 acre-feet (see *supra*, p. 538, note 6). According to the evidence, San Francisco's commitment to pay for the assumed 1,200,000 acre-foot reservoir is firm. The Districts proposed to pay for the increment of storage in excess of 1,200,000 acre feet and for the project's power facilities, their contribution being presently estimated to be $49,234,060.

The project cost estimate of $92,415,580 was made by the Bechtel Corporation and appears to be reasonable. It includes $10,100,000 on specific construction costs of $60,471,350 for omissions, contingencies, engineering and management of construction; $7,494,500 for land and rights together with a contingency figure of $5,000,000 to cover the possibility of increased highway costs; and monies for general expense as well as $4,350,000 to cover interest during construction.

There is more to this case than meets the eye at first glance. On the surface it seems to be only a soundly conceived cooperative plan, substantially aided by a Federal contribution for flood control, to maximize the quantity of water the Districts and San Francisco will be able to appropriate and put to beneficial use. But other issues relating to San Francisco's rights, obligations, etc., under the Raker Act lurk in the record. What San Francisco was authorized to do in the way of construction, the volume of water Congress intended it to divert, the disposition it makes of its power, and its obligations to the Districts and others are matters governed by the provisions of the Raker Act to the extent it is applicable—not the terms of private contracts between the Districts and San Francisco. Moreover, insofar as the issuance of a license for New Don Pedro is concerned, such private contracts must yield to regulatory authority and can be given only such force and effect as sanctioned by the Commission.

It is necessary to condition the license to be issued herein so as to provide that construction of New Don Pedro may commence only after a firm agreement, acceptable to and approved by the Commission, has been entered into by the Districts and San Francisco and obligating San Francisco to pay its proper portion of the cost.[11]

As stated, to the extent that the cost of New Don Pedro is not borne by the Federal Government, it is to be shared by the Districts and San Francisco. Issuance of general obligation bonds in the amounts of $34,000,000 (for Turlock) and $18,400,000 (for Modesto) have already been approved by the voters of the Districts for use in financing their respective portions of the project cost. The voters of San Francisco have also approved the issuance of $115,000,000 in general obligation bonds for utilization in connection with the Hetch Hetchy water supply system, with approximately $45,000,000 thereof being earmarked for use in connection with New Don Pedro. The project financing is therefore already assured even though the details of the agreement to be executed by the Districts and San Francisco have not been finalized.

---

[11] The following colloquy occurred at the outset of the hearing between counsel for the Districts and the Presiding Examiner:

> MR. MCCARTY. * * * I think the governing organizations of all three entities involved feel that it is necessary to have a license and know what is in that license before consummating the final agreement as to the cost.
>
> PRESIDING EXAMINER. Well, wouldn't you think the Commission would have to know the same thing, otherwise maybe they wouldn't know what they were licensing.
>
> MR. MCCARTY. I think that is correct * * * but I think what has happened on the river in the past indicates the good faith of the parties involved.
>
> PRESIDING EXAMINER. I don't think the Commission would question the good faith. I think they would like to be advised as to the final understanding.
>
> MR. MCCARTY. It may be possible that it would be necessary to condition a license * * *. We would have no objection to that.
>
> PRESIDING EXAMINER. The Commission could do that.

The issuance of a license upon conditions requiring a licensee to firm up its arrangements prior to commencement of construction and in a manner acceptable to the Commission in both practical and legal. To use the words of the court in *Panhandle Eastern Pipe Line Co.* v. *F. P. C.*, 169 F. 2d 881, 883 (CADC, 1948), Congress has not confronted the Commission "with a dilemma like that created by the famous municipal ordinance requiring that when two trains approach a grade crossing at the same time, both shall stop and neither shall proceed until the other has proceeded. * * *"

The Districts would be unable to finance the construction of New Don Pedro without (1) the contributions to be made by San Francisco and the Federal Government, and (2) power revenues. The power will be produced, however, only from water released for irrigation or flood control uses or when not inconsistent with the primary water conservation purposes.

History of Proceeding

The joint application for license to construct the New Don Pedro project was filed by the Districts on May 9, 1961 and was thereafter amended and supplemented. Public notice was given (26 F.R. 5340).

On January 30, 1962, the Commission issued an order fixing hearing and prescribing the specific procedure to be followed with reference to the service of all testimony, exhibits and motions by specified dates in advance of the hearing "to eliminate any cause which might otherwise exist for a protracted hearing."

The hearing on the application, initially set for May 21, 1962, was continued from time to time, being finally set for October 16, 1962. It commenced in San Francisco on the latter date and continued for nine hearing days ending October 26, 1962. The record made consists of 2108 pages of testimony of 24 witnesses and 223 exhibits, including two exhibits rejected by the Examiner and one withdrawn.

In addition to the intervention of the State of California (acting by and through its Department of Fish and Game), which had petitioned to intervene within the period set by the Commission in its public notice, the Commission by separate orders issued October 15, 1962, granted limited intervention out of time to the Secretary of the Interior; Tuolumne County, California; and Banta Carbona Irrigation District (Banta Carbona), their participation being restricted to "an opening statement of position, participation in the cross-examination of witnesses, and the filing of briefs and exceptions to the Presiding Examiner's decision." The Commission ruled that to have granted the Secretary of the Interior, Tuolumne County and Banta Carbona "full participation on the eve of the hearing and after filing of elaborate prepared direct testimony by applicants and the California Department of Fish and Game would frustrate the procedures prescribed in our order of January 30, 1962" which was designed to, and did, avoid a protracted hearing.[12]

Briefs have been filed by counsel for the Districts, Commission Staff, California Department of Fish and Game, Secretary of the Interior, Tuolumne County and Banta Carbona. The final brief of the Districts was filed on March 4, 1963.

History of the Irrigation and Power Activities of the Districts

Until completion of the existing Don Pedro project in 1923,[13] the Districts owned and operated only the La Grange diversion dam, the offstream Turlock and Modesto reservoir hereinafter referred to, and the related irrigation systems.

Because the La Grange dam has no significant storage capacity it must be kept full, or nearly so, when the main canals of the Districts are diverting irrigation water from the Tuolumne River. Accordingly, to cope with growth and to be effective in a substantial beneficial way the La Grange reservoir must be implemented through increased storage. Within limits, the larger the other storage facilities and the greater their number the more effective is the function of La Grange dam.

---

[12] Counsel for Banta Carbona state in their brief that while "Banta Carbona's permission to intervene out of time does not permit it to introduce evidence. We have no complaint. We are grateful for the hearing accorded us under the circumstances."

[13] The existing Don Pedro project is covered under a minor part license, No. 1086, issued by the Commission in 1930. Staff counsel states that in 1930 "lands of the United States were inundated as a result of construction of spillways."

Following completion of the La Grange dam (constructed in 1894 at the site of the then Wheaton dam which had been purchased by the Districts in 1890 along with water rights and properties held by the prior owner),[14] and as ditch and lateral construction advanced bringing irrigation water to more acreage within the area served by the Districts, the inadequacy of a simple diversion dam became apparent, for after the feast came the famine—the dry months. Nature's schedule was decidedly wrong for the Districts' needs. Crops would be out of irrigation water by August, making it essential that a means of storing at least a portion of the heavy river runoff—usually occurring in the spring of the year—be provided by the Districts to supplement natural flows during low-flow (sometimes no-flow) periods. Accordingly, offstream reservoirs were constructed downstream from the La Grange dam by Modesto in 1911 and by Turlock in 1914, such reservoirs having capacities of about 28,000 and 50,000 acre feet, respectively, enabling the collection and holding of waters in reserve during the early part of the season for use in the dry periods. But much more was required to utilize the excess runoff to the maximum extent.

In passing it should be pointed out that it was during the period of construction of the Modesto and Turlock reservoirs to provide storage for waters diverted at La Grange that Congress considered and passed the Raker Act permitting San Francisco to develop the Hetch Hetchy water and power system on the Tuolumne River headwaters. That system increased the storage on which the Districts could rely (see *supra*, note 5, p. 537).

In 1924, following completion of the existing Don Pedro project, which now has an installed capacity of 37,500 kilowatts, the Districts expanded their business to include the generation, distribution and sale of power.[15] Construction of the existing Don Pedro project five miles above the La Grange dam not only provided additional storage capacity for growth and a more predictable irrigation supply through the better leveling of seasonal extremes but also enabled the Districts to use the water for power generation[16] before its re-use for irrigation purposes, thus achieving the most economic operation.

---

[14] Upon organization in 1887 the Districts had a combined total of about 257,000 acres, with about two-thirds thereof being in the Turlock District and one-third in the Modesto District. The water diverted at La Grange dam was, by agreement, divided two-thirds Turlock and one-third Modesto, inasmuch as this was the ratio of lands between them. This ratio also controls the financing of the project, making it necessary for Turlock to contribute about two-thirds of the cost to be borne by the Districts. It further accounts for the project's power output being divided two-thirds for Turlock and one-third for Modesto, notwithstanding the fact that Modesto's electric load is more than 50 percent greater than that of Turlock.

At the present time the combined acreage of the Districts exceeds 279,000 acres, largely as a consequence of including within their respective boundaries the lands of each covered by the Don Pedro, Turlock and Modesto reservoirs.

[15] The power systems of the two Districts, although operated independently, are connected at the Ceres Substation just south of Modesto and there is a free interchange at this point whenever necessary. In addition, the Districts have connections to San Francisco transmission lines from the Hetch Hetchy system power plants and presently purchase all of their power requirements, beyond those generated at the Don Pedro and La Grange facilities (see note 16, page 543, *infra*.). There are two connections with the P. G. & E. power system resulting from the fact that prior to 1924, when the Districts commenced distributing power themselves, the area was served by P. G. & E. and its predecessors. Such connections are maintained for emergency purposes only. The San Francisco system is also connected to the P. G. & E. network at two points. The significance of these connections is that if a failure should occur on the Hetch Hetchy lines it will be possible for the Districts to get emergency power from the P. G. & E. system.

The Districts purchase power solely from San Francisco.

The Districts began distributing electric power in 1924 with about 8,000 customers. They expanded with general growth and now serve in excess of 51,000 customers. They anticipate that the number of their power customers will double by 1985.

The combined loads of the Districts have increased from almost zero in 1924 to an existing combined peak requirement of about 141,000 kilowatts in 1962. Their combined peak load requirement is expected to increase at a rate of about 8 percent annually, reaching almost 180,000 kilowatts in 1965. The situation is similar in connection with the combined electrical energy requirements of the Districts.

The population within the power service area of the Districts has grown from an estimated 29,500 in 1930 to 135,590 in 1960. The population is estimated to increase to 189,000 by 1970, 260,000 by 1980 and 385,000 in 1990.

Because of the great variation in annual stream flow, construction of the existing Don Pedro project did not provide the necessary carryover storage, through the lean water years, adequate for demands ranging from 1,000,000 to 1,200,000 acre feet of irrigation water each year. And although the storage then on the river assisted in reducing the variations in flow occurring under natural conditions, it did not accomplish complete regulation of the monthly variations and has had a negligible effect on the annual variation. Thus the idea of a larger reservoir grew to firm up the irrigation and power supply. As stated above, the well-conceived New Don Pedro project will significantly amplify and improve the purposes now served by the existing Don Pedro project. The enlarged reservoir capacity is designed to permit the Districts, among other things, to carry over waters from wet years to dry years to provide the maximum possible dependable annual irrigation supply.[17]

The Districts have been the sole distributors of power within their power service area since 1940, that being the year in which the Supreme Court, in *United States* v. *City and County of San Francisco*, 310 U.S. 16, held San Francisco's sale of power to P. G. & E. to be unlawful under Section 6 of the Raker Act.[18] In that case the Court affirmed the judgment of the District Court which had—

---

[16] Water in excess of irrigation needs which passes La Grange dam is utilized, to the extent possible, in a small power plant located on the left bank of the river downstream from the dam. This plant, of 4,300 kilowatt capacity, was constructed by the Turlock District in 1924 and is owned and operated solely by that District. Water taken through the plant is not diverted directly from the dam but is taken from the Turlock main canal, downstream from the dam. There is no connection between power production at Don Pedro and La Grange.

[17] The generally favorable weather conditions in the area irrigated by the Districts allow a growing season of approximately 270 days out of the year, permitting double cropping in some instances. The area is, however, deficient in rainfall, the average annual precipitation being on the order of only twelve inches, roughly ninety percent of which occurs in the months of November through April. Accordingly, to take advantage of the favorable climate and valley soils, irrigation is essential to successful agriculture, the irrigation season usually beginning in March and terminating in mid-October. It is pertinent to point out in this regard that if the hydrologic cycle which New Don Pedro planning must anticipate repeats itself, there will still be years in which the farms will not have the water they require.

Agricultural activity in Stanislaus County to which the Districts contribute the major share has ranked that county among the top ten in the nation in agricultural production, major crops being peaches and other tree crops, grapes, crops associated with the dairy industry, and livestock and poultry and products thereof, the acres of crops raised under irrigation totaling 267,000 acres in 1961.

[18] The grant to San Francisco of certain lands and rights in the public domain was made subject to the prohibition contained in Section 6, acquiesced in by San Francisco, that San Francisco shall not sell or let to any corporation or individual, except a municipality or a municipal water district or irrigation district, the right to "sell or sublet the water or the electric energy sold or given to it or him by" San Francisco. The Supreme Court therefore held that the sale of Hetch Hetchy power by San Francisco to P. G. & E., for resale by the latter, was an evasion and frustration of the purposes of Congress.

The Raker Act was drawn for the benefit of the people of California, it being intended for use by San Francisco as a means of supplying water and the distribution and sale of power. It contemplated that San Francisco would sell the power at cost to consumers in order to bring it into direct competition with power sold by private utilities. As the Supreme Court pointed out (310 U.S. at p. 26), "Congress clearly intended to require—as a condition of its grant—sale and distribution of Hetch Hetchy power exclusively by

> * * * concluded that the City was violating § 6 by the sale and distribution of Hetch-Hetchy power through the Pacific Gas & Electric Company, a private utility. Accordingly, the City was required by injunction alternatively to discontinue such disposal of the power or cease further use of the lands and rights granted it under the [Raker] Act for generation and transmission of electric energy. * * * [310 U.S. at p. 19.]

In so doing the Court stated (310 U.S. at p. 30):

> * * * Congress may constitutionally limit the disposition of the public domain to a manner consistent with its views of public policy. And the policy to govern disposal of rights to develop hydroelectric power in such public lands may, if Congress chooses, be one designed to avoid monopoly and to bring about a widespread distribution of benefits. The statutory requirement that Hetch-Hetchy power be publicly distributed does not represent an exercise of a general control over a public policy in a State but instead only an exercise of the complete power which Congress has over public property entrusted to it.

Faced with the above described alternatives, San Francisco ceased selling power to P. G. & E. and began selling the output of its plants to the Districts. It is contemplated that by 1972 the Districts will be able to absorb not only the full output of New Don Pedro but also the total output of San Francisco's system.

The Districts estimated that the annual costs of the New Don Pedro power output, including the loss of existing Don Pedro generation, over a fifty year period, would amount to $3,535,000; that the estimated cost at market value of the power to be produced based on alternative cost of steam generation would be $3,952,000; and that the resulting net annual value of the power production of the project for the fifty year period would be $417,000, which is $101,000 more than the net annual value computed by the staff.[19]

The Districts, which now look to even greater usefulness in the future, have expanded their usefulness over the years by taking advantage of water and power opportunities. In so doing they have followed the fruitful path of raising the horizons of individual and collective progress, playing a full part in the ever-increasing requirements of the area's growing population, expanding economic activity, and rising standard of living.

San Francisco's Development of Tuolumne River

As previously pointed out, San Francisco's Hetch-Hetchy system is located in the headwaters of the Tuolumne River. The total watershed area tributary

---

San Francisco and municipal agencies directly to consumers in the belief that consumers would thus be afforded power at cheap rates in competition with private power companies, particularly Pacific Gas & Electric Company. It is not the office of the courts to pass upon the justification for that belief or the efficacy of the measures chosen for putting it into effect."

[19] The Commission staff believes that the annual net benefit should be shown as $316,000 instead of $417,000, pointing out that the cost of money used by the staff in determining the value of power was 4.5 percent whereas the Districts used a cost of money of 4.25 percent. They point out that in order to be comparable, the total fixed charge should be computed using 4.5 percent per annum for both the cost of the alternative steam plant and the hydroelectric plant; that when the Districts' cost figures as so adjusted (to add .25 percent to the cost of the project) for a 50-year period, the cost of money is increased annually by $101,000, thereby reducing the Districts' estimate from $417,000 to $316,000.

Throughout their economic analysis the Districts used at-market annual power values furnished by the Commission staff. Those unit values were based on the cost alternative steam electric generation at an assumed 4.5 percent cost of money. The unit values so determined were $19.55 per kilowatt year and 4.06 mills per kilowatt hour.

to San Francisco's dams is about 713 square miles and includes the constituent watersheds of the Cherry Valley, Lake Eleanor and the Lower Cherry Diversion watershed, Hetch-Hetchy Valley and the Early Intake watershed.[20]

The dams constructed by San Francisco, the year in which each was completed, the names of the reservoirs they form, and the seasonal storage capacity of each, are:

Dam name	Reservoir name	Year completed	Seasonal storage capacity (acre-feet)
Cherry Valley	Lake Lloyd	1956	268,200
Eleanor	Lake Eleanor	1918	27,100
O'Shaughnessy	Hetch Hetchy	1923	[21] 360,360
Lower Cherry	None	1918	
Early Intake	None	1925	
Total			655,660

San Francisco presently generates power at two plants (Moccasin and Cherry). A third plant (Intake) has been on standby since completion of the Cherry plant in 1960 and an additional plant (Canyon) is under construction.[22] Data relating to these plants are as follows:

Plant	Water diverted from—	Design head in feet	Installed in kva	Capacity in kw
Cherry	Cherry Valley and Eleanor Dams	2,230	150,000	135,000
Canyon	O'Shaughnessy Dam	1,245	75,000	67,500
Intake	Lower Cherry Dam	320	3,800	3,600
Moccasin	Priest (on aqueduct)	1,250	80,000	70,000
Totals			308,800	276,100

San Francisco's Moccasin power plant, completed in 1925, has been in continuous operation except for occasional periods of shutdown due to maintenance or water shortage. Cherry is the newest of San Francisco's operating power plants.

San Francisco constructed the Early Intake diversion dam in 1925 about 12 miles downstream from the O'Shaughnessy Dam. It is at Early Intake that San Francisco's main diversion from the Tuolumne River takes place. At Early Intake the water is diverted into the 19-mile Mountain Tunnel. This tunnel, driven between 1917 and 1925, has a capacity in excess of 400 mgd[23] and carries the water to the Moccasin power plant. From Moccasin the water enters the

---

[20] The Tuolumne River watershed and the various dams, reservoirs, etc., to which frequent references are made herein, are shown on the map at the end of this opinion.

[21] The O'Shaughnessy Dam was completed in 1923 to a capacity of 206,000 acre feet. This storage capacity was increased to 340,360 acre feet during the 1935–38 period and was further increased to 360,360 acre feet in 1949.

[22] The Canyon power plant now under construction will take advantage of the power drop from O'Shaughnessy Dam to Early Intake. Water used in the Canyon plant will be returned to the stream at a point just above Early Intake and will be diverted at that point, as at present, for the 130-mile journey to the Crystal Springs Reservoir in the San Francisco Bay area.

[23] "mgd" refers to "million gallons per day." Equivalents for mgd quantities to which reference will be made are as follows:

1. 210 mgd equals 325 cfs equals 235,000 acre feet/365 day year
2. 295 mgd equals 456 cfs equals 330,000 acre feet/365 day year
3. 400 mgd equals 619 cfs equals 448,000 acre feet/365 day year

16-mile Foothill Tunnel,[24] driven in the 1926-1929 period, which also has a capacity of 400 mgd. This tunnel extends to Oakdale Portal near the San Joaquin Valley floor. The Canyon power tunnel, now under construction between the O'Shaughnessy Dam and Early Intake, will likewise have a capacity in excess of 400 mgd.

At Oakdale Portal water enters two pipelines to cross the San Joaquin Valley. These lines have a combined capacity of about 160 mgd. The first section of a third pipeline across the San Joaquin Valley is now under construction and will raise the combined capacity of the pipelines across the valley to about 295 mgd by 1968. Another line to increase the capacity to 400 mgd is projected for installation when required. At the Tesla Portal, the western terminus of these lines, the water is taken through the 28-mile Coast Range Tunnel into the Bay area. This tunnel, driven during the 1927-1934 period, can carry about 300 mgd. Current plans embrace either driving a parallel tunnel or the adjustment of the hydraulic gradient so that the existing tunnel will carry about 400 mgd.

According to the Districts' evidence there is no plan, and indeed no possibility, for San Francisco to obtain water from other sources, such as the South Bay Aqueduct, which involves the State of California's Feather River project, or the East Bay Municipal Utilities District. The anticipated supply through the South Bay Aqueduct is already substantially committed and the needs of the area intended to be served through this facility require more than double the facility's expected capacity.

San Francisco's Water Requirements and Rights

San Francisco's local water supply, developed in the 1885-1925 period, has a safe yield of about 36 mgd including carryover storage. It is claimed that in a very dry year no water can be derived from local sources. It was the insufficiency of this supply which caused San Francisco's development of the Tuolumne headwaters through the enactment of the Raker Act in 1913. In that year San Francisco had a population of about 500,000 as compared with the present population of its water service area of approximately 1,650,000. The estimated ultimate population of that area is 3,370,000.

Water consumption in San Francisco's service area was about 90 mgd in 1944. Ten years ago the average daily consumption from the system was approximately 110 mgd. The system demand in the fiscal year 1961-62 of almost 178 mgd is close to the existing sustained capacity of the system of 180 mgd. This situation will be alleviated when the pipelines now under construction across the San Joaquin Valley are completed in 1968.

Demands on the San Francisco water system are estimated to reach 210 mgd in 1968, 295 mgd by 1984, and 400 mgd by 2015.[25] San Francisco's existing storage in Hetch Hetchy, Lake Lloyd and Lake Eleanor, presently totaling 655,660 acre feet (see *supra*, p. 545), will support diversions at the rate of about 210 mgd (approximately 86 mgd of which is provided through the completion of the Cherry Valley Dam and reservoir in 1956). Diversions to San Francisco's water system beyond 210 mgd must be supported entirely by the exchange storage in the New Don Pedro reservoir. As previously explained, San Francisco, while storing water in its headwater reservoirs and diverting water into its aqueduct, would release water from its exchange storage at New Don Pedro to satisfy the Districts' water rights to Tuolumne River flows.

---

[24] Water in the Foothill Tunnel not presently needed for consumptive uses in the San Francisco system is returned to the Tuolumne River at a point above the present Don Pedro reservoir.

[25] San Francisco will need an additional 340,000 acre feet of storage for a diversion of 295 mgd, and 674,000 acre feet of additional storage for a diversion of 400 mgd. The New Don Pedro reservoir could provide this additional storage. San Francisco anticipates that if New Don Pedro is constructed it will be able to obtain a maximum diversion of 571 mgd from the Tuolumne River watershed (528,000 acre feet per year).

The Districts' claim that "San Francisco was authorized, pursuant to the Raker Act of 1913, to utilize public lands and rights of way in the development of a water supply on the Tuolumne River which would permit the ultimate exportation of 400,000,000 gallons daily (400 mgd) to the Bay area for domestic and urban uses." The Examiner finds this contention to be untenable. In fact counsel for the Districts effectively and completely remove the underpinning for their contention by admitting that San Francisco's "present storage without New Don Pedro will permit only a 210 mgd diversion." Congress never intended the Raker Act, which contains many limitations, to be a grant without limitation, nor did it anticipate that the diversion of water to San Francisco would ever exceed the capacity of the reservoir facilities it authorized to be constructed, that is, the capacity of those facilities after providing for the water rights of the lower appropriators. Such facilities, including the increased capacity of the Hetch Hetchy reservoir (see *supra*, p. 545, note 21) and the recent construction of the Cherry Valley reservoir, are admittedly capable of delivering only up to 210 mgd to San Francisco's water system.

The Districts claim that San Francisco has obtained State water rights which would permit it to divert 400 mgd. However, such water rights, to the extent that they exceed 210 mgd, are useless without New Don Pedro. It is not the extent of the State water rights San Francisco acquired but rather the capacity of the facilities Congress authorized that is controlling. Moreover, one will search in vain for any reference in the Raker Act to an ultimate diversion of 400 mgd by San Francisco. Under no circumstances can San Francisco's planning for an ultimate diversion in excess of 400 be construed as Congressional authorization therefor.

New Don Pedro had not been conceived at the time of the passage of the Raker Act which envisaged an entirely different approach to meeting the then demonstrated needs and rights of the Districts and San Francisco. What San Francisco is here seeking is a right it does not now possess, namely, the right to divert all the water it stores in the Tuolumne River headwaters—to the extent it is needed and possible to do so. It is clear that the purpose of New Don Pedro is, *inter alia*, to avoid depletion of San Francisco's reservoirs as Congress directed they should be depleted to provide water to the downstream appropriators. It is the ceiling imposed by the Raker Act that is wholly responsible for San Francisco's present problem which it seeks to overcome through the contribution of millions of dollars to the New Don Pedro construction cost. Stated another way, the Congressional concept embraced in the Raker Act, to which San Francisco acceded, placed the water rights of the Districts and others on San Francisco's back and this, together with the limited capacity of San Francisco's reservoirs, has led San Francisco to a dead-end. It now faces the necessity of bypassing this dead-end to meet future needs. This confronts San Francisco with the realization that it must embark upon a considerably different and better approach. But any reorientation to meet its ever-changing requirements must take into account the hard facts of the Raker Act and the Commission's regulatory power.

Wholly consistent with the ceiling Congress placed on San Francisco's diversion is the fact that Congress viewed the storage rights it granted would enable an ultimate development of only 115,000 horsepower, or about 85,790 kw (which is 12,190 in excess of the combined capacity of the Intake and Moccasin Power plants completed in 1918 and 1925, respectively). This contemplated ultimate power development of 85,790 kw is to be contrasted with the total of 276,100 kw capacity San Francisco will have upon completion of its Canyon power plant and the use of the greater water supply resulting from the recent completion of the Cherry Valley reservoir (Lake Lloyd) and the proposed exchange storage arrangement at New Don Pedro.

The purposes to be served by New Don Pedro and its proposed operation were not only conceived after the passage of the Raker Act, but there appears to have been nothing in the then existing conditions, size of population, and irrigation, industrial and other activity which would have justified its constructon or enabled its financing. Thus the facilities that the Districts and San Francisco then planned to and did rely upon were considerably less than those they now claim are required for their future use.

The New Don Pedro concept is new. It evolved out of many years of experience, knowledge, growth, the Federal Government's interest in flood control, etc. In fact the knowledge gained through the 39-year hydrologic period 1923–1961 is indispensable to the construction of New Don Pedro.[38] While the Districts, following the completion of the existing Don Pedro in 1923, appear to have given thought to a larger project to further firm up their irrigation and power supply, the contemplated construction of New Don Pedro project did not begin to take great strides until 1940 when the Districts and San Francisco decided to find, through cooperative effort, the most satisfactory solution to their future water needs. That decision was followed by agreements made in 1949 obligating the Federal Government and San Francisco to make substantial contributions to the first cost of New Don Pedro.

Coordinated Efforts of the Districts and San Francisco to Develop the Resources of the Tuolumne River

The Districts initially opposed the Raker Act but withdrew their opposition when that legislation recognized and protected *inter alia*, the prior water rights of the Districts. Insofar as the use of the Tuolumne River is concerned, that Act made it necessary and proper for the Districts and San Francisco to live together in a common sense way. In the years that followed passage of that statute it became increasingly apparent that a dovetailing of the activities of the Districts and San Francisco would maximize the quantity of water each will be able to appropriate. Thus in 1940 the Districts and San Francisco agreed to coordinate their efforts to develop the water resources of the Tuolumne River, such agreement being implemented by further agreements executed in 1949 under which (1) San Francisco agreed to pay for the use of 570,000 acre feet of exchange storage space, and (2) the Federal Government agreed to pay $14,200,000 for 340,000 acre feet of flood control storage.

Prior to 1949 the Districts and San Francisco became aware of the fact that the Corps of Engineers, in planning for comprehensive flood control in the San Joaquin Basin, had included a reservoir at the Jacksonville site on the Tuolumne River with a capacity of about 320,000 acre feet. Inasmuch as this site would interfere with, if not defeat, their plan for New Don Pedro a request was made by the State Engineer of California, the Districts and San Francisco that in lieu of Jacksonville the Corps consider a financial contribution to the first cost of New Don Pedro, or other suitable Tuolumne basin reservoirs, covering a portion of the construction costs to the extent justified by the flood control to be provided. The Chief of Engineers found that flood control would be thus provided as effectively as at Jacksonville and recommended the plan to Congress which approved an allocation of funds therefor in 1944. This was implemented in 1949 by what is referred to as the "Federal Contract" executed by the Corps, the Districts and San Francisco. This contract, among other things, provided that the Federal Government would pay to the Districts and San Francisco a then estimated $12,000,000 for flood control in New Don Pedro which, according to the agreement, was to be completed on or before December 1, 1959, with a reservoir capacity of not less than 1,200,000 acre feet, with flood control to be furnished therein of not less than 340,000 acre feet. The agreement further provided for (1) the immediate operation of the existing Don Pedro reservoir and San Francisco's Hetch-Hetchy and Lake Eleanor reservoirs for flood control until New Don Pedro is constructed; (2) construction by San Francisco of the Cherry Valley reservoir on or before December 1, 1951 (it being actually completed in 1956) and its correlation with flood control until New Don Pedro is completed; and (3) that—

---

[38] Counsel for the Districts state in their brief that "Exhaustive operation studies were conducted with the use of computers in order to determine the anticipated inflow to the New Don Pedro reservoir in the future, utilizing all the hydrologic records available * * *. The 39-year hydrologic period 1923–1961 was then selected because this contained years of extremely high as well as of extremely low flow and permitted the studies to assume a full reservoir at the start of the period containing 1,690,000 acre feet which is the maximum permissible storage in January for flood control purposes * * * . The actual anticipated inflow was determined after deducting for evaporation losses in upstream reservoirs as well as for diversions by San Francisco in the amounts of 210 mgd, 295 mgd, and 400 mgd, respectively."

> * * * none of the money paid by the Federal Government under the terms of this agreement shall be expended for purposes other than new work on Cherry Valley or New Don Pedro or other new reservoirs.

The Federal Contract was incorporated as evidence in this proceeding. However, the agreement referred to as having been entered into between the Districts and San Francisco was not made a part of the record. The record is therefore deficient in this respect.

The Federal Contract contemplated that New Don Pedro and San Francisco's Cherry Valley project would be constructed under appropriate authorizations, it being provided in Article 4 that the program and conditions of the contract and the completion dates of the projects set forth therein were subject on the part of the Districts and San Francisco "to such action as may be required by law." The Districts' application for a license for New Don Pedro is involved in this proceeding. San Francisco, however, constructed the Cherry Valley project without a license, it apparently proceeding on the belief that construction and operation of this project had been authorized by the Raker Act.

As hereinabove pointed out (*supra*, pp. 539, 540), the Federal Government has already paid $4,600,000 to the Districts and $4,400,000 to San Francisco of the presently estimated total of $14,200,000 which the Federal Government will pay for storage space.[37] The $4,600,000 paid to the Districts was transferred by them to San Francisco and appears to have been applied, along with the $4,400,000 received by San Francisco, to the cost of the Cherry Valley project completed in 1956. In explanation of the transfer of the $4,600,000 by the Districts to San Francisco, a witness for the Districts testified that the Districts—

> * * * got relief of 25,000 acre feet of water per month emptying into the Don Pedro Reservoir.
>
> **Presiding Examiner**: Could they have released the water in any other direction?

---

[37] The Federal Government's initial payment was, by the terms of the contract, paid as work on the Cherry Valley project progressed, with the balance to be paid as work on New Don Pedro progresses.

The WITNESS: Well, they could release it as they saw fit. They could peak with the plant and hold the water, but they released the 25,000 acre feet per month during the irrigation season.

PRESIDING EXAMINER: Oh, it is the timing of the releases you were interested in?

The WITNESS: Yes.

PRESIDING EXAMINER: And it is to insure the timing that you paid the money to them?

The WITNESS: Yes.

* * * * * * *

Q. From which reservoirs was this water released?

A. From Lake Lloyd [Cherry Valley].

It appears that the agreement entered into by the Districts and San Francisco—which was not made a part of the record—provides that the balance of $5,200,000 out of the total estimated Federal Government payment of $14,200,000 is to be received by San Francisco and might be utilized by it in meeting its portion of the cost of New Don Pedro.[30] The provisions of that contract are not binding upon the Commission for regulatory purposes and the treatment to be accorded the Federal Government's contribution, insofar as the portion properly allocable to New Don Pedro is concerned, is a matter which it may be necessary for the Commission to fully explore at a subsequent time.

As previously pointed out, the estimated cost of New Don Pedro is $92,415,850, of which it is contemplated the Districts will pay $49,234,060 and San Francisco will pay $43,181,790. Bond issues have been authorized in the total amount of $52,500,000 for the Districts ($34,000,000 for Turlock and $18,500,000 for Modesto) and San Francisco has obtained authorization to issue bonds in the total amount of $115,000,000, of which approximately $45,000,000 is earmarked for the San Francisco cost of New Don Pedro. The full amount of these bonds, which appear to provide adequate leeway for any contingencies, need not be issued unless required by the costs actually incurred. In this regard the fact should not be overlooked that the cost of the project to the Districts and San Francisco will not be $92,415,850 (assuming the actual cost equals the presently estimated cost) but will be that amount less the portion of the Federal Government's contribution of $14,200,000 (estimated) properly allocable to New Don Pedro.

San Francisco's Recent Construction Activities

The House Committee Report which accompanied the bill that later became the Raker Act recites that the power potential of the Tuolumne River was estimated to be 115,000 horsepower in its ultimate development—equal to 85,790 kw, it apparently being assumed that only the San Francisco system authorized by the Raker Act would develop power on the stream (the existing Don Pedro project not being constructed until ten years after the passage of the Raker Act).

Section 5 of the Raker Act required that construction of the Hetch Hetchy system should "be prosecuted diligently, and no cessation of such construction shall continue for a period of three consecutive years" unless prevented by act of God or unforeseen circumstances, or difficulties beyond the control of San Francisco. In other words, San Francisco was to construct and place its system in operation with all possible expedition, with no delay except such as might be incident to the work itself.

---

[30] Under Article 11 of the 1949 contract entered into between the Districts and San Francisco, the payments to be made by the Government during the construction of New Don Pedro will be made "in a manner to be prescribed in a supplemental agreement."

The combined capacity of the Intake power plant (3,600 kw) completed in 1918 and the Moccasin power plant (70,000 kw) completed in 1925 (the first two power plants completed by San Francisco) is 73,600 kw, and is within 12,190 kw of the total of 85,790 kw Congress thought San Francisco's system would ultimately develop. The maximum of 85,790 kw is to be contrasted with the total of 276,100 kw of capacity San Francisco will have upon completion of its Canyon power plant (see *supra*, p. 545).

In 1956, or 43 years after the passage of the Raker Act, San Francisco completed the Cherry Valley Dam pursuant to its 1949 agreement with the Districts and the Corps of Engineers, and thereafter completed its Cherry power plant and placed it in operation in 1960. This plant utilizes the water from Lakes Lloyd (created by the Cherry dam) and Eleanor. This plant alone has a capacity of 135,000 kw—far in excess of what the Raker Act contemplated. And as pointed out, San Francisco now has the Canyon power plant (with a capacity of 67,500 kw) under construction. Furthermore, the height of San Francisco's O'Shaughnessy dam (completed in 1923) was raised in the 1935-1938 period from 206,000 acre feet to 340,000 acre feet, with the storage capacity being further increased to a total of 360,000 acre feet in 1949.

In passing it is also pertinent to point out that while the Raker Act (Sections 9 (a) and (d) makes specific reference to the "Hetch Hetchy Dam" and the "Lake Eleanor Dam" and to the "Hetch Hetchy and Lake Eleanor sites", no similar reference is made therein to the Cherry Valley dam completed in 1956. In this connection, the Examiner observes that Staff counsel states in his brief that the Raker Act authorized "construction of Hetch Hetchy and Lake Eleanor Dams."

The House Report which accompanied the bill that became the Raker Act refers to the acreage and capacity of three proposed reservoirs, namely, "Hetch Hetchy", "Lake Eleanor" and "Cherry Valley". San Francisco proceeded to construct three dams as a part of its initial system, namely Lower Cherry (completed in 1918), Eleanor (also completed in 1918) and O'Shaughnessy (the Hetch Hetchy reservoir completed in 1923). The House Report refers to "Cherry Valley" as being the smallest of the proposed reservoirs and what is referred to now as "Lower Cherry" is the smallest of San Francisco's reservoirs. The fourth reservoir, the Cherry Valley project completed in 1956, is an additional reservoir having a reservoir capacity of 268,200 acre feet.

While the record is not as complete as it might be (due in part to the fact that San Francisco did not become a party to this proceeding), it is sufficient to raise a question in the Examiner's mind as to whether San Francisco in recent years has carried out a more expansive construction program than authorized under the Raker Act. The foregoing and other facts are therefore set forth herein for the Commission's consideration in connection with the license sought by the Districts and also for consideration in determining whether or not to institute an investigation under Section 4(g) of the Federal Power Act to ascertain whether San Francisco's recent construction referred to was in addition to and not in conformity with the Raker Act authorization—and without Commission approval.

In conclusion it should be pointed out that while the Secretary of the Interior has supervision over San Francisco's activities to the extent authorized by the Raker Act, San Francisco's dam and power facilities not within that authorization, if any, would necessarily fall within the Commission's jurisdiction in the absence of sanction by additional special legislation. Of interest here also is the fact that in *United States* v. *City and County of San Francisco*, 310 U.S. 16, decided April 22, 1940, the Supreme Court appears to have been clearly of the view that San Francisco had prior to 1940 constructed and was then utilizing all the power and water facilities authorized by the Raker Act. It said (310 U.S. at p. 29):

> * * * After passage of the Bill the City accepted the grant by formal ordinance, assented to all the conditions contained in the grant, constructed the required power facilities, *and up to date has utilized the rights, privileges and benefits granted by Congress.* * * * [Italic supplied.]

Sixteen years after this decision San Francisco completed the Cherry Valley dam. Twenty years after that decision it completed the Cherry Valley power plant. And now more than twenty-three years after that decision San Francisco has the Canyon power plant under construction.

Variant Views of the Parties

None of the parties recommend denial of the license. Rather the Staff of the Commission and the Interveners contend that the water resources of the Tuolumne River are capable of being put to greater beneficial use than the Districts presently propose. They say that the fuller use of the stream can and should be accomplished pursuant to Section 10(d) of the Act through the incorporation of conditions in the license; and that this can be done without affecting the rights of the Districts or destroying the economic feasibility of the project. In their view, nothing contained in Section 27, upon which the Districts rely, or any other provisions of the Act constitute a bar to the proposed conditions.

The Staff and the Interveners request that the Commission condition the license so as to require releases of water, not now contemplated by the Districts, for anadromous fish spawning in a seventeen mile stretch of the river commencing about five miles below the New Don Pedro site. Additionally, they seek conditions in the license relating to recreation, protection of wildlife resources, access roads, water quality, etc., so that the project will provide, as they say Section 10(d) contemplates, the most comprehensive development of the Tuolumne River.

Before stating the position of the Districts it will facilitate an understanding of the various views if it is pointed out that Section 10(a) of the Act was intended to afford an effective means of bringing about the development of water resources to the maximum practicable extent consistent with the primary purposes of proposed projects, such consistency with the primary purposes being essential since without protection of the primary purposes proposed projects might never be constructed.

In the discharge of its responsibilities the Commission, among other things, gives full consideration to the preservation and enhancement of fish and wildlife resources, the creation and enhancement of recreation potentialities, flood control and irrigation. Except where superior water uses or the law or compelling circumstances dictate otherwise, releases of water from reservoir projects should be adequate to protect the continued use of a stream by fish and wildlife. As for recreation, this matter takes on added significance in densely populated areas and in regions where natural water recreation opportunities are limited. In this regard counsel for the Districts point out that the proximity of New Don Pedro "to large population centers assures substantial use for camping, swimming, boating, water-skiing and sport fishing." It is therefore the Commission's function to require that adequate land, facilities, etc., be constructed and made available for general public use.

Because of limitations in the Act and the fact that particular needs and uses of water vary from stream to stream and region to region, the Commission is unable to apply a single uniform policy to all streams and situations. Accordingly it necessarily has flexibility in its policy and adjusts to the realities of each situation. It goes without saying that a project designed to serve one or more particular purposes may not be of equal benefit to others.

There is a contrariety of opinion as to what constitutes comprehensive development, particularly in the light of the provisions of Section 27 of the Act. The Districts argue "that (1) comprehensive development is fully served by the New Don Pedro project as proposed to be operated, with the salmon fishery downstream to be helped rather than hindered by the new project; and that (2) use of the water for irrigation and domestic purposes are shielded by the * * * Act (Sec. 27) from being undercut by the" proposals made by the Staff and the Interveners.

With respect to fish in the proposed reservoir, the greatly increased size of the reservoir will substantially increase the catch over existing conditions. As to the effect on fish below the project, the evidence shows that if it is constructed there will be, for a number of years following construction, more water in storage than can be used by the Districts and San Francisco. It therefore appears that if the excess stored water is released in adequate amounts during the fish spawning season that, for the years immediately following construction of New Don Pedro, greater benefits can be expected with than without New Don Pedro. But thereafter, assuming San Francisco's needs measure up to estimates, water would not be available in significant amounts and, therefore, the fish and wildlife resources would suffer.

The Districts claim that fish and wildlife conditions will be worse in the future without New Don Pedro than with it. The short answer to this assertion is that it is based upon the unwarranted assumption that San Francisco now has the right to divert the water it proposes to divert and that it would be physically able to do so (see *supra*, pp. 546, 548). San Francisco's present storage without New Don Pedro will permit only a 210 mgd diversion and there is no evidence that it could either physically or legally develop other storage facilities on the river to supply additional water to its Bay area system.

Raker Act Was the Mould in Which Congress Shaped Sections 9(b), 10(a) and 27 of the Federal Power Act

The Raker Act became law in 1913. The Federal Water Power Act (now Part I of the Federal Power Act) was enacted in 1920 after several years of consideration and debate.

The procedure set forth in the Federal Power Act, to the extent relevant to the issues raised herein by the parties, is the same as that which Congress required San Francisco to follow under the Raker Act. In this regard, a matter of great significance in the interpretation of Section 27 of the Federal Power Act is that except for the fact that Section 27 has reference to "the laws of the respective States" whereas Section 11 of the Raker Act was necessarily limited to "the laws of the State of California", the language of Section 27 is identical to language contained in Section 11 of the Raker Act. Accordingly, Section 27 may be interpreted in the light of the Congressional action under the Raker Act. In short, the Raker Act is the mould in which Congress shaped Section 27. It is also the mould in which it shaped the Section 9(b) and 10(a) of the Federal Power Act to which Section 27 is related. Having so shaped these sections, Congress, in effect, handed the Raker Act mould to the Commission for its use in following the Raker Act example.

The Raker Act required prior compliance by San Francisco with the water law of the State of California, just as Section 9(b) of the Federal Power Act requires of each applicant with respect to the law of the state in which the proposed project is to be located. But notwithstanding the necessity for compliance with California water law at the outset, Congress "being jealous of its own responsibility to dispose of * * * rights [in the public domain] in a manner deemed by it most likely to render the benefits widespread" (*United States* v. *City and County of San Francisco*, 344 U.S. 16, 31), exacted from San Francisco conditions consistent with its view of public policy, just as the Commission, now "plainly made the guardian of the public domain" (*F.P.C.* v. *Idaho Power Co.*, 344 U.S. 17, 23), is authorized to exact under Section 10(a) of the Federal Power Act.[29] The conditions exacted of San Francisco were not considered by Congress to be an infringement upon the provisions of Section 11 of the Raker Act prohibiting interference with the laws of the State relating to "water *used* in irrigation or for municipal" purposes. This is true even though some of the conditions, in recognizing and protecting the water rights of the Districts *used* for irrigation purposes, restricted San Francisco's diversion of water for municipal purposes (the highest use to which water may be put) for which San Francisco had obtained its State permits. That is to say, Congress regarded water *to be used* as being subject to the conditions it imposed, with the water *being used* by the Districts subject to the protection afforded by Section 11. As to water San Francisco proposed *to use* Congress, in exercising authority which it has now empowered the Commission to exercise under Section 10(a) of the Federal Power Act, in effect modified the State water permits San Francisco had obtained, but had not then perfected through use, by limiting the water San Francisco could divert under those permits to amounts which would not interfere with the prior and superior appropriative rights[30] of the Districts and then *in use* by the latter. In fact, Congress went even further in limiting San Francisco's use of water by increasing the storage upon which the Districts could rely (see *supra*, p. 537, note[8]) and, as counsel for the Districts point out in their brief, by expressly recognizing "the right of the Districts to divert water for the irrigation of 'not to exceed three hundred acres of land' (§ 9(b), 32 Stat. 242; Ex. 7, p. 6), a point they have not yet reached." That is to say, Congress enforced its views of public policy through the conditions imposed in the Raker Act rather than leaving benefits to be derived completely at the mercy of state legislation. That Section 11 of the Raker Act, like Section 27 of the Federal Power Act, is applicable to State water rights *being used*, as distinguished from water rights proposed *to be used*, is clearly apparent from the provisions thereof:

---

[29] New Don Pedro will occupy public lands. The power of Congress over public lands, conferred by Article 3, section 1, clause 2 of the Constitution, is, as the Supreme Court said in *United States* v. *City and County of San Francisco*, 310 U.S. 16, 29, "without limitation." The imposition of the conditions requested by the Staff or the Commission and the Interveners in the license for New Don Pedro would be under authority of the same constitutional provision.

While it is true that States may make laws respecting the character of rights to the use of water which may be acquired in streams within their boundaries, the Supreme Court long ago held that States may not, by legislation and without the consent of Congress:

> * * * destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the government property [*United States* v. *Rio Grande Irrigation Co.*, 174 U.S. 690, 703 (1899)].

The Court had earlier held that admission of a state into the Union did not deprive the United States of power to protect adequately its own property, saying that a "different rule would place the public domain of the United States completely at the mercy of the state legislation." [*Camfield* v. *United States*, 167 U.S. 518, 526 (1897).]

Federal authority over the use of public lands is accordingly complete. And as noted above, under the Federal Power Act "the Commission is plainly made the guardian of the public domain." [*F.P.C.* v. *Idaho Power Co.*, 344 U.S. 17, 23.]

[30] California law includes the rights of use acquired by prior appropriation and rights inherent in the ownership of lands riparian to natural streams, such rights having been in competition throughout California legal history (*United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725, 742–755). The water rights of the Districts and San Francisco were all acquired under the principle of priority of appropriation. The effect to be accorded priority has been construed by the Supreme Court of California as follows:

> * * * One of the essential elements of a valid appropriation is that of priority over others. Under this doctrine, he who is first in time is first in right, and, so long as he continues to apply the water to beneficial use, subsequent appropriators may not deprive him of the rights his appropriation gives him, by diminishing the quantity or deteriorating the quality of the water. [*Joeger* v. *Pacific Gas & Electric Co.*, 276 Pac. 1017, 1026.]

While California law recognizes prior appropriate rights, it should be pointed out that insofar as applications filed with the State Water Rights Board are concerned Section 1254 of the California Water Code provides that "the board shall be guided by the policy that domestic use is the highest use and irrigation is the next highest use of water."

> Sec. 11. That this Act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to effect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use, or distribution of water *used* in irrigation or for municipal or other uses, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with the laws of said State.

In other words, as to the water Congress permitted San Francisco to *use* for municipal purposes, the Secretary of the Interior was to proceed in conformity with the laws of the State of California in carrying out the provisions of the Raker Act. Likewise, all conflicting claims and controversies respecting water rights affected by San Francisco's *use* of water are to be determined under State law [see *Meridian, Ltd.* v. *San Francisco*, 90 Pac. 2d 537; 91 P. 2d 105 (1939)].[31]

In connection with the consideration and passage of the original Federal Water Power Act of 1920, which as amended is now Part I of the Federal Power Act, Congress had the Raker Act very much in mind, providing in Section 29 thereof—

> * * * That nothing herein contained shall be held or construed to modify or repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights-of-way to the city and county of San Francisco, in the State of California * * *.

As hereinabove made clear (*supra*, p. 547), it is the conditions imposed by Congress in the Raker Act that have brought San Francisco to the dead-end it is now attempting to by-pass through the purchase of exchange storage in the proposed New Don Pedro reservoir.

Interpretation of Sections 9(b), 10(a) and 27 of the Federal Power Act

Since Sections 10(a) and 27 of the Act, discussed in the briefs of the parties, are intimately related to Section 9(b), a review of the intent of Congress with reference to Sections 10(a) and 27 necessarily must take into account Section 9(b).

---

[31] The *Meridian* case is of interest here. The conflicting claims of the parties involved their rights in and to the waters of the Tuolumne and San Joaquin Rivers and their tributaries. The plaintiff relied upon his rights both as a riparian owner and appropriator downstream from the Hetch Hetchy project.

The plaintiff was the then owner of the El Solyo Ranch (now the El Solyo Water District), located just south of the Banta Carbona Irrigation District (one of the Interveners herein) on the San Joaquin River. The flow of the San Joaquin River past the ranch consisted largely, and at times almost entirely, of waters contributed to it by the Tuolumne River.

The Districts, applicants herein, were among the defendants, although their rights were not involved.

Section 9(b) requires each applicant for a license to submit to the Commission "satisfactory evidence" of its compliance with state laws "with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act." Such compliance was intended to be a condition precedent to Commission consideration of an application for a license.

By Section 10(a) of the Act Congress specifically limited the Commission's authority to issue licenses under Section 4(e) to those projects which, in the judgment of the Commission, are—

> * * * best adapted to a comprehensive plan for improving or developing a waterway or waterways * * * for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

Following submission of an application for license showing compliance with State law as required by Section 9(b), the Commission, on the basis of evidence before it, then determines, *inter alia*, the extent to which the proposed use of water, as reflected in the State permits, is to be modified so that the subsequent use of the water, when State water rights are perfected through actual use, will accomplish the comprehensive development contemplated by Section 10(a). In fact, insofar as the water right permits and other State authorizations obtained by an applicant are concerned, the Commission is empowered to do one of three things: First, by denying the application for license, it can in effect veto all the State permits and authorizations obtained by, but not yet used by, the applicant. Second, it can, where necessary, accomplish full development of a stream through conditions incorporated in the license which modify the purposes for which the water right permits were obtained, doing this where it is shown that the additional purposes are reconcilable with the basic purposes to be served by the project. Third, grant the license as requested, thereby placing its approval upon subsequent perfection of the water rights—through use—for the identical purposes for which such rights were obtained.

As to water right permits obtained under California law and submitted in compliance with Section 9(b) of the Act, it is important to bear in mind that such permits, as counsel for the Districts point out in their brief—

> * * * require the application of water to the proposed use * * * subject to any conditions the permit may impose. * * * Then when the works involved have been constructed and the water applied to the maximum beneficial use, an inspection is made of those works and the use of the water as authorized by the permit. A license is then issued confirming the beneficial use of water made under the application and permit. [California Water Code, Division 2, Part 2, Sections 1200–1677 (1961).]

In other words, an applicant for a license does not have, under state law, an indefeasible water right until he obtains from the Commission the license applied for, constructs the project, and applies the water to an actual beneficial use. Accordingly, the Commission in bringing about the comprehensive development contemplated by Section 10(a), is not normally dealing with water rights already perfected through use, with which Section 27 is concerned, but with rights that can only be perfected in the manner authorized by the Commission to accomplish comprehensive development. Thus, as to water rights pertaining to water proposed *to be used*, any action of the Commission which modifies the purposes for which water right permits have been obtained does not affect or in any way interfere with the laws of California but is wholly consistent therewith for the reason that the effectiveness of the state permits are made to depend upon a Commission license, construction of the project, and actual use of the water through the operation of the project. To borrow the words of the Supreme Court in *P.U.C.* v. *Gas Co.*, 317 U.S. 456, 467, relating to regulation under the Natural Gas Act, state commissions and this commission regulate "without any confusion of functions" to attain what Congress intended, i.e., "a harmonious dual system of regulation * * *—federal and state regulatory bodies operating side by side, each active in its own sphere".

This case presents a factual situation which will rarely be encountered by the Commission but is similar to that involved in the Raker Act authorization. Normally the Commission is confronted with a proposed project for which the applicant has, by obtaining State permits, complied with State law with reference to water he proposes to put to beneficial use. Here, however, the Commission, like Congress in connection with the Raker Act, is dealing with water rights *used* as well as water rights proposed *to be used* for irrigation and municipal purposes. As to the water rights the Districts and San Francisco *are using*, it is clear that such rights may not be impaired through conditions incorporated in the license issued for New Don Pedro. However, as to the water rights obtained by the districts to increase the storage of water over and above the capacity of the existing Don Pedro project, and as to water rights held by San Francisco for use in diverting water in excess of 210 mgd, or whatever lesser amount it is determined San Francisco was actually authorized by the Raker Act to use, the Commission is authorized under Section 10(a) of the Act to limit the proposed use of water by the Districts and San Francisco to whatever extent is practicable and feasible in bringing about comprehensive development.

Before setting out the provisions of Section 27 of the Act, it is important to review, to the extent possible, the Congressional intent underlying Section 27 which is reemphasized in Section 10(a). The legislative history discloses that the phrase "other beneficial uses" contained in Section 10(a) was intended to cover the uses specified in 27. An unsuccessful attempt was made in Congress to insert the word "irrigation" in Section 10(a).[22] This word was not included (see 58 Cong. Rec. 2135 (1919)), not because irrigation was not to be considered by the Commission in arriving at its judgment as to what represents comprehensive development of a particular stream, but because the inclusion of the word "irrigation" in Section 10(a) might tend to give the Commission a semblance of authority over irrigation rights and powers specifically reserved to the States.[23] The word "irrigation" was included in Section 27, however, in order to affirm state jurisdiction over water *used* for irrigation purposes as well as to prevent the Commission from interfering with water *used* for this purpose in licensing power projects.

While Congress assumed that the usual rules of supersedure would apply to state laws in conflict with the Act occupying the field, it included in Section 27 explicit provision to save, in the case of conflict, those state laws not relating to the development of hydroelectric power which it wanted to continue in effect (*First Iowa Hydro-Electric Cooperative* v. *F.P.C.*, 328 U.S. 152, 175–176). Section 27 expressly precludes any supersedure of the State laws relating to water "*used* in irrigation or for municipal or other uses." This section provides:

---

[22] When the original Federal Water Power Act (now Part I of the Federal Power Act) was being debated in 1919, Congressman Raker offered an amendment on the floor of the House (to H.R. 3184, 66th Cong., 1st Sess., 1919), to include "irrigation" as within the Commission's Section 10(a) jurisdiction in determining comprehensive development. The Raker amendment was to: . . . strike out the word "of" before "water power", and insert the word "irrigation." [58 Cong. Rec. 2134 (1919).]

[23] See statement of Congressman Taylor of Colorado (58 Cong. Rec. 2135 (1919)), following which Congressman Raker's amendment was rejected.

> That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water *used* in irrigation or for municipal or other uses, or any vested right acquired therein. [Underscoring supplied.]

Section 27 is not intended to deprive the Commission of any jurisdiction which is expressly conferred by the Act, but is only intended to cause the Commission to exercise jurisdiction in a manner which does not deprive the States of whatever constitutional powers they may have with respect to water *used* within their boundaries for the indicated purposes.

While the Commission rarely ever deals with water *used* for irrigation and municipal purposes in connection with its licensing authority, a case in which water *used* for irrigation was involved is *Southern California Edison Co.*, 8 FPC 364. In this case the company claimed that the requirement of the Commission "for release of water for recreational purposes is in direct conflict with the provisions of a certain contract between the Company and downstream riparian owners * * * who have irrigation rights in the waters of the Kern River prior to the Company's rights and requested that the condition be omitted from the license." The Commission held, *inter alia*, that—

> * * * operation of the plant under the proposed condition would not actually or inferentially affect the use of the Kern River water by the lower irrigators * * *. A private agreement to divert all the water from the stream, even though the lower irrigators might be benefited by such diversion, is not binding against the United States. [8 FPC at 372.]

In passing it seems appropriate to point out that the establishment and operation of irrigation districts, such as the districts herein, requires investments by them and their customers running into millions of dollars. Absolutely essential to their creation and maintenance in a beneficial way is a long-term assurance as to water supply which is not subject to change whenever the interests of others dictate. Business reality and the public interest therefore demand that such water users be protected by law from losing their water supply—or be fully compensated if deprived of it. Section 27 of the Federal Power Act, the water law of California, and the Raker Act therefore manifest a proper concern for the legitimate interests of irrigation districts in whose success and financial stability the public has a vital stake. The same, of course, can be said of municipal water systems.

Fish Water Releases Proposed by the California Department of Fish and Game

The primary interest of the California Department of Fish and Game in this proceeding is in connection with the salmon runs of the Tuolumne River. Salmon is an anadromous fish, meaning that it is propagated in fresh water, migrates to salt water where it spends most of its adult life and then returns to fresh water to spawn.

Although there is a general tendency for fish born of spawning in a particular year to return to spawn themselves four years later, it is very common for fish to return as three years olds, five year olds, and even six year olds. These tendencies of the fish not only contribute to the yearly runs but also appear to enable a salmon population to reconstitute itself so that intermittent years of poor or even zero spawning do not mean that runs in a stream will be destroyed.

There is a great variety of species of salmon, but king and silver salmon appear to predominate in California coastal waters. King salmon is the only variety of salmon of consequence in the Sacramento-San Joaquin River system of California's Central Valley. The salmon population of the Sacramento system is considerably larger than that of the San Joaquin system. As to the San Joaquin river system, king salmon spawning populations have been known on the main river as well as on its tributaries, including the Consumnes, Mokelumne, Stanislaus, Tuolumne and Merced Rivers. Of the San Joaquin tributaries the Tuolumne is said to be the largest producer but in relation to the entire Central Valley production, it is indicated that the Tuolumne produced on the average between 7 and 8 percent.

In addition to the Sacramento-San Joaquin River complex there are a great number of coastal streams in California having salmon populations. Among these are the Mad, the Klamath, the Eel and the Smith. There is disagreement in the record as to the importance of the various rivers in salmon production.

Access for the fish to coastal streams such as the Klamath, Eel, Mad and Smith is a matter of going directly from the ocean into the stream. The situation is otherwise for the inland rivers of the Central Valley. First the fish must proceed through San Francisco Bay and then easterly to its upper reaches, known as Suisun Bay, where they enter the great Delta area of the Sacramento and San Joaquin Rivers. Those fish electing the San Joaquin then traverse the maze of Delta channels by a route or routes unknown to reach the lower San Joaquin. It is approximately 50 miles from the Delta area to the mouth of the Tuolumne River.

Mention should also be made of the fact that "straying" is the ability of the salmon to return for spawning purposes to a stream other than the stream in which the salmon was born. It appears that straying is somewhat common for Central Valley salmon.

The California Department of Fish and Game, supported by the Secretary of the Interior, and in part by the Commission Staff, seeks to preserve and enhance the fish resources of the Tuolumne River by conditioning the license so as to provide for the flows hereinafter set forth, such flows being based upon spawning areas over six inches in depth.

King salmon have spawned in a seventeen mile reach of the Tuolumne River extending from La Grange bridge to the Hickman-Waterford bridge. This area begins at the Hickman-Waterford bridge, about thirty-two miles upstream from the point where the Tuolumne joins the San Joaquin and ends just below La Grange bridge, about two miles downstream from the La Grange dam.

Gravels utilized for spawning in the Tuolumne River apparently resulted in part at least from gold dredging activity. The extent and utility of the gravels for spawning are the subject of different estimates. The chief witness for the California Department of Fish and Game considered gravels were available to accommodate at least 80,000 spawning salmon. Witnesses for the Districts considered the gravels such as to accommodate in excess of 25,000 spawning salmon, with the potential being from 40,000 to 60,000.

For successful spawning, salmon require, in addition to gravel, water of suitable temperature, quality, depth and velocities. The spawning areas must contain gravels of certain sizes and composition. Water moving over gravels creates "riffles" in which salmon prefer to spawn. A riffle was described as "a portion of the stream (having) water velocity and depth * * (and) some gradient and have water passing over it at a suitable velocity." But some riffle areas, for reasons known only to the fish, are preferred above others in which areas the fish will indulge in what is known as "mass spawning". This phenomenon occurs even though there are gravels which are unoccupied by any fish and such activity.

The usable salmon spawning area is dependent upon flow, with the area required depending upon several factors including the number of spawning salmon to be accommodated, the distribution of the run as to time and location, numbers of female spawning at any one time and spawning area required per female.

The California Department of Fish and Game contends that the Tuolumne River has an average annual run of 40,000 king salmon; that to maintain the 40,000 average space must be provided for double the average, or 80,000 salmon; that 40 percent of the salmon run are females; that an average of 31 percent of the total run will be on the spawning beds at any one time; that for spawning purposes a female salmon will use 40 to 60 square feet for the actual redd or nest, but will keep other females from using a much larger area of approximately 200 square feet; that the total spawning area requirement for the support of an average run of 40,000 fish would be approximately 1,984,000 square feet; that to provide for migration of any salmon into the Tuolumne River a flow of approximately 200 c.f.s. is needed at the town of Waterford; that to provide for the successful spawning of a run of 80,000 salmon, a flow of 385 c.f.s. is needed over the spawning beds during the spawning season; and that water temperatures of 56° F. or less are needed for successful spawning.

The California Department of Fish and Game and the Secretary of the Interior seek to have fish water releases required for the entire life of the license, with the Commission retaining jurisdiction to reopen the matter for review at any appropriate time. In the view of the Commission Staff, the recommended releases should be allowed, at the outset, for only a period of 20 years and be re-examined at the end of that time. It should be pointed out in this regard that the recommendations of the California Department of Fish and Game failed to take into consideration the proposed diversion of water by San Francisco for municipal purposes. As is clear from the record, shortly after San Francisco's diversion exceeds 295 mgd, estimated to be about 1985 (or 20 years after completion of the project), the dependable capacity of the New Don Pedro project would drop to zero. It is this circumstance that causes the Staff to recommend re-examination of the fish water releases after the initial 20-year operating period.

The water which the California Department of Fish and Game seeks to have released from the New Don Pedro reservoir into the natural stream-bed below the La Grange dam to benefit spawning conditions of fall run king salmon is set forth in its schedules "A" and "B" as follows:

Period	Schedule A (normal year)		Schedule B (dry year)	
	Cfs	Acre-feet*	Cfs	Acre-feet*
Preseason flushing flow	2,500	4,960		
October 1-15	200	5,950	50	1,490
October 16-31	250	7,930	200	6,350
November	385	22,900	200	11,900
December 1-15	385	11,450	200	5,950
December 16-31	280	8,880	135	4,280
January	280	17,210	135	8,300
February	280	15,550	135	7,500
March	350	21,520	200	12,300
April	100	5,950	85	5,060
May-September	3	910	3	910
Total acre-feet		123,210		64,040

*Cfs day equals 1.983 acre-feet.

Concerning the fish water releases requested by the California Department of Fish and Game for the Tuolumne fall run salmon, it should be observed that upstream migration begins in early October and continues through November and into December. Spawning activities begin upon arrival in the spawning areas between Waterford and La Grange, and spawning continues throughout November and December and for some days in January. Incubation begins with first spawning and continues for about 60 days after final spawning until early in March, the actual period depending on water temperature. The period of emergency begins approximately three weeks after hatching. Following emergence the young fish start their downstream migration with the bulk migrating seaward by the end of March. Some, however, remain until April.

Because the proposed fish water releases would have the effect, *inter alia*, of reducing the irrigation supply available to the Districts in critical years below that available from the existing Don Pedro project, a result clearly within the ban of Section 27 of the Act, it would serve no useful purpose, insofar as this opinion is concerned, to pass upon above described contentions of the California Department of Fish and Game or to detail the evidence and contentions of the Districts with reference thereto. No evidence was offered by the Staff of the Commission. Suffice it to say that while there are some areas of agreement as to the evidence and contentions set forth above in a generalized fashion, there are other areas in which opinions differ, such as the weight to be accorded some of the evidence, the amount of water necessary to provide suitable spawning conditions for salmon, the space required by an individual spawner, the need to provide for 80,000 salmon and the amount of space necessary to accommodate that number of salmon, and the water temperature required.

But before proceeding further, an additional contention of counsel for the California Department of Fish and Game should be considered. They argue that the annual power loss of $1,777,000 that their proposed fish conditions would inflict upon the New Don Pedro project can be made up by the Districts by charging the water users for water and raising their present low power rates.[34] In this regard they call attention to the fact that the Districts' portion of the cost of New Don Pedro is proposed to be paid for out of power revenues, with no charge to be made for the additional water to be provided; and that if the Districts "divert a million acre-feet of water each year to the farmers, then a charge of only a little over a dollar an acre-foot would make up the loss in power revenues" (see also *infra.*, p. 566, note 36). In their view, "it is more equitable to let those who get the benefits pay the costs, and in this case, it is readily apparent that the Districts can afford to build the project and provide safeguards for the fish and wildlife resources."

This contention, as counsel for the Districts point out, "misses the crucial point that the proposed fish conditions destroy the primary purpose of New Don Pedro to conserve water for the dry years. As we demonstrated * * *, the result of the State's fish conditions is to reduce the dependable minimum year irrigation supply obtainable from New Don Pedro to below that obtainable from the existing Don Pedro project after six years of operation, or 1972. By 1985 the dependable minimum year irrigation supply under New Don Pedro with the fish conditions would be about 546,000 acre-feet or more than 100,000 acre-feet less than that of existing Don Pedro. Certainly no farmer can be expected to pay more for a new project that will provide less water. He would rightly ask why such a project should be built at all."

---

[34] The consultants for the Districts have recommended a slight increase in power rates so that a reserve fund may be created. The increase recommended by the California Department of Fish and Game would be a further but slight increase.

Limitation on the Commission's Jurisdiction

The desire of the California Department of Fish and Game, the Secretary of the Interior and the Commission Staff to preserve and enhance the fishery resources of the Tuolumne River is understandable, particularly in view of the fact that the spawning areas in coastal streams, which are so important to the fishing industry, recreational pursuits, etc., are shrinking in number. However, the Commission may only issue a license in this proceeding which will not impair the rights of the Districts and San Francisco to water *being used* for irrigation and municipal purposes. So far as the Districts are concerned, not only may the Commission not reduce its irrigation supply available in the critical years below that available from the existing Don Pedro project, but in the Examiner's view, it ought not to unduly interfere with the central purpose of the project to provide the Districts with a more dependable supply during the critical dry years.

For reasons unknown to the Examiner, the proposed fish water releases were intended to be provided solely out of water belonging to the Districts rather than out of water belonging to both the Districts and San Francisco. It is clear, of course, that by limiting the proposed use of water by both to provide for fish water releases, the effect would be less burdensome on the Districts but, on the basis of the record, would after a few years of project operation interfere with San Francisco's water supply for municipal purposes.

The proposal to provide fish water releases out of water belonging to the Districts may be due to the fact that the California Department of Fish and Game, the Secretary of the Interior and the Commission Staff (1) appear to have erroneously assumed that San Francisco has the right to divert in excess of 400 mgd from the Tuolumne River, a right it does not presently possess and, unless New Don Pedro is constructed, will not have (see *supra*, pp. 546, 548); or (2) that they were of the opinion—shared by the Examiner—that water for municipal purposes should take preference over fish. Of course, if there can be a sharing of the water so that fish as well as irrigation and municipal purposes can be provided for, the license should be conditioned to provide therefor.

It is of interest to point out in passing that the fact that San Francisco is not one of the joint applicants, or even a party to this proceeding, in no way hampers the exercise of the Commission's jurisdiction. In the present state of the record, all the Commission needs to do in order to exercise complete control over San Francisco's plans is to prohibit commencement of construction until an agreement satisfactory to the Commission is entered into by the Districts and San Francisco with reference to the construction and operation of the project. In connection with the contract to be executed by the Districts and San Francisco it should be borne in mind that, as stated in *United States* v. *Willow River Co.*, 324 U.S. 499, 503, "only those economic advantages are 'rights' which have the law back of them", and Congress has left the final decision to this Commission rather than to the contracting parties.

Because the record was made on the basis that fish water, if provided, would be provided out of the total volume of water belonging to the Districts the Examiner is unable to compute the water which might be available for fish water releases when provided solely out of a portion of the additional volume of water to become available to the Districts and San Francisco as a result of the construction of the New Don Pedro project. As previously pointed out (*supra*, p. 557), it is only out of the additional water to become available that fish water releases may be provided, assuming that the water which can be provided for this purpose will be sufficient in volume to make it worthwhile. In making a record which will permit this determination to be made it appears that it will be necessary to inquire into, *inter alia*, the circumstances under which, and the period over which, San Francisco proposes to sell water stored in the recently completed Cherry Valley project to the Districts (see *supra*, pp. 549, 550); whether a Commission license is required for the Cherry Valley project; and the justification for the claim that San Francisco's local water supply, which was its sole source of supply until it began receiving Tuolumne River water in 1934, cannot now be depended upon to supply any water in a very dry year (see *supra*, p. 546).

In view of the state of the record concerning fish water releases, and the requirements of the Act with reference thereto, the order accompanying this opinion grants a license on the condition that the Districts maintain minimum stream flows in the Tuolumne River at La Grange bridge as may be prescribed hereafter by the Commission (see Article 30). To expedite disposition of this case the parties may be able to stipulate the necessary facts for the Commission's consideration.

The Districts' Recreation Proposal

Section 10(a) of the Act is quoted hereinabove (see *supra*, p. 556). If, as this Section contemplates, the general welfare is to be served to the maximum practical extent, the Commission's outlook in this case may not be limited to the interests of those who will bear the cost of New Don Pedro. Rather its outlook must be as comprehensive as the total public interest. And as is well known, the Commission is showing a renewed and increasing interest in the development of the Nation's water resources for the benefit of all.

The evidence shows that the New Don Pedro project will create one of the largest low-elevation lakes in the San Joaquin Valley. At full pool it will have a shoreline of 159 miles and afford many varied recreational opportunities including sport fishing, camping, hunting, boating, water skiing, swimming and picnicking, with such opportunities being afforded in a region which, along with the State of California in general, is experiencing an accelerated increase in population and in industrial and other activity.

The Districts plan to employ a consultant to develop a master plan for recreation consistent with the project purposes, but such plan is not proposed for development by the Districts but rather for implementation by interested local, state or federal agencies. The Districts have not offered to create recreational facilities at their own expense, nor have they offered to purchase land for recreational purposes. They contemplate that the only land to be made available for such purposes will be the land within the project boundary and this would be true with respect to the entire 159 miles of shoreline with the exception of the area adjacent to the proposed New Don Pedro dam. Notwithstanding this long shoreline it appears that the only access road proposed to the reservoir will be to the dam site. In the view of Tuolumne County, proper recreational development could be afforded along the entire reservoir shoreline with suitable access roads and the acquisition by the Districts of various sites which lend themselves to recreational development.

Counsel for the Districts request that the following finding, among others, be made:

> The New Don Pedro project at full pool will create a lake of about 12,000 acres and of about 3,000 acres at the minimum storage of approximately 309,000 acre feet, affording many and varied recreational opportunities including fishing, boating, water skiing, swimming and picnicking.

Counsel for the Secretary of the Interior suggests that there be added to this proposed finding the words "if sufficient lands, access roads, and recreational facilities are provided for these purposes." He recommends the addition of this language because it "clearly sets forth the fact that the Applicants intend for someone else to provide the means of achieving the recreational values which they claim will flow from the construction of this project. The record is clear to the effect that the Districts have no present intention of investing any funds in facilities for public use of the reservoir. Unless they are willing to make some contribution other than planning to these uses, it is doubtful that they may claim properly that they are improving the recreational opportunities of the area by the construction of the project." The Examiner agrees.

The proposal of the Districts' to do no more than cause a master recreational plan to be prepared is to be contrasted with the conditions Congress exacted of San Francisco in connection with its construction of the Hetch Hetchy system (also located on public lands) under the Raker Act. In consideration of the rights and privileges granted under that Act, San Francisco was required, *inter alia*, to construct and maintain access and scenic roads, trails and bridges under the direction and approval of the Secretary of the Interior and the Secretary of Agriculture; to construct telephone systems, fences, camp sites, etc.; to permit free access to and use of the Hetch Hetchy area by the public; to supply water for camp purposes; to comply with sanitary regulations; and to dispose of all power generated by the Hetch Hetchy system to the public at cost. In this connection it is of interest to point out that House Report No. 41, 63d Congress, 1st Session, which accompanied the bill that became the Raker Act, stated in part (p. 11, 15):

> Section 7 provides that for and in consideration of the grant the grantee shall make certain payments, the proceeds of which are to be used exclusively for the construction of roads and other improvements in the Yosemite National Park and other national parks in the State of California.
>
> * * * * * * *
>
> Paragraph (p), section 9, provides for the building of roads and trails in the Yosemite National Park as designated by the Secretary of the Interior.
>
> (The routing of these roads and trails was made by Mr. Marshall, of the Geological Survey, who surveyed the Hetch Hetchy Valley and is familiar with all the scenic and topographical conditions there. These roads will cost the city of San Francisco $500,000 to $1,000,000, and are to be turned over, free of charge, to the United States. This is one of the important considerations, and carries compensation to the Government for the rights of way granted. The construction of these roads will make the Hetch Hetchy Valley accessible and will provide a convenient and easy way for mountaineers to reach the higher parts of the Sierra. This paragraph also contains a requirement that the grantee shall provide a water supply for camp purposes at the Meadow camping place, a third of a mile from Hetch Hetchy. It is also provided that all trail and road building shall be done subject to the approval and direction of the Secretary of the Interior or the Secretary of Agriculture, according to their respective jurisdictions.)
>
> Paragraph (q), section 9, provides that the grantee shall furnish water at cost to any authorized occupant within 1 mile of the reservoir, and shall repair and maintain roads and trails constructed under the provisions of the grant.
>
> Paragraph (r) provides that the grantee shall pay all the cost of inspection and investigations which may be required of the Department of the Interior . . . .
>
> * * * * * * *
>
> Paragraph (t) requires the grantee to convey to the United States any and all tracts of land now owned by the city within Yosemite National Park or

the national forest, which lands are not actually required for use under the provisions of this act.

(The city of San Francisco purchased private lands for the purpose of exchanging the same with the Government in lieu of that portion of the floor of the Hetch Hetchy Valley, which is not owned by the city. The purpose of this plan is to provide suitable and desirable camping places for visitors who may wish to visit the Sierra and who would otherwise have camped in the Hetch Hetchy, and at the same time compensate the United States for lands to be submerged.)

Paragraph (u) provides that the grantee shall sell water at cost to the military reservations in San Francisco. * * *

The Raker Act was enacted in 1913 when the population of California and adjoining states was far less than today. Today, for example, California is the largest state in the Nation population-wise. Accordingly, it is apparent that the need for creating and maintaining extensive recreational facilities, access roads, bridges, trails, camp sites, etc., is far greater now than in 1913. The order accompanying this opinion therefore requires that such facilities be provided at the expense of the Districts and San Francisco.

While the Districts claim that they lack legal authority to construct and maintain recreational facilities, there is no merit to this contention. This is particularly so since New Don Pedro will be a licensed project. It clearly appears that under State law the Districts may do any and all acts necessary to providing water and power. But even if this contention had merit the required recreational facilities could be constructed, maintained and paid for by San Francisco, with San Francisco's portion of the other project costs being reduced accordingly.

Tuolumne County has a sincere and urgent interest in the licensing of the New Don Pedro project, particularly insofar as recreational features and the cost of relocation of roads and bridges are concerned. Their counsel stated at the hearing that he had talked with representatives of the Districts "and they have promised nothing." He further stated that the negotiations in which he had participated had led "to complete frustration as far as Tuolumne County is concerned."

Counsel for Tuolumne County points out in his brief that "Tuolumne County . . . has a land area in excess of 1,400,000 acres. Of this land area 72% is owned by the United States and 6% by other tax exempt agencies such as Modesto . . . and Turlock . . . . * * * The New Don Pedro project . . . will remove an additional 8,917 acres from the tax roles . . . ." The county estimates that the total cost of the relocation of the county roads and bridges which they desire to be relocated[35] is roughly $1,618,000.00, but requests that the Districts be held responsible for no more than the actual replacement cost. In this regard counsel points out that, as the evidence indicates, "more than sufficient money has been budgeted [by the Districts] for the County road relocation."

Concerning the recreation potential of the New Don Pedro project counsel for Tuolumne County contends that it "could be unlimited if developed properly" since "it lies within easy reach of the densely populated central valley and bay area regions of California. The fact that the reservoir is at a low elevation means that it would be used by the public for recreational purposes during the greater part of each year. A well planned and controlled recreational development along the shores of New Don Pedro Reservoir would allow a maximum of public use and would tend to make the recreational operation a financial success." Tuolumne County recommends that the recreation facilities be provided at the expense of the Districts since the resources of the County "are already strained to the limit by reason of the fact that over 70% of its land area is owned by tax exempt agencies. With its small tax base, it would be impossible for Tuolumne County to provide the initial basic facilities, the land necessary for these facilities, and the access roads to these facilities." Counsel for the county further states that "After the basic recreational facilities are installed Tuolumne County believes that it should be allowed to participate in the operation of the recreational development with the Irrigation Districts since the reservoir is entirely situated within Tuolumne County. Furthermore, since Tuolumne County will have to provide the police and fire protection and other government services which are afforded by taxes raised solely within the County, there is no way for Tuolumne County to mitigate this financial burden unless it is allowed to participate in the operation of the recreational development."

---

[35] Counsel for Tuolumne County states in his brief that "These are the only county roads which Tuolumne County seeks to have replaced. Other county roads and parts of county roads have been inundated, but Tuolumne County feels that the damage by the loss of these roads and parts of these roads is negligible. Therefore, Tuolumne County does not seek their relocation, nor redress for their loss."

The financial ability of the Districts and San Francisco to provide the recreational facilities, etc., is obvious. The Districts, for example, propose to recover their portion of the cost of New Don Pedro entirely out of power revenues and San Francisco may be able to recover its cost contribution in the same manner. It is not proposed that the farmers of the area, in order to get more water for irrigation, will pay for the additional water they receive.[38] It is clear, of course, that irrigation as well as power will provide revenues and attract capital, as will the high credit rating of the Districts and San Francisco. Moreover, the cost of the project to the Districts and San Francisco is substantially reduced by the Federal Government's payment for flood control space.

Position of Banta Carbona

The source of water of Banta Carbona for irrigation is by diversion from the San Joaquin River below its confluence with the Tuolumne River. In its petition to intervene Banta Carbona stated that:

> In recent years, as the consumptive use of water for irrigation in the San Joaquin Valley upstream from [Banta Carbona's] points of diversion has increased, [Banta Carbona's] water supplies have been seriously impaired, principally through the deterioration of the quality thereof. As a result severe damage to crops and orchards within [Banta Carbona's] service area has been caused by the excessive salinity of the water diverted

---

[38] Counsel for the State of California state that "The two irrigation districts involved had in 1961 a gross agricultural product of over $70,000,000 (Ex. 23). The water which is used to produce this great amount of agricultural income is served to farmers of Modesto . . . without charge, and is served to the farmers of Turlock . . . at a nominal fee of 31 cents an acre-foot . . . . In California, at least, this is a rather unique situation. The United States Bureau of Reclamation and the State of California have built and are building vast irrigation projects so that land may be served with water and produce agricultural crops. This water, however, will not be free. For example, the State of California will serve water to the Delta or upstream from the Delta at $3.50 an acre-foot and the price downstream from the Delta will be the $3.50 an acre-foot plus additional distribution costs."

The past success of the Districts, however, is not a reason for now imposing onerous conditions upon them. It is true, of course, that they have provided the area they serve with a larger and larger slice out of an expanding cake, but the key to that flourishing growth has been the know-how and integrity of a competent management filled with determination and enjoying the confidence of the inhabitants.

> from the San Joaquin River. A substantial part of [Banta Carbona's] water supplies during the early months of the irrigation season is derived from runoff in the Tuolumne River. Heavy snow melt runoff in the Tuolumne River and other tributaries of the San Joaquin River during the spring months has been beneficial to the District in that it has served to flush out the excessive saline water that had previously accumulated in the stream channels and sloughs in the San Joaquin Valley.

As counsel for Banta Carbona states in his brief, "The water quality problem in the lower San Joaquin has been developing gradually over many years. But * * * only in recent years has this problem become so acute that it now constitutes deprivation of property and impairment of vested rights."

Counsel for Banta Carbona recognize, of course, that the serious water quality problem that now exists in the lower San Joaquin River is not due to the proposed construction of the New Don Pedro project. What Banta Carbona seeks is an appropriate condition in the license issued to the Districts to prevent any "further deterioration in the water quality in the lower San Joaquin as a result of" the construction of New Don Pedro. In this regard counsel states that Banta Carbona does "not expect the Tuolumne River to contribute all the water that is necessary to maintain water quality in the lower San Joaquin. We only expect the Tuolumne River to contribute its historical proportion. We do not believe anyone controverts the water rights of the Banta Carbona Irrigation District of the fact that said water rights have a priority dating from August 11, 1911, which is prior to both the existing Don Pedro applications made in 1919 and the New Don Pedro applications made in 1951."

The question of whether a downstream irrigator can require upstream irrigators to prevent an alleged impairment of quality of river flows is an issue of State law depending upon the rights held by the respective users. As counsel for the Districts point out, "The Commission has consistently ruled * * * that once a license applicant has shown prima facie compliance with State laws regarding its water rights * * * a challenge to those rights * * * should be made not to the Commission, but to the appropriate State agency having jurisdiction over State water rights." See *Power Authority of the State of New York*, 19 FPC 186, 190–191; *California Oregon Power Co.*, 13 FPC 1, 5; *Oakdale Irrigation District, et al.*, 10 FPC 810, 811, *East Bay Municipal Utility District*. 1 FPC 12, 13.

Mention should also be made here of the fact that counsel for Banta Carbona point out in their brief "that if mandatory fish releases from the New Don Pedro project are to be made in accordance with the recommendations * * *, these would mitigate the quality problem in the lower San Joaquin River to a considerable extent during part of the irrigation season at least." But as hereinabove pointed out, the Examiner is unable, on the basis of the record made, to calculate the extent that fish water releases can be made consistent with the provisions of the Act.

FINDINGS

Based on the evidence of record, the briefs and arguments of counsel, as well as the preceding portion of this decision, it is further found and concluded that:

(1) The Districts, two public agencies of the State of California, filed a joint application on May 9, 1961, as amended on March 30, 1962 and May 18, 1962, for a major license under the Act to construct, operate and maintain a hydroelectric project known as the New Don Pedro project, FPC Project Number 2299, at approximately river mile 54.5 on the Tuolumne River in California.

(2) No conflicting application is before the Commission. Public notice has been given.

(3) The proposed New Don Pedro project would be located about one and a half miles downstream from and would inundate the existing Don Pedro project of the Districts, located at river mile 56.0, and covered under FPC Minor Part License Number 1086 issued in 1930.

(4) A public hearing was held on the application in San Francisco, California commencing on October 16, 1962, and continuing for nine hearing days ending October 26, 1962.

(5) The proposed project would affect public lands of the United States and is subject to licensing under the Act.

(6) The Chief of Engineers, Department of the Army, has reported that special terms and conditions in the interests of navigation are not considered necessary for insertion in any license which may issue.

(7) The New Don Pedro project, constructed, operated and maintained as hereinafter ordered and conditioned, will not affect any Government dam, nor will the issuance of a license therefor, as herein provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) The issuance of a license for the New Don Pedro project will not interfere or be inconsistent with the purposes of any reservations or withdrawal of public lands.

(9) The exhibits filed by the Districts pertaining to the New Don Pedro project conform with the Commission's rules and regulations and should be approved as part of the license, but there shall be filed, as hereinafter provided, Exhibits F and K showing and describing the project boundary and lands.

(10) The New Don Pedro project would consist of a dam about eight hundred feet long at crest Elevation 850, which will have a centrally located impervious rolled earth core and previous gravel and cobble shells; a reservoir of 2,030,000 acre feet capacity at full pool water surface Elevation 830, which will extend about twenty-two miles upstream to a point on the main stream known as Wards Ferry Bridge; a control spillway consisting of a concrete structure with an ogee crest at Elevation 800 and provided with three radial type, hoist operated steel gates capable of passing 81,000 cfs at reservoir Elevation 832; and uncontrolled emergency overflow spillway 1900 feet wide with the crest at Elevation 832 which in combination with the controlled spillway will pass 324,000 cfs with the water surface at Elevation 843.3; a diversion tunnel through the left abutment with permanent outlet works; a power tunnel through the left abutment extending to a steel penstock leading to an outdoor type power house at the downstream toe of the dam containing three units, each consisting of a reaction type turbine with a rated capacity of 69,000 horsepower operating under a 425 feet head and a directly connected generator rated at 45,766 kva, and connected to the main transformers rated at 58,000 kva; a switchyard; and six 69 kv transmission lines to substations of the Districts, together with appurtenant works, the location, nature and character of all of which are more specifically shown and described by the exhibits which form part of the application for license.

(11) The structures proposed as part of the New Don Pedro project conform to sound engineering practice and will be safe and adequate.

(12) The estimated cost of construction of the New Don Pedro project is reasonable.

(13) The project site was selected after examination of four other sites, all in the same general vicinity, and was chosen not only because it will permit the maximum practicable reservoir size which the topography of the area will support but also because it offers superior geologic conditions.

(14) The Tuolumne River has a large annual variation in flow, ranging from 600,000 acre feet to 3,200,000 acre feet over the 39 year representative hydrologic cycle, namely 1923–1961, and storage is essential in order to provide dependable supplies for irrigation and domestic use, permitting the carryover of waters from wet years to dry years.

(15) As proposed, the purposes of the New Don Pedro project are to (a) conserve water for the Districts for irrigation and domestic supply, with releases of water for irrigation purposes to be used in the generation of hydroelectric power; (b) enable San Francisco to increase its upstream diversions and power output; and (c) provide flood control and some recreation.

(16) The major purposes of the Districts in constructing the New Don Pedro project are to generate additional hydroelectric power for distribution in their power service area and to firm up the water supply available for irrigation through providing sufficient storage to carry them over dry years, thus providing the area with needed power and improving and stabilizing the basic agricultural economy of the area.

(17) The major purposes of San Francisco in proposing to contribute to the first cost of constructing the New Don Pedro project are to enable it (a) to increase its ultimate diversion of water from the Tuolumne River to more than 400 mgd; (b) avoid the cost of constructing other storage space and aqueduct facilities; and (c) to generate and sell additional hydroelectric power.

(18) The New Don Pedro project, as authorized herein, is best adapted to a comprehensive plan for the improvement and utilization of water power development and other beneficial public uses, including recreational purposes.

(19) It is anticipated that pursuant to the terms of an agreement previously entered between the Districts and San Francisco that San Francisco will enter into a binding agreement with the Districts fixing San Francisco's contribution to the overall cost of the New Don Pedro project. Under the prior agreement San Francisco agreed to pay the actual cost of constructing the New Don Pedro project to a reservoir capacity of 1,200,000 acre feet.

(20) Construction of the New Don Pedro project should not commence until the Districts and San Francisco enter into an agreement filed with and acceptable to the Commission and allocating the total costs between the parties and obligating San Francisco to pay its proper share of those expenditures. Such agreement should entitle San Francisco to a maximum of 740,000 acre feet of storage in the New Don Pedro reservoir consisting of 570,000 acre feet of municipal exchange storage and 50 percent of the 340,000 acre feet of off-season flood control space.

(21) Federal financial participation in the New Don Pedro project in the interests of flood control was authorized by Congress in the Flood Control Act of 1944 (58 Stat. 887) and the Chief of Engineers, Department of the Army, has reported no objection to the issuance of a license providing that a satisfactory agreement is reached to satisfy the needs of flood control, pursuant to the 1944 Flood Control Act.

(22) The Corps of Engineers, San Francisco and the Districts entered into a contract in 1949 providing for the operation of then existing projects of the Districts and San Francisco for flood control, the construction of Cherry Valley dam by San Francisco to incorporate flood control, and for the transfer of flood control operations to New Don Pedro when completed, with a federal monetary contribution for flood control currently estimated at approximately $14,000,000. about $9,000,000 of which has already been advanced.

(23) The substantial contribution made and to be made by the Federal Government is another demonstration that the water resource development for flood

control space in the New Don Pedro reservoir in the Tuolumne and San Joaquin basins is not a matter limited to local concern.

(24) The contract entered into in 1949 by the Corps of Engineers, San Francisco and the Districts, and referred to in paragraph (22) above, specified that "none of the money paid by the Federal Government under the terms of this agreement shall be expended for purposes other than new work on Cherry Valley or New Don Pedro or other new reservoirs." The only new reservoir constructed by San Francisco is Cherry Valley. New Don Pedro is the only new reservoir which the Districts contemplate constructing.

(25) The Districts transferred to San Francisco the $4,600,000 paid by the Federal Government to them under the 1949 contract in exchange for headwater benefits, a matter subject to the Commission's jurisdiction under Section 10(f) of the Act. The transfer of $4,600,000 by the Districts to San Francisco does not appear to conform to the requirement of the 1949 contract limiting the use of Federal payment to "new work", nor does it appear that such payment is justification for the Commission regarding it as being other than a contribution to the first cost of New Don Pedro.

(26) The California Districts Securities Commission approved the feasibility of the proposed New Don Pedro project in 1961 and authorized the Districts to hold elections on the question of whether general obligation bonds in the amounts of $34,000,000 (for Turlock) and $18,500,000 (for Modesto) should be issued, the issuance of which was approved by the voters of the Districts on November 7, 1961.

(27) The voters on San Francisco approved the issuance of $115,000,000 in general obligation bonds in an election held on November 7, 1961 for utilization in connection with the Hetch Hetchy water supply system, to include approximately $45,000,000 for use in connection with the New Don Pedro project.

(28) The Districts have demonstrated their ability to finance their portion of the New Don Pedro project cost pending the conclusion of a final agreement with San Francisco as to the exact amount of the cost of the project to be paid by San Francisco.

(29) The proposed New Don Pedro project will utilize the head and stream flow of the Tuolumne River to the maximum extent for power purposes.

(30) Under the proposed plan the hydraulic capacity of the New Don Pedro project will be about the same as the combined capacity of the Districts' irrigation canals below La Grange dam.

(31) The New Don Pedro project will have an installed capacity of 130,440 kilowatts and an estimated average annual output of 527,000,000 kilowatt hours, with a peaking capability of 150,000 kilowatts. The additional energy values to be developed in the upstream generation facilities of San Francisco as a consequence of the construction of the New Don Pedro project are not a matter of record.

(32) The combined loads of the Districts' electric systems will be sufficient to absorb the entire output if the New Don Pedro project by the date of its completion.

(33) The at-market power value of the New Don Pedro project is estimated at $19.55 per kilowatt year for capacity plus 4.06 mills per kilowatt hour for energy.

(34) As proposed, the usable storage capacity of the New Don Pedro project will be 1,721,000 acre feet at a drawdown of 230 feet, of which 340,000 acre feet will be for flood control; 811,000 acre feet will be for irrigation; and 570,000 acre feet for exchange storage for San Francisco.

(35) The installed horsepower capacity of the New Don Pedro project for the purpose of computing annual charges is 174,000 horsepower.

(36) It is desirable to reserve for future Commission determination the question of what lands of the United States are affected by the New Don Pedro project and the amount of annual charges to be fixed for the use thereof.

(37) The amount of annual charges to be paid under the license for the New Don Pedro project for the purpose of reimbursing the United States for the cost of administration of Part I of the Act is reasonable.

(38) It is appropriate for the Commission to reserve the right hereafter to determine the transmission facilities to be included in the license.

(39) The Districts at present jointly own 37,500 kilowatts at the existing Don Pedro dam and Turlock Irrigation District owns 4300 kilowatts at the La Grange powerhouse.

(40) The Districts have generated and distributed power within their service area since the completion of the existing Don Pedro project in 1923 and currently purchase power from the San Francisco plants upstream because of the insufficiency of their own generating sources.

(41) The combined peak loads served by the Districts have been increasing at an average annual rate of 8 percent and are estimated to reach 180,000 kilowatts by 1965 indicating that the full installed capacity of New Don Pedro of 150,000 kilowatts would be absorbed in the systems of the Districts when the project goes on the line.

(42) The combined energy requirements of the two Districts have been increasing at a rate of about 8 percent and are estimated to reach 840,000,000 kilowatt hours by 1965, indicating that most, and probably all, of the proposed energy production will be absorbed within the Districts when New Don Pedro project goes on the line, depending upon hydrologic conditions.

(43) The total dependable capacity that would be provided at the New Don Pedro project would be fully utilized in the Districts' systems promptly upon construction of the project.

(44) The lowest alternate source of power to meet the Districts' requirements is steam electric power, the average annual cost of which is estimated to exceed the annual cost of New Don Pedro power by about $316,000 based on the Districts' estimated share of the project cost before making any allowance for fish releases.

(45) The New Don Pedro project is economically feasible as a power plant when operated in the manner proposed by the Districts.

(46) The Districts, organized in 1887, have been engaged since that time in the development of the waters of the Tuolumne River for irrigation purposes, under their rights to the use of river waters.

(47) Developments by the Districts, in addition to the construction of main canal and lateral systems totaling over 400 miles, include the La Grange dam, constructed in 1894 at the site of the then Wheaton dam, the Turlock and Modesto reservoirs, completed in 1911 and 1914, of 50,000 and 28,000 acre-foot capacity respectively which provide offstream storage for waters diverted at La Grange, and the existing Don Pedro project with a 290,000 acre-foot reservoir and a power plant of 37,500 kilowatts installed capacity, completed in 1923.

(48) The Raker Act of 1913 (38 Stat. 242) protected the prior water rights of the Districts against interference by San Francisco and recognized the possibility that the Districts might irrigate up to 300,000 acres.

(49) San Francisco was authorized, pursuant to the Raker Act of 1913, to utilize public lands and rights of way in the development of hydroelectric power

and a water supply on the Tuolumne River, but that authorization did not envisage the construction and operation of the New Don Pedro in connection with San Francisco's Hetch Hetchy system.

(50) San Francisco has developed storage at Hetch Hetchy, Lake Eleanor and Cherry Valley aggregating about 656,000 acre feet, four power plants and a network of diversion dams and tunnels and pipe lines across the San Joaquin Valley which transmit Tuolumne River water over 130 miles to the Bay area for distribution to a service area which in 1961–62 had a demand of 178 mgd.

(51) Additional pipeline construction now underway by San Francisco, to be completed by 1968, will provide capacity in the San Joaquin Valley pipelines of 295 mgd.

(52) It is estimated that demands on the San Francisco water supply system will reach 210 mgd in 1968, 295 mgd by 1984, and 400 mgd by 2015. San Francisco anticipates that it will ultimately require a maximum diversion of 471 mgd from the Tuolumne River watershed.

(53) The existing reservoirs of San Francisco's Hetch Hetchy system will support diversions to San Francisco of 210 mgd and the exchange storage to be provided by the New Don Pedro project will be capable of permitting a future diversion in excess of 400 mgd if no allowance is made for downstream flow maintenance.

(54) The California Department of Fish and Game has recommended that the low level outlets of the existing Don Pedro dam be opened before the filling of the New Don Pedro reservoir, to permit free passage of water, which is agreeable to the Districts.

(55) The California Department of Fish and Game has recommended that vegetation be cleared from the New Don Pedro reservoir site according to a plan developed in consultation with that Department for the purpose of providing maximum fish habitat values consistent with other interests and the Districts are agreeable to this, provided that such a plan will not create any conflict with project operations and will be devised so as not to increase clearance costs.

(56) The California Department of Fish and Game has recommended a minimum project pool of at least 100,000 acre feet which would be covered by the minimum pool proposed by the Districts of 309,000 acre feet.

(57) The Districts have agreed to permit free access to project lands to the California Department of Fish and Game to allow management of fish and wildlife resources; to impose limitations upon contractors constructing project features to prevent unnecessary destruction to fish and wildlife, and, in utilizing river gravels for dam construction, not to disturb gravels in a river channel downstream from the project accommodating approximately 500 cfs, leaving a gravel cover over borrow areas adjacent to such a channel so as to prevent the unnecessary washing of silts and fines by flows above that level.

(58) The record does not contain sufficient evidence to justify requiring the Districts to remove willow growth and other vegetation from salmon spawning areas of the Tuolumne River.

(59) The Districts as public agencies of the State of California have submitted satisfactory evidence of compliance with requirements of all applicable state laws insofar as necessary to effect the purposes of a license for the New Don Pedro project.

(60) The Districts propose to employ a recreational consultant to develop a master plan for recreational purposes, consistent with the primary purposes of the project, and to deliver the plan to interested federal, state and county agencies for implementation.

(61) The New Don Pedro project at full pool will create a lake of about 12,000 acres and of about 3,000 acres at the minimum storage of approximately 309,000 acre feet, affording (in a region which, along with the State of California in general, is experiencing an accelerated increase in population and industrial and other activity) many and varied recreational opportunities including camping, fishing, hunting, boating, water skiing, swimming and picnicking, making it desirable that the Districts not only prepare a master plan but provide, with San Francisco's financial assistance, lands, access roads, and recreational facilities to the maximum practical extent in the same manner as Congress required of San Francisco under the Raker Act.

(62) The New Don Pedro project will permit a seasonal reservoir draft of at least 1,105,000 acre feet for almost 80 percent of the 39 year hydrologic cycle and a draft of 900,000 acre feet for the balance of the time, under a 210,000,000 gallons per day (210 mgd) diversion condition upstream; as seasonal draft of at least 1,105,000 acre feet almost 75 percent of the time and a draft of 900,000 acre feet for most of the balance of the time under a 295 mgd diversion condition upstream; and at least a 1,105,000 acre-foot draft about 56 percent of the time, 900,000 acre feet about 33 percent of the time and smaller diversions for the remaining 12 percent of the time, under a 400 mgd diversion condition upstream, representing the optimum yields possible under the hydrologic cycle.

(63) Major upstream and downstream migration and spawning activity occurs in the stretch of the Tuolumne River from La Grange bridge at river mile 50.5 to Hickman bridge at river mile 31.7 during the months of October through April.

(64) The State of California, acting through its Department of Fish and Game, intervened in this proceeding for the purpose of protecting and maintaining the fishery and wildlife resources of the Tuolumne River.

(65) The California Department of Fish and Game, in its recommendations for the protection of the fish and wildlife resources of the Tuolumne River, has requested that the Districts maintain minimum stream flows downstream from La Grange dam, which aggregate 123,000 acre feet for a normal year (Schedule A) and 64,000 acre feet in a dry year (Schedule B) for the protection and utilization of fish spawning areas downstream during the period October through April.

(66) In its criteria for operation under Schedule A or B the California Department of Fish and Game makes no allowance for the increasing diversions proposed to be used by San Francisco.

(67) The California Department of Fish and Game did not take into account the accretions which occur in the Tuolumne River in its computations of the flows and areas it recommended for salmon spawning.

(68) The report of the Secretary of the Interior states that the New Don Pedro project will have an adverse effect on fish and wildlife resources of the Tuolumne River, and makes various recommendations for the preservation and enhancement of such resources. Insofar as those recommendations call for specific releases of water into the natural streambed below La Grange dam they exceed those proposed by the California Department of Fish and Game by 25,000 acre feet per annum in a normal water year and by 15,000 acre feet per annum in a dry year.

(69) A fall run of king salmon has spawned in a 17-mile reach of the Tuolumne River commencing about two miles below La Grange dam, actual counts of which are available only for the years 1940–42, 1944 and 1946, and estimates of which are available for the years 1947–49 and 1951–61, the estimates for the 1951–61

period ranging from a high of about 46,000 fish in 1959 to a low of 500 in 1951, while the actual counts range from 27,000 in 1941 to 130,000 in 1944.

(70) Salmon spawning gravel surveys were conducted on the Tuolumne River by teams composed of California Department of Fish and Game and Department of the Interior personnel in the fall of 1961 and field studies were made of the spawning gravels inundated, by the personnel of these same agencies, with the cooperation of the Districts in releasing various flows over the February 26–March 6, 1962 period.

(71) In appraising the area which would be inundated over the seventeen mile reach of the spawning area by a flow at La Grange Bridge (about one mile below La Grange dam and at the upstream end of the spawning area) it would be appropriate to take into account accretions which occur in the Tuolumne River as a consequence of return flow from irrigation if these flows were stable and present in the same quantities during the salmon spawning season.

(72) The Tuolumne River is a "gaining" stream and even in times of full diversion of the river at La Grange dam for irrigation purposes when the only flow immediately below the dam is about 2 cfs as a consequence of seepage and leekage at the dam, accretions have resulted in a flow of 80 to 100 cfs at the Hickman-Waterford Bridge (the downstream end of the spawning area), which continued to increase the flow of the river from 200 to 300 cfs at Tuolumne City, just before the confluence of the Tuolumne River with the San Joaquin River.

(73) The Districts' planned operation of the New Don Pedro project does not provide for any minimum flow in the natural streambed below La Grange dam in a critical year.

(74) The fish water releases proposed by the California Department of Fish and Game, the Secretary of the Interior, and the Commission Staff would have the effect of reducing the irrigation supply available to the Districts in critical years below that available from the existing Don Pedro project, a result which is prohibited by Section 27 of the Act.

(75) The Examiner is unable, on the basis of the record as made, to compute the volume of water which might be made available for fish water releases.

(76) There is no necessity in this proceeding for the Commission to pass upon the request of Tuolumne County, California, that the license issued to the Districts contain a condition requiring the Districts to pay any headwater benefits that might result from the proposed construction by the County of an upstream project.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) This license is issued to the Districts (hereinafter referred to as the Licensees) under Section 4(e) of the Federal Power Act for a period of fifty years, effective as of the first day of the month in which the acknowledgment of acceptance thereof is filed with the Commission by the Licensees, for the construction, operation and maintenance of major Project No. 2299, known as the New Don Pedro Project, on the Tuolumne River and its tributaries, affecting certain public lands of the United States, subject to the terms and conditions of the Flood Control Act of 1944 (58 Stat. 887) and the Federal Power Act which are incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Federal Power Act: *Provided, however*, that Licensees shall surrender their license for Project No. 1086, upon completion of the New Don Pedro project.

(i) The proposed project consists of:

All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensees or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

Exhibit J; sheet	FPC No. 2299-	Title, New Don Pedro Project
1	4	General map—Project location.
2	5	General map—Reservoir area.
3	53	Reservoir capacity and area curves—Profile.

(ii) An earth and rock-fill dam 580 feet high with impervious center core and pervious shells at river mile 54.5 on the Tuolumne River; a spillway on the right abutment comprised of a gate-controlled section and an ungated broad-crested weir section discharging into Gasburg Creek; a reservoir extending 22 miles up the Tuolumne River having a gross storage capacity of 2,030,000 acre feet and an area of 12,960 acre feet at elevation 830 feet; low level intake discharging through Howell-Bunger valves, a power tunnel 2,800 feet long through the left abutment and a penstock extending to a powerhouse located across the river adjacent to the toe of the dam; a powerhouse containing three 69,000-horsepower turbines operating under a rated head of 425 feet connected to three 43,480-kilowatt generators, making a total of 130,440 kilowatts; a switchyard; transmission lines extending to Turlock and Modesto, California; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works—the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L; sheet	FPC No. 2299-	Title, New Don Pedro Project
2	38	General project layout.
3	39	Rock-fill dam.
4	40	Diversion tunnel.
5	41	Outlet works—Inlet works.
6	55	Power tunnel.
7	43	Spillway.
8	44	Powerhouse—Service area and longitudinal section.
9	45	Powerhouse—Generator floor and transverse section.
10	46	Powerhouse—Turbine and valve floors.
11	47	Powerhouse main single line diagram.
12	48	Switchyard main single line diagram.
13	49	Switchyard layout.

Exhibit M: "General Description of Equipment" in 3 sheets revised Mar. 12, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all water rights the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(B) This license is also subject to the terms and conditions set forth in Form L–2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," (17 FPC 62), except for Articles 10, 20 and 21 and the last sentence of Article 23 thereof, and subject to the following conditions set forth herein as additional articles:

Article 25. The Licensees shall commence construction of the project works within one year of the effective date of this license; shall thereafter in good faith and with due diligence prosecute such construction; and shall complete construction of such project works within four years from the effective date of this license.

Article 26. The Licensees shall, within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary including transmission line rights-of-way in accordance with the rules and regulations of the Commission.

Article 27. The Licensees shall, prior to impounding water, dispose of all temporary structures, unused timber, brush, refuse, or other inflammable material resulting from the clearing of the land or from the construction and maintenance of the project works, and shall clear all lands in the reservoir area up to normal water level; except that all lands in the reservoir area shall be cleared according to a plan to be prescribed by the Commission upon recommendation of the California Department of Fish and Game and the United States Fish and Wildlife Service. The clearing of the lands and the disposal of the material shall be done with due diligence by the Licensees and to the satisfaction of the authorized representative of the Commission.

Article 28. The Licensees shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources as may be prescribed hereafter by the Commission upon the recommendation of the Secretary of the Interior: *Provided*, that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the California Department of Fish and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: *Provided further*, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Article 29. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its expense, the Licensees shall permit the United States or its designated agency to use, free of cost, such of Licensees' lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensees shall modify the project operation as may be prescribed by the Commission, consistent with the primary purposes of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or approved by the United

States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensees of any obligation under this license.

Article 30. The Licensees shall maintain minimum stream flows in the Toulumne River at La Grange bridge as may be prescribed hereafter by the Federal Power Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the California Department of Fish and Game, after notice and opportunity for hearing and upon a finding based on substantial evidence that such minimum flows are available and are necessary and desirable and consistent with the provisions of the Act.

Article 31. Licensees in cooperation with the California Department of Fish and Game shall make studies for the purpose of assuring continuation and maintenance of the fishery of the Toulumne River in the most economical and feasible manner consistent with the Act and the requirements of the Commission thereunder.

Article 32. In the event water temperatures during the critical months of the spawning season are too high for successful salmon spawning, the Licensees and the California Department of Fish and Game shall confer to determine whether project operations may be adjusted to assist in correcting the situation.

Article 33. The Licensees shall, after notice and opportunity for hearing coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

Article 34. The Licensees shall, prior to the filling of New Don Pedro reservoir, provide for free passage of water through the existing Don Pedro dam either by opening the low-level outlets or breaching the dam near streambed.

Article 35. Gravels of the river channel downstream from La Grange dam shall not be disturbed during the construction of project facilities except in accordance with a plan developed by Licensees after consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service with a view toward maintaining the pre-project value of the gravels for salmon spawning. Licensees shall take all reasonable measures to prevent silt, fines and other construction debris from being released into the Toulumne River.

Article 36. The Licensees shall, prior to beginning of operation of the New Don Pedro reservoir, enter into an agreement with the Chief of Engineers, Department of the Army or his designated representative for the operation of the reservoir in the interests of flood control pursuant to the Flood Control Act of 1944 (58 Stat. 887).

Article 37. The Commission expressly reserves the right to determine at a later date what transmission lines and appurtenant facilities, if any, shall be included in the license as part of the project works.

Article 38. The Licensees shall cause to be developed a master plan for recreational use of the reservoir which shall not conflict with the safe and efficient operation of the project. Such plan shall show the location of the areas, access roads and facilities to be constructed, maintained and paid for by the Licensees and San Francisco for fishing, hunting, camping, picnicking, bathing, boat-launching, etc., and shall be prepared in cooperation with interested federal, state and local agencies, including Toulumne County. Such plan shall be submitted to the Commission on or before August 15, 1963, for approval, and shall be accompanied by such written comments as the interested agencies desire to make with reference thereto. Commencement of construction of the project shall be delayed until the Commission, by order, has approved the plan as submitted or as modified by the Commission.

Article 39. Licensees shall acquire sufficient interest in lands of Section 20 and 21, T. 2 S., R. 15 E., M.D.M., to provide parking and road access to National Land Reserve in Sections 19 and 20, T. 2 S., R. 15 E., M.D.M., and shall acquire such additional lands as will be necessary for recreation, fish and wildlife purposes.

Article 40. The Licensees shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 174,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.

Article 41. The Licensees shall enter into an agreement with the City and County of San Francisco relating to the allocation of the total cost of the project (including the cost of recreation and other facilities required by the Commission) and its acquisition of storage space in the reservoir. A conformed copy of the agreement shall be filed with the Commission on or before July 15, 1963, for its approval. Construction of the project shall not commence until the Commission, by order, has approved such agreement as submitted or as modified by the Commission.

Article 42. The Licensees shall, if desired by the State of California or by Tuolumne County, California, on or before July 15, 1963, enter into agreements with the State and County obligating the Licensees to pay the replacement cost of all State and County roads involved in the construction and operation of the New Don Pedro project. Such agreements shall be filed with the Commission on or before July 20, 1963.

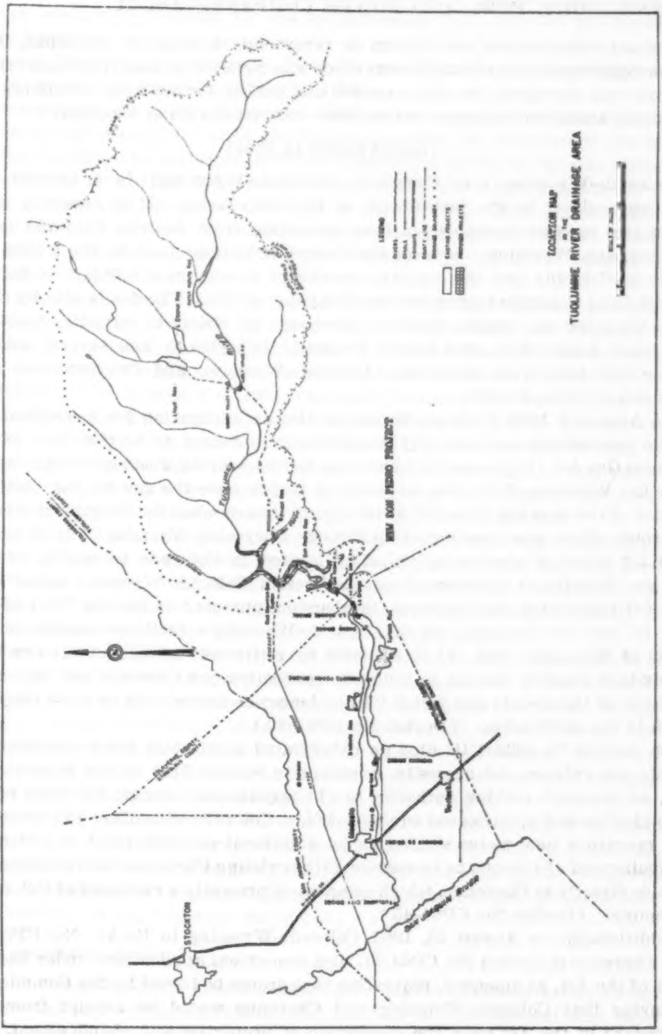
Article 43. The Licensees shall, if desired by the California Department of Fish and Game, enter into an agreement with that agency which makes available for management by it for fish and wildlife purposes those lands which the Commission hereafter finds to be adaptable to management of fish and wildlife.

Article 44. The Licensees shall allow the public free access to the entire project area, except such limited areas to be reserved for reasons of safety and efficient operation of the project, for all recreational pursuits, and shall permit any road or trail leading to the project area to be freely used by the public.

(C) The exhibits described in paragraph (A) above are approved as part of the license for the project.

(D) This order shall become final 30 days from the date it becomes the final act of the Commission unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

FRANCIS L. HALL,
Presiding Examiner


LEGEND
COUNTY LINE
DRAINAGE BOUNDARY
EXISTING PROJECTS
PROPOSED PROJECTS
LOCATION MAP
TUOLUMNE RIVER DRAINAGE AREA
NEW DON PEDRO PROJECT
STOCKTON
Modesto
Turlock
TUOLUMNE
RIVER
SAN JOAQUIN RIVER
SAN JOAQUIN COUNTY
Don Pedro Dam
La Grange

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

COLORADO-WYOMING GAS COMPANY, DOCKET NOS. RP64-2, CP64-39, CP64-50; COLORADO INTERSTATE GAS COMPANY, CP64-45; CHEYENNE LIGHT, FUEL AND POWER COMPANY, CP64-51

ORDER GRANTING MOTION FOR WAIVER OF INTERMEDIATE DECISION PROCEDURE, ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, GRANTING EXEMPTIONS FROM THE PROVISIONS OF THE NATURAL GAS ACT, ACCEPTING RATE SCHEDULES FOR FILING, APPROVING PROPOSED SETTLEMENT AND TERMINATING PROCEEDING.

(Issued March 12, 1964)

Colorado-Wyoming Gas Company (Colorado-Wyoming) is a natural gas company subject to the jurisdiction of the Commission. It is presently operating two parallel transmission lines extending from Denver, Colorado north to Cheyenne, Wyoming. Most of the Colorado-Wyoming system lies within the State of Colorado and the company purchases approximately 98½% of its gas supply from Colorado Interstate Gas Company (CIG). The gas is sold by Colorado-Wyoming to Public Service Company of Colorado (Public Service), Cheyenne Light, Fuel and Power Company (Cheyenne) and several smaller resale and industrial customers. Colorado-Wyoming and Cheyenne are subsidiaries of Public Service.

On August 9, 1963, Colorado-Wyoming filed an application for a certificate of public convenience and necessity for authority pursuant to Section 7(c) of the Natural Gas Act (1) to construct metering facilities on the west leg of their system near the Wyoming State line to enable it to purchase the gas for the northern portion of the west leg from CIG at this point, thus eliminating the present circuitous route of the gas transported up through Cheyenne, Wyoming; (2) to sell to CIG 3.6 miles of sixteen-inch pipeline located in Colorado to enable CIG to sell gas directly to Cheyenne from the present Colorado-Wyoming meter site; (3) for permission and approval, to abandon, pursuant to Section 7(b) of the Act, by sale to Cheyenne, all of Colorado-Wyoming's facilities located in the State of Wyoming; and (4) to abandon by retirement approximately one mile of six-inch pipeline located in Colorado connecting the Colorado and Wyoming portions of the system and which will no longer be needed; all as more fully set forth in the application. (Docket No. CP64-39.)

On August 19, 1963, CIG filed an abbreviated application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, as amended, seeking authority to (1) acquire and operate 3.6 miles of 16-inch pipeline and appurtenant equipment from Colorado-Wyoming; (2) construct and operate a new meter station as an additional delivery point to Colorado-Wyoming and (3) continue to operate CIG's existing Cheyenne meter station for service directly to Cheyenne, which company is presently a customer of Colorado-Wyoming. (Docket No. CP64-45.)

Additionally, on August 23, 1963, Colorado-Wyoming in Docket No. CP64-50 and Cheyenne in Docket No. CP64-51, filed concurrent applications under Section 1(c) of the Act, as amended, requesting that orders be issued by the Commission declaring that Colorado-Wyoming and Cheyenne would be exempt from the provisions of the Act upon the disposition of properties and abandonment, and subject to the grant of the necessary certificate authority sought by Colorado-Wyoming in Docket No. CP64-39 and CIG in Docket No. CP64-45. The Public Utilities Commission of the State of Colorado, (PUC) in a notice of intervention, has certified that, upon cessation of Colorado-Wyoming's interstate operations and its commencement of intrastate transmission operations, PUC will assume and exercise regulation of the rates, charges and facilities of Colorado-Wyoming. Cheyenne has filed a certificate of the Chairman of the Public Service Commission of Wyoming, stating that the rates, service and facilities of Cheyenne are subject to that Commission's regulation, that it is exercising such regulation and that it will continue to exercise such regulation if such company purchases its gas requirements from CIG at the proposed delivery point.

Docket Nos. CP64–39, CP64–45, CP64–50 and CP64–51 were consolidated for hearing by a notice issued November 15, 1963.

Formal hearing was held January 7, 1964, and was concluded January 9, 1964, at which time counsel for Colorado-Wyoming moved the omission of the intermediate decision and requested that the Commission render a decision pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure [18 CFR 1.30(c)], reserving, however, the right to file a brief. This motion was concurred in by all parties. Simultaneous briefs were filed by Colorado-Wyoming, CIG and the Staff on February 3, 1964. Cheyenne joined in the brief filed by Colorado-Wyoming.

By order issued July 3, 1963, in Docket No. RP64–2, the Commission instituted an investigation of Colorado-Wyoming rates. Conferences were held on January 6 and on January 8, 1964, attended by the Commission Staff and representatives of Colorado-Wyoming to discuss settlement of the issues involved in Docket No. RP64–2. On February 6, 1964, Colorado-Wyoming filed an offer of settlement and a request for termination of the proceeding in RP64–2. As part of its offer of settlement, Colorado-Wyoming tendered for filing certain revised tariff sheets[1] which reduce its Colorado rates by $128,914 annually. This proposed rate reduction would be accomplished by decreasing the demand charge of its G–1 rate by 8¢ per Mcf and reducing the GS–1 rate by 0.72¢ per Mcf.

In addition to the savings to Colorado-Wyoming's customers in Colorado other benefits will accrue upon acceptance of this entire proposal by the Commission. The Cheyenne Light, Fuel and Power Company, presently a Colorado-Wyoming customer will thereafter purchase its natural gas requirements directly from Colorado Interstate at lower rates than it is presently paying.

Colorado-Wyoming has submitted the revised tariff sheets on the express condition that they become effective only upon the effective date of the Commission order approving the consolidated proceedings in Docket Nos. CP64–39, CP64–45, CP64–50 and CP64–51 and upon the acceptance by all parties to the provisions in all the proceedings. Colorado-Wyoming further conditioned the proposed settlement upon the understanding that the Commission, upon its acceptance thereof, will terminate the proceeding in Docket No. RP64–2.

The offer of settlement also contains a reservation that no party to the proceeding shall be bound or prejudiced by any part of the offer of settlement in any future proceeding and no party shall be deemed to have approved, accepted, agreed or consented to any rate-making principle, any method of cost of service determination, or any allocation method.

The Commission finds:

(1) Colorado-Wyoming Gas Company and Colorado Interstate Gas Company are natural gas companies within the meaning of the Natural Gas Act, as amended.

---

[1] Third Revised Sheet No. 4, Third Revised Sheet No. 5 and Third Revised Sheet No. 6 to its First Revised Volume No. I, FPC Gas Tariff.

(2) The present and future convenience and necessity permit the construction by Colorado-Wyoming Gas Company, pursuant to Section 7(c) of the Natural Gas Act, as amended, of the metering facilities on the west leg of its system.

(3) The present and future convenience and necessity permit, pursuant to Section 7(b) of the Act, as amended, the abandonment of service to Cheyenne Light, Fuel and Power Company by Colorado-Wyoming Gas Company; the abandonment and sale to Cheyenne Light, Fuel and Power Company by Colorado-Wyoming Gas Company of all Colorado-Wyoming facilities located in the State of Wyoming; the abandonment and sale to Colorado Interstate Gas Company by Colorado-Wyoming Gas Company of 3.6 miles of sixteen-inch pipeline located in the State of Colorado; the retirement by Colorado-Wyoming Gas Company of approximately 1 mile of six-inch pipeline located in the State of Colorado.

(4) The present and future convenience and necessity permit the construction, acquisition and operation, pursuant to Section 7(c) of the Act, as amended, of the facilities proposed by Colorado Interstate Gas Company and the sales of natural gas by it, all as set forth in its application.

(5) Cheyenne Light, Fuel and Power Company is engaged in the transportation, distribution and sale of natural gas within the State of Wyoming; its rates, service and facilities are subject to regulation by the Public Service Commission of the State of Wyoming. Upon consummation of the proposed project Cheyenne Light, Fuel and Power Company will continue under such regulation and the gas it will receive from Colorado Interstate Gas Company will be received in the State of Wyoming and will be ultimately consumed within said State.

(6) Colorado-Wyoming Gas Company, upon its consummation of the abandonments, retirements and sales of facilities authorized herein, will operate only within the State of Colorado, will be an intrastate natural gas company meeting the requirements of Section 1(c) of the Act, as amended, and its rates, service and facilities will be subject to regulation by the Public Utilities Commission of the State of Colorado.

(7) The revised tariff sheets tendered for filing by Colorado-Wyoming Gas Company with the Commission on February 6, 1964, should be accepted for filing, effective on the date this order becomes effective.

(8) The settlement of the proceeding in Docket No. RP64–2 upon the basis of the proposal for settlement which was filed with the Commission on February 6, 1964, is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved as hereinafter ordered.

The Commission orders:

(A) The request for the omission of the intermediate decision procedure is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

(B) A certificate of public convenience and necessity is hereby issued authorizing Colorado-Wyoming Gas Company to construct and operate facilities to receive gas from Colorado Interstate Gas Company at a new purchase point, as more fully described in its application.

(C) Colorado-Wyoming Gas Company is hereby permitted to abandon service to Cheyenne Light, Fuel and Power Company, to sell to Cheyenne Light, Fuel and Power Company all facilities located within the State of Wyoming, and to retire or sell to Colorado Interstate Gas Company certain facilities located within the State of Colorado, all as more fully set forth in its application.

(D) A certificate of public convenience and necessity is hereby issued to Colorado Interstate Gas Company authorizing the construction, acquisition and operation of the facilities and sales of natural gas as proposed by it in its application.

(E) The facilities authorized to be constructed and acquired herein shall be constructed, acquired and placed in operation within 120 days from the effective day of the final order herein.

(F) The certificates issued herein shall be subject, as applicable, to the general conditions set forth in Section 157.20 of the Commission's regulations.

(G) From and after the date of consummation of the abandonment, sale of facilities, and retirements by Colorado-Wyoming Gas Company, and the commencement of deliveries of gas by Colorado Interstate Gas Company to Cheyenne Light, Fuel and Power Company as herein ordered, Cheyenne Light, Fuel and Power Company shall be, and it hereby is, declared exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of this Commission issued thereunder.

(H) From and after the date of consummation of the abandonment, sale of facilities and retirements as herein ordered, Colorado-Wyoming Gas Company shall be, and it hereby is, declared exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of this Commission issued thereunder.

(I) The revised tariff sheets filed with the Commission by Colorado-Wyoming on February 6, 1964, are hereby accepted for filing to become effective on the date this order becomes effective.

(J) The conditions within the offer of settlement are hereby approved and made effective as proposed therein.

(K) The proceeding in Docket No. RP64-2 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP63-286 AND DOCKET NO. CP63-339

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 12, 1964)

On April 15, 1963, as supplemented on June 7, 1963, South Texas Natural Gas Gathering Company (Applicant) filed in Docket No. CP63-286 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the twelve-month period ending June 30, 1964, of miscellaneous natural gas gathering facilities necessary to take into Applicant's certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to Applicant, all as more fully set forth in said application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,000,000, and no single project will exceed a cost of $250,000, which costs will be financed from cash on hand and from cash generated from normal operations and internal sources.

On June 7, 1963, as supplemented on November 18, 1963, Applicant filed in Docket No. CP63-339 an application for a certificate of public convenience and necessity authorizing the construction and operation of approximately 6.5 miles of 14-inch pipeline and appurtenant facilities for the purpose of receiving into its pipeline system natural gas which will be purchased from Shell Oil Company and Delhi-Taylor Oil Corporation in the McAllen Ranch area, Hidalgo County, Texas, all as more fully set forth in said application. The estimated cost of these facilities is $265,000, which cost will be financed from funds on hand or internally generated.

Temporary certificate authorization in Docket No. CP63-339 was requested by Applicant on November 18, 1963, and was issued by the Commission on January 2, 1964.

Notice of the application and hearing in Docket No. CP63-286 was issued July 18, 1963, and published in the Federal Register on July 25, 1963 (28 F.R. 7574). Notice of the application and hearing in Docket No. CP63-339 was issued July 19, 1963, and published in the Federal Register on July 26, 1963 (28 F.R. 7620). On August 9, 1963, Colorado Interstate Gas Company filed petitions to intervene in each of these dockets, and the respective hearings were, by notice, postponed without date. Subsequently, on September 30, 1963, Colorado Interstate Gas Company filed notices of withdrawal of the respective intervention petitions and by operation of Section 1.11(d) of the Commission's Rules of Practice and Procedure, such withdrawal became effective on October 30, 1963. Both dockets were again scheduled for hearing by duly published notice, but on October 7, 1963, United Gas Pipe Line Company filed a petition to intervene in these and another docket (since effectively withdrawn), and again both dockets were postponed without date. By order issued March 4, 1964, the Commission denied the intervention requested by United. No other petitions to intervene or notices of intervention have been filed.

At a hearing held on March 12, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, South Texas Natural Gas Gathering Company, a Delaware corporation having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order accompanying Opinion No. 362 issued August 30, 1962, in Docket No. G-18907 (Docket No. G-18638, *et al.*, 28 FPC 401, 418).

(2) The facilities hereinbefore described, as more fully described in the applications, as supplemented, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates hereinafter issued and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations as to Docket No. CP63-286, and paragraphs (c)(4) and (e) of said Section 157.20 as to Docket No. CP63-339.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted in Docket No. CP63-286, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(7) The authorization hereinafter granted in Docket No. CP63-286 should be limited to construction during the twelve-month period ending June 30, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

The Commission orders:

(A) Upon the terms and conditions of this order, certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, South Texas Natural Gas Gathering Company, to construct (during the twelve-month period ending June 30, 1964, as to Docket No. CP63-286) the proposed facilities hereinbefore described, as more fully described in the applications in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations as to Docket No. CP63-286, and paragraphs (c)(4) and (e) of said Section 157.20 as to Docket No. CP63-339.

(C) Applicant shall submit within 60 days after the expiration of the authorization granted in Docket No. CP63-286 by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(D) The authorization granted in Docket No. CP63-286 by paragraph (A) above is hereby limited to construction during the twelve-month period ending June 30, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

H. F. SEARS, DOCKET NOS. G-10494 AND G-10752[1]

ORDER REJECTING OFFER OF SETTLEMENT, AND DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued March 13, 1964)

On December 12, 1963, H. F. Sears (Sears) filed an offer of settlement and motion to terminate the above-docketed proceedings. The offer and motion relates to proposed increased rates of 11.0704¢ per Mcf for sweet gas, and 10.6209¢

---

[1] Each of these proceedings are presently consolidated with the proceedings in Docket No. AR64-1, *et al.*

per Mcf for sour gas sold to Phillips Petroleum Company (Phillips) from the Panhandle Field, Hutchinson and Moore Counties, Texas (Texas Railroad Commission District No. 10), by Sears under its FPC Gas Rate Schedule No. 5. Said proposed increases were filed by Sears on May 11, 1956, and were suspended by order of the Commission on May 29, 1956. By appropriate motion, Sears placed such proposed increased rates into effect, subject to refund on November 19, 1956. The offer and motion also relate to a proposed increase in rate to 11.0704¢ per Mcf for a sale of natural gas made to Phillips in the same field under Sears' FPC Gas Rate Schedule No. 4. The latter proposed increase was filed by Sears on June 21, 1956, was suspended by order of the Commission on July 17, 1956, and was made effective, subject to refund, by Sears on December 26, 1956.

Until May 1, 1961, all of the natural gas sold by Sears under its Rate Schedule No. 4 to Phillips, and part of the gas sold by Sears under its Rate Schedule No. 5 to Phillips was processed by Phillips in its Sanford and Rock Creek plants, and the residue thereof was sold by Phillips to Colorado Interstate Gas Company (Colorado Interstate) under Phillips FPC Gas Rate Schedule No. 21. On November 26, 1956, and December, 8, 1959, Phillips filed proposed increases in its rate to Colorado Interstate, which were suspended by orders of the Commission, and made effective, subject to refund, by Phillips on June 1, 1957 and June 8, 1960, respectively.[2] Phillips continued to charge and collect such proposed increased rates, subject to refund, until May 1, 1961, when the sale to Colorado Interstate under Phillip's Rate Schedule No. 21 was abandoned.[3] Subsequently, by order issued, in Docket No. CI64–359, the Commission cancelled Sears' Rate Schedule No. 4 and terminated the certificate related thereto, and cancelled Sears' Rate Schedule No. 5 in part and amended the certificate related thereto. Sears' avers that none of the residue gas from Phillips' Sanford and Rock Creek plants is presently being transported in interstate commerce.

In its offer of settlement, Sears proposes to refund, with applicable interest, all amounts of monies, collected subject to refund, above 11¢ per Mcf for the sweet gas sold and delivered to Phillips, and 10.5534¢ per Mcf for the sour gas. It then requests that the proceedings relating to each of its rate schedules be terminated.

In support of its offer and motion, Sears states (1) that "the Commission has uniformly and without exception considered the 11¢ per Mcf applicable to wellhead sellers in Texas Railroad Commission District No. 10"; (2) that in other proceedings the Commission has approved 11¢ per Mcf rates for sales to Phillips at the wellhead in said District, and (3) that it shares in none of the liquid revenues Phillips may derive from gathering and processing its gas.

In *Foster Petroleum Corporation*, Docket No. RI64–17, *et al.*, 30 FPC 672, (order issued September 9, 1963) we said:

> The area price levels set forth in the Statement of General Policy No. 61–1, as amended (18 CFR, Chapter I, Part 2, Section 2.56), are applicable to pipeline quality gas as that term is generally understood in each area. In the instant case, Phillips gathers the subject gas, among others, into its Panhandle gathering system which connects its Dumas, Sanford and Sneed gasoline plants. After processing, the residue gas is then sold by Phillips to several interstate pipeline companies. We consider the area rate ceiling for pipeline quality gas to be applicable to the sale of residue gas by Phillips at the outlet of its plants. Although Foster's increased rates are not in

---

[2] Docket Nos. G–11622 and G–20561, which are presently consolidated with the proceedings in Docket No. AR64–1, *et al.*

[3] *Phillips Petroleum Company*, Docket No. CI61–1597.

> excess of the 11.0¢ per Mcf increased rate ceiling for pipeline quality gas for Texas Railroad District No. 10, the cost per Mcf to Phillips for the gathering and processing of Foster's non-pipeline quality gas must be taken into consideration in determining the proper rate level for Foster's sales to Phillips. Since such costs are not known, the subject increased rates of 10.5¢ and 11.0¢ per Mcf were properly suspended.[4]

Additionally, in *H. N. Burnett*, Docket No. RI64-334, 30 FPC 1384-A, which involved a sale of both sweet and sour gas by Burnett to Panhandle Producing Company in Railroad District No. 10, which gas after processing by Panhandle was sold to Colorado Interstate, we held that: "We consider the area ceiling to be applicable to the sales of residue gas by Panhandle after processing."

The previous acceptance in other proceedings of certain increased rates similar to the rates of Sears involved in these proceedings does not dictate acceptance of Sears' offer of settlement and granting of the subject motion. *Cf. FCC* v. *Pottsville Broadcasting Company*, 309 U.S. 134, 145; *Panhandle Eastern Pipe Line Company* v. *FPC.*, 236 F. 2d 289. Additionally, the proceedings in Docket No. AR64-1, *et al.*, with which these proceedings are consolidated, had not been initiated when such other proceedings were before us for consideration. *Fly* v. *Heitmeyer*, 309 U.S. 146.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject the offer of settlement and to deny the motion to terminate filed by Sears with the Commission on December 12, 1963.

The Commission orders:

The offer of settlement filed by Sears in these proceedings on December 12, 1963, is hereby rejected, and the motion to terminate filed therewith is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SKELLY OIL COMPANY (OPERATOR), ET AL., DOCKET NO. RI64-531

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued March 13, 1964)

On January 20, 1964, Skelly Oil Company (Operator), *et al.* (Skelly) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Skelly. The offer relates to a sale made under Skelly's FPC Gas Rate Schedule No. 145 in Fort Bend County, Texas (Texas R.R. Com. District #3). The proposed increased rate of 14.5¢ per Mcf was suspended by order of the Commission until June 19, 1964.

Under the terms of the offer, Skelly proposes to eliminate the price redetermination and the present periodic escalation provisions from its rate schedule, and to establish a 14.5¢ per Mcf rate for the subject sale.[1] Skelly also proposes to limit future periodic escalations to 1.0¢ per Mcf on January 1, 1969, and each five year period thereafter. No protests or objections have been filed to the offer.

---

[4] In fact, Phillips' Panhandle gathering system connects its Rock Creek, Sanford, Pantex, Canadian, Sneed and Dumas plants, and has an "emergency" connection with its Sherman plant.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Skelly's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases or periodic increases as provided in its offer of settlement. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Skelly's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Skelly on January 20, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Skelly January 20, 1964, is hereby approved in accordance with the provisions of this order.

(B) Skelly shall file, within 30 days from the date of issuance of this order, an executed contractual amendment to its FPC Gas Rate Schedule No. 145, eliminating the price redetermination, and the present periodic escalation provisions therefrom and substituting therefor periodic escalations as specified in its offer of settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Skelly has complied with the terms and conditions of the order, the rate and charge of 14.5¢ per Mcf at 14.65 psia, specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated.

(D) The acceptance by the Commission of Skelly's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Skelly, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SINCLAIR OIL & GAS COMPANY (FORMERLY WESTERN NATURAL GAS COMPANY), DOCKET NOS. G–19828, RI60–263, AND RI61–142

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued March 13, 1964)

On January 9, 1964, Sinclair Oil & Gas Company (Sinclair) as successor in interest to Western Natural Gas Company (Western), submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) in Hidalgo County, Texas (Texas R.R. District No. 4). Western has also joined in the offer of settlement in order to terminate the above-captioned proceedings for the period prior to the transfer of the properties to Sinclair.[1] Details are as follows:

---

[1] The 14.5¢ rate includes a dehydration allowance paid by buyer to seller for delivery of dehydrated gas.

Rate schedule and supplement No.[1]	Docket No.	Suspended rate [2]	Effective date	Settlement rate [2]
264-2	G-19828	[3] 14.87589	4- 1-60	15.0
264-3	RI60-263	[3] 17.02416	9-23-60	15.0
264-4	RI61-142	[4] 17.24347	10-28-60	15.0

[1] Formerly Western Natural Gas Company (Operator), *et al.*, Rate Schedule No. 2.
[2] Cents per Mcf at 14.65 psia, inclusive of tax reimbursement.
[3] Excludes a 0.21931-cent dehydration charge deducted by buyer.
[4] Rate increase filed to reflect elimination of the 0.21931-cent dehydration charge previously deducted by buyer.

Under the terms of the offer, Sinclair proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Sinclair's annual revenues will be decreased about $60,200 from the presently effective rate. No protests or objections have been filed to the offer.

Sinclair and Western propose to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[2] Western proposes to make refunds for all gas delivered prior to July 1, 1963, and Sinclair proposes to make refunds for all gas delivered thereafter. The estimated total dollars to be refunded approximates $261,000 exclusive of interest.

The proposed settlement is consistent with the provisions of the Second amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Sinclair's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Sinclair's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Sinclair on January 9, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

---

[1] The properties were transferred to Sinclair as of July 1, 1963.

[2] All gas delivered prior to July 1, 1960, was subject to a 0.21931¢ deduction made by the buyer for dehydration. However, as of that date, Western commenced the sale of dehydrated gas, thus making the deduction inapplicable. Accordingly, for the period prior to July 1, 1960, allowance must be made in computing the refund for the applicable dehydration charge.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sinclair January 9, 1964, is hereby approved in accordance with the provisions of this order.

(B) Sinclair shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 264 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Sinclair and Western, on the basis heretofore described, shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, with simple interest at 7 percent per annum, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Sinclair and Western have complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in the offer of settlement, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Sinclair's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Sinclair, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7150

ORDER AUTHORIZING THE ISSUANCE OF DEBENTURES

(Issued March 16, 1964)

Iowa Power and Light Company (Applicant), incorporated under the laws of the State of Iowa and doing business in that State, with its principal place of business in Des Moines, Iowa, filed an application on February 14, 1964, as supplemented on February 25, 1964 for an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance and sale of $10,000,000 principal amount of ———% Sinking Fund Debentures due 1989.

Applicant proposes to issue the Debentures under a proposed Debenture Indenture to be dated as of April 1, 1964, to Continental Illinois National Bank & Trust Company of Chicago, Trustee.

The Debentures will be unsecured but the Indenture will contain provisions restricting the Company in respect of the creation of specified new liens, and the Company will covenant not to obligate itself with respect to any unsecured funded indebtedness in excess of 25% of its outstanding mortgage bonds plus its capital stock and surplus and unless it meets certain earnings requirements. The Debentures will carry a sinking fund designed to retire 40% of the Debentures prior to maturity.

On or about March 17, 1964, Applicant proposes to invite sealed, written bids for the purchase of the proposed Debentures. All bids, whether from a single bidder or a group of bidders, must be for the purchase of all the Debentures and must be submitted on the Form of Bid furnished by Applicant. Each bid for the proposed issuance of Debentures must specify (1) the interest rate to be borne by the Debentures, which rate shall be a multiple of ⅛th of 1%; and (2) the price (exclusive of accrued interest) to be paid to Applicant for the Debentures, which price shall not be less than 99% thereof if a public offering of the Debentures is to be made, and not less than 100% if no such public offering is to be made.

Unless postponed, all bids for the proposed issuance of Debentures must be presented to Applicant before 10:00 A.M., Central Standard Time, on March 24, 1964, at Room 11A, Corporate Trust Division, Continental Illinois National Bank and Trust Company of Chicago, 231 South La Salle Street, Chicago, Illinois, unless Applicant shall reject all bids for the proposed issuance of Debentures (which it reserves the privilege of doing) or shall exclude a bid or bids for reasons specified in the statement of terms and conditions, it will accept the bid for purchase of the Debentures which results in the lowest annual cost of money to it. Each bid for the proposed issuance must be accompanied by a certified or bank cashier's check or checks, payable in Chicago Clearing House funds, in the aggregate amount of $250,000.

Applicant states that the proceeds to be obtained from the proposed issuance of Debentures will be utilized (1) to repay temporary bank loans incurred and to be incurred prior to the sale of the Debentures to secure funds for construction purposes (which loans totaled $4,570,000 as of December 31, 1963 but are expected to total $4,000,000 on April 1, 1964) and (2) to provide a portion of the funds required for the construction or acquisition of permanent improvements, extensions and additions to the Applicant's property. Present plans, as indicated in the Company's application, call for a 1964 construction budget of $11,953,000. Major items in the 1964 budget are $2,343,000 for a 125,000 kw generating unit at Des Moines Power Station No. 2, $1,050,000 for a plant modernization program (modernization and centralization of controls and instrumentation for three boilers and five turbines) at the same plant, and $1,000,000 for a high pressure gas main extension in Des Moines.

Written notice of application has been given to the State Corporation Commission of Iowa, and to the Governor of that State. Notice has also been given by publication in the Federal Register on February 27, 1964, (29 F.R. 2769), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before March 6, 1964, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 31, 1961, Iowa Power and Light Company, Docket No. E-6974 (25 FPC 1063).

(2) The proposed issuance and sale of Debentures, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities, therefore, is not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Debentures, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice herein is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Debentures upon the terms and conditions and for the purposes specified in the application, all as described above, are authorized subject to the provisions of this order.

(B) The proposed issuance and sale of Debentures at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those regulations relating to affiliations, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Debentures and the interest rate thereof.

(C) The authorization contained herein to issue Debentures shall expire unless the transaction thus authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which is now pending or may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E-7095

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 17, 1964)

The Minnesota Power & Light Company (Applicant), on January 29, 1964, filed an application for rehearing upon the declaratory order issued on December 30, 1963, 30 FPC 1618, requiring it to apply for a license on its Little Falls Project on the Mississippi River in Morrison County in the State of Minnesota. On March 2, 1964 we issued an order granting rehearing for further consideration of the issues raised in the application and staying the declaratory order until further order.

The application for rehearing presents no new facts. It makes substantially the same contentions as the petition for declaratory order, tendering additional argument on the meaning of subsection 23(a) and the extent of the authority granted under the Special Act of July 3, 1886.

Applicant makes substantially the same contentions as were made in an Application for Rehearing in the matter of the Northwest Paper Company, Docket

No. E-7092. The issue in that matter was whether the Northwest Paper Company had a valid pre-1920 permit for its existing reconstructed project works so as to exempt it from the requirements of Section 23(b) of the Federal Power Act. That case turned on the meaning of the Special Act of April 25, 1886 (24 Stat. 12), which authorized one of the Northwest Paper Company's predecessors, the Mississippi Water-Power and Boom Company, to construct a water power project at Brainerd, Minnesota.

In the instant case we are presented with an almost identical issue. In our deliberations thereon, we have considered the meaning of the Special Act of July 3, 1886 (24 Stat. 123), which authorized the Little Falls Water Power Company to construct a water power project at Little Falls, Minnesota.

For the reasons discussed in the Memorandum Opinion and Order on Rehearing issued by the Commission in the matter of The Northwest Paper Company on March 17, 1964, [printed below] the Application for Rehearing will be denied except as hereinafter provided.

The Commission finds:

(1) It is appropriate and in the public interest in administering the Federal Power Act that the declaratory order, issued December 30, 1963, be amended to allow the Minnesota Power & Light Company to file application for license for its project works at Little Falls, Morrison County, Minnesota within ninety days of either the issuance of the instant order or entry of a final order by any appellate court, whichever is later.

(2) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by the company on January 29, 1964, of the Commission's declaratory order issued herein on December 30, 1963, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any further change in or modification of the said order.

(3) For the reasons discussed in Opinion No. 421, memorandum opinion and order on rehearing issued March 17, 1964, in the matter of the Northwest Paper Company the relief sought in the application for rehearing will be denied, except as hereinafter provided.

The Commission orders:

(A) The stay of the declaratory order is dissolved.

(B) The declaratory order is amended to allow the Minnesota Power & Light Company to file application for license within ninety days of either the issuance of the instant order or entry of a final order by an appellate Court pursuant to Section 313 of the Federal Power Act (16 U.S.C. 825), whichever is later, and the relief otherwise sought in the application for rehearing be and is hereby denied.

OPINION NO. 421

THE NORTHWEST PAPER COMPANY, DOCKET NO. E-7092

MEMORANDUM OPINION AND ORDER ON REHEARING

(Issued March 17, 1964)*

Syllabus

1. It cannot reasonably be inferred from Applicant's pre-1920 grant that Congress broadly consented to authorize Applicant or its successors to replace original project works with other and different works in perpetuity. P. 596.

---

*Affirmed, *The Northwest Paper Co. v. F.P.C.*, 344 F. 2d 47; 53 (CA8-1965).

2. Since no period is provided for duration of grant only reasonable inference is that authority is for life of project first constructed. P. 596.
3. Subsequent to enactment of Federal Power Act if applicant needed new Federal authorization to construct, operate and maintain its project works, it could only obtain it as a license from Federal Power Commission. P. 596.
4. Post 1920 approval by Chief of Engineers and Secretary of the Army of plans affecting navigation is not a substitute for a license. PP. 596, 597.
5. Upon rehearing, Commission *reaffirms* prior order requiring application for license, in proceeding involving Section 23(b) of the Federal Power Act. P. 597.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

The Northwest Paper Company (Applicant) on January 6, 1964, filed an application for rehearing upon the declaratory order issued on December 9, 1963, requiring it to apply for a license on its Brainerd Project on the Mississippi River at Brainerd, Minnesota. On February 6, 1964, we issued an order granting rehearing for further consideration of the issues raised in application and staying the declaratory order until further order.

Section 23(b) of the Federal Power Act provides that it is unlawful to maintain or operate hydroelectric project works upon navigable waters of the United States except under license from the Commission (41 Stat. 1075, 49 Stat. 846; 16 U.S.C. 817). Exempted from this licensing requirement by subsections (a) and (b) of Section 23[1] are any projects operated or maintained under and in accordance with Federal permits[2] issued prior to the approval on June 10, 1920, of the Federal Water Power Act (Part I of the Federal Power Act since 1935).

The petition for declaratory order claimed that Applicant was entitled to such an exemption under the Act of April 15, 1886 (24 Stat. 12), authorizing the Mississippi Water-Power and Boom Company to construct a water power project at Brainerd. The petition, however, showed that the project completed by 1889 under this authorization, twice was reconstructed and modified, leaving little more of the original project works than certain oak pilings upon which some of the present structures rest. The first generating equipment was installed in 1889–1890 by the Brainerd Light and Power Company, one of Applicant's predecessors, after the completion of the original project works. Applicant stated in its petition that in 1916 and 1917 it constructed a paper mill on the east bank of the Mississippi River adjacent to the original dam. In order to obtain necessary power it reconstructed the dam and built a new powerhouse. The power generation was furnished by two 560 kva, 480v, 60c, 80% P. F. generators. The dam as reconstructed in 1916 and 1917 with some minor changes in equipment and power remained until the spring of 1950 at which time the dam was substantially rebuilt. In the declaratory order, we found that the Act of 1886 does not authorize Applicant to maintain and operate its project works as they now exist. If, as we thus found, Applicant does not hold a valid pre-1920 Federal permit for its project works, it is not entitled to the exemption from the licensing requirement.

---

[1] This section reads in pertinent part:

(a) The provisions of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law. . . .

(b) It shall be unlawful for any person . . ., for the purpose of developing electric power, to construct, operate or maintain any dam, water conduit, reservoir, powerhouse, or other works incidental thereto across, along, or in any of the navigable waters of the United States . . ., except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. [41 Stat. 1075, 49 Stat. 846; 16 U.S.C. 816, 817.]

[2] Although Section 23 says only "permit," this has been understood and held to mean Federal permit. *Niagara Falls Power Co. v. FPC*, 137 F. 2d 787, 791–792 (2d Cir.), cert. denied, 320 U.S. 792, rehearing denied, 320 U.S. 815 (1943); *Wisconsin Public Service Corp. v. FPC*, 147 F. 2d 743, 748–749 (7th Cir.), cert. denied, 325 U.S. 880 (1945).

The application for rehearing presents no new facts. It makes substantially the same contentions as the petition for declaratory order. However, it tenders additional argument on the meaning of subsection 23(a) and the Act of 1886, and it presses a claim to an exemption from the licensing requirement because of the approval of the Chief of Engineers and Secretary of Army of the reconstruction and modification of the project works in 1950 and 1951.

The application for rehearing recites authority from legislative history and judicial and administrative interpretation that pre-1920 Federal permittees are exempt under subsection 23(a) from the licensing requirement. We believe that it is abundantly clear that a license is not required if the project is operated and maintained under a valid Federal permit.[3] In fact, we expressly found in the declaratory order that this exemption also exists under subsection 23(b):

> Under Section 23(b) of the Federal Power Act, it is unlawful for the Petitioner, as a nonlicensee, to maintain and operate hydroelectric project works upon a navigable water of the United States, *unless it received a Federal permit for such works prior to passage of the Federal Power Act on June 10, 1920*, [Emphasis supplied.]

The only substantial issue before us is whether Applicant holds a valid pre-1920 permit for the project works as they now exist. The resolution of this issue depends upon the meaning of the Act of 1886.

The Commission, in construing Congressional acts authorizing private parties to utilize the Nation's water power must apply the familiar rule of construction "that all federal grants are construed in favor of the Government lest they be enlarged to include more than was expressly included."[4] This rule, which has become a basic principle of statutory construction[5] applies with special force when grantees try to derive private rights of an indefeasible nature from a Federal grant under the commerce power.[6]

The Act of 1886 reads in pertinent part as follows:

> That the consent of the Government is hereby given to the Mississippi Water Power and Boom Company of Brainard, Minnesota, to construct across the Mississippi River at some point not more than two miles from the limits of said city of Brainard, to be approved by the Secretary of War, a dam, canal and appurtenances thereof, for water-power and other purposes, and in connection therewith a wagon and foot bridge for public travel . . .

Pursuant to this authority one of Applicant's predecessors, shortly after 1886, built a water power project (not a hydroelectric project). The Applicant, apparently relying upon the fact that the 1886 law talked in terms of the construction of the named project works "for water-power and other purposes", asserts that Congress broadly consented to an obstruction in a navigable waterway of the United States in perpetuity, regardless of the nature or purpose thereof or the extent to which the obstruction might be changed by subsequent redevelopments.

---

[3] Pursuant to Section 23(a) of the Act, a project owner may continue to operate and maintain its project under a valid Federal permit or it may surrender such permit and obtain a fair value license. *Niagara Falls Power Co.* v. *FPC*, 137 F. 2d 787 (2d Cir.), cert. denied, 320 U.S. 815 (1943).

[4] *United States* v. *Grand River Dam Authority*, 363 U.S. 229, 234, rehearing denied, 364 U.S. 855 (1960).

[5] *Charles River Bridge* v. *Warren Bridge*, 36 U.S. (11 Pet.) 420, 546–551, see also 3 SUTHERLAND STATUTORY CONSTRUCTION § 6402 (3d ed. 1943).

[6] *Louisville Bridge Co.* v. *United States*, 242 U.S. 409, 417 (1917); *Bridge Company* v. *United States*, 105 U.S. 470, 480 (1881).

We cannot reasonably infer from the grant that Congress broadly consented to authorize the Mississippi Water-Power and Boom Company or its successors to replace the original project works with other and different works in perpetuity.[7] Since no period is provided for the duration of the grant we believe that the only reasonable inference is that the authority is to endure for the life of the project first constructed.[8]

We have examined *City of Newark* v. *Central Railroad Co. of New Jersey*[9] and *Rogers Sand Co.* v. *Pittsburgh,*[10] cited by Applicant. Those cases held that consent by a State for the construction of a bridge over a navigable water was broad enough to cover subsequent modification of the bridges. Here Congress has provided in the Federal Power Act an elaborate scheme for continuing regulation of the non-Federal development of water power in the navigable streams of the United States.[11] We believe that perpetual Federal authorization for the obstruction of navigable waters should be less readily implied in such circumstances than continuing State consent for modification of bridges.

Applicant sought and obtained approval from the Chief of Engineers and the Secretary of the Army, on May 18, 1951, for a dam reconstructed in 1950 and 1951.[12] This action, of course, is inconsistent with any claim that the 1886 law, in and by itself, gives authority to the Applicant to reconstruct the original project and to operate and maintain the reconstructed project despite its material difference from that originally authorized.

If, as we believe, Applicant, subsequent to the enactment of the Federal Power Act, needed a new Federal authorization to construct, operate and maintain its project works, it could obtain it only as a license from the Federal Power Commission. The legislative history of the Federal Water Power Act makes this clear.[13] Although Section 4(e) of the Act (16 U.S.C. 797) requires the approval of plans affecting navigation by the Chief of Engineers and the Secretary of the Army, this is not a substitute for a license.[14]

Applicant cannot avoid the licensing provisions, enacted to ensure comprehensive development of the nation's water resources, merely by obtaining the approval of the Chief of Engineers and the Secretary of the Army which since 1920 constitutes only one phase of the statutory scheme.[15]

---

[7] Examples of decisions limiting the duration of legislative authorizations pursuant to the rule of strict construction are *Reichelderfer* v. *Quinn,* 287 U.S. 315, 321 (1932) and *Blair* v. *City of Chicago,* 201 U.S. 400, 472–473 (1906).

[8] We do not find it necessary to consider here whether construction or operation of a hydroelectric project would have been permissible under the language of the Act of 1886. Assuming that the language might have been broad enough to cover such a project if that had in fact been the objective of the permittee, this would not mean that if the original permittee constructed a project not involving the use of hydroelectric energy, his successor could without securing the approval of the appropriate Federal Agency construct an entirely new project for another purpose.

[9] 267 U.S. 377 (1925).

[10] 139 F. 7 (3d Cir., 1905).

[11] 16 U.S.C. 791–823.

[12] The District Engineer of the Corps of Engineers, at Applicant's solicitation, wrote on March 12, 1963, that:

> This approval together with the authorizing Act of 15 April 1886 makes both the original structure and the repairs of 1950 and 1951, lawful structures in the navigable waters of the United States.

[13] H.R. Rep. No. 61, 66th Cong., 1st Sess. 5 (1919), S. Rep. No. 180, 66th Cong., 1st sess. 6 (1919). See also, 32 Ops. Atty. Gen. 525, 528 (1921).

[14] See, *First Iowa Corp.* v. *F.P.C.,* 328 U.S. 152, 180–181, *rehearing denied,* 328 U.S. 879 (1946).

The Commission finds:

(1) It is appropriate and in the public interest in administering the Federal Power Act that the declaratory order, issued December 9, 1963, be amended to allow The Northwest Paper Company to file application for license for its project works at Brainerd, Minnesota, within ninety days of either the issuance of the instant order or entry of a final order by any appellate court, whichever is later.

(2) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by the company on January 6, 1964, of the Commission's declaratory order issued herein on December 9, 1963, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any further change in or modification of the said order.

The Commission orders:

(A) The stay of the declaratory order is dissolved.

(B) The declaratory order is amended to allow The Northwest Paper Company to file application for license within ninety days of either the issuance of the instant order or entry of a final order by an appellate court pursuant to Section 313 of the Federal Power Act (16 U.S.C. 825), whichever is later, and that the relief otherwise sought in the application for rehearing be and is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY AND SACRAMENTO MUNICIPAL UTILITY DISTRICT

ORDER APPROVING HEADWATER BENEFITS AGREEMENT

(Issued March 17, 1964)

Pacific Gas & Electric Company (Pacific) on September 16, 1963, requested approval of an agreement with the Sacramento Municipal Utility District (Sacramento) concerning compensation for headwater benefits provided by each party to the other on the South Fork of the American River in California. The Commission, as provided in section 13.1 of the Regulations under the Federal Power Act, may approve such agreements in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The Commission has authorized seven projects on the South Fork and its tributary Silver Creek. Sacramento holds authorizations for four of these—

---

[15] The chief statutory conditions are discussed in *United States v. Appalachian Power Co.*, 311 U.S. 377, 419 in note 65, *rehearing denied*, 312 U.S. 712 (1940). See also, FPC Opinion No. 411, dated November 21, 1963, issuing a major license for the South Carolina Electric & Gas Company's Neal Shoals project, setting out the current license conditions, 30 FPC 1338. [conditions appear at 30 FPC 1658]

Union Valley, Jay Bird, Camino, and White Rock[1]—under one license, Project No. 2101. Pacific maintains and operates two projects—Eldorado and American River—under separate licenses, Project Nos. 184 and 78, respectively. Sacramento and Pacific jointly hold a license for the Chili Bar Project, Project No. 2155.[2]

Sacramento's Union Valley, Jay Bird (including Junction reservoir), and Camino projects benefit Pacific's American River project. Pacific's Eldorado project benefits Sacramento's White Rock project. The Chili Bar project, which is the farthest downstream, receives benefits from all of Sacramento's and Pacific's upstream projects.

On January 5, 1962, Sacramento and Pacific executed an agreement for cooperative development of the Chili Bar project. The essential term of the agreement provided that Sacramento initially would operate the project and then turn it over to Pacific; this transfer was to occur when the Slab Creek reservoir of Sacramento's White Rock project cuts off the water supply for Pacific's American River project (but not later than December 31, 1970). The agreement contained this paragraph on headwater benefits:

> The parties specifically understand and agree that in their negotiations they have taken into full account the provisions of Section 10(f) of the Federal Power Act relating to upstream benefits. They agree that such benefits are of the essence of this agreement and that the considerations forming a part of this agreement take into full account and include both those upstream benefits to be provided by SACRAMENTO to PACIFIC at its American River Project and at CHILI BAR, and those upstream benefits to be provided by PACIFIC to SACRAMENTO at WHITE ROCK and CHILI BAR, and that neither party is entitled to any further consideration with respect to such benefits.

Since each party by this contract relinquished rights to payments for headwater benefits to obtain other valuable rights, the agreement is a contract concerning headwater benefits compensation which may be filed by the parties under section 13.1 of the Regulations under the Federal Power Act for Commission approval in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act.

The Commission finds:

The agreement executed on January 5, 1962, between the Pacific Gas and Electric Company and the Sacramento Municipal Utility District constitutes an effective and reasonable method for compensating Pacific for benefits received from Sacramento's Project No. 2101 at Pacific's American River project and the Chili Bar project and for compensating Sacramento for benefits received from Pacific's Project Nos. 184 and 78 at Sacramento's White Rock and the Chili Bar project.

The Commission orders:

The aforesaid agreement is approved with respect to headwater benefits under section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act until changed conditions may require further order of the Commision.

---

[1] The White Rock project has not been installed.

[2] This project is under construction.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EXCEPTIONS TO INTERMEDIATE DECISIONS—BRIEFS—ORAL ARGUMENT, DOCKET NO. R-258

ORDER NO. 277

AMENDING § 1.31 OF THE RULES OF PRACTICE AND PROCEDURE

(Issued March 18, 1964)*

The Commission has concluded that it is desirable to reduce the paper work relating to appeals from examiners' decisions and to facilitate the improvement of the briefs which bring the issues to the Commission.

Accordingly, we are revising § 1.31 of the Rules of Practice and Procedure. In the future, a party objecting to all or parts of an examiner's decision shall in 30 days after service of the decision file his objections in a single document entitled "Brief on Exceptions," comprising the grounds of objection to a decision stated in a reasoned and documented written argument or brief. The style of organization of the brief is prescribed along lines familiar to the bar in appellate briefs. In generally similar style, any party disagreeing with the briefs on exceptions may answer them and support the disputed decision or the challenged parts in a "Brief Opposing Exceptions" filed within 20 days after the time limited for service of briefs on exceptions.

By this revision we are eliminating the present system of separate filing of exceptions and briefs supporting exceptions, the simultaneous filing of exceptions and statements in support of the decision, and the filing of reply briefs.

Under the revised rule, each brief will be limited in length to 50 pages and each must be self contained, i.e., the brief must contain within itself the argument that the party filing desires the Commission to consider, without incorporating by reference earlier briefs or arguments. The 50-page limitation may be altered or waived for each class of brief for good cause on timely application to the Chief Examiner of the Commission.

The revised rule also covers oral argument before the Commission on matters raised by the briefs, and the subject of briefs and oral argument to the Commission in any case where the intermediate decision of the examiner is waived.

The amendment will be effective May 1, 1964, but to avoid confusion as to whether the revised rule or its predecessor applies to examiners' decisions rendered immediately prior to that date, we are providing that the revised rule shall not apply to the intermediate decisions of examiners issued prior to May 1, 1964.

The Commission has been greatly assisted in the revision of the rule by the suggestions of the Committee on Rules of Practice and Procedure of the Federal Power Bar Association.

The Commission finds:

(1) Since the amendments adopted herein involve matters of Commission practice and procedure the notice, hearing and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

(2) The adoption of these amendments are necessary and appropriate to the administration of both the Federal Power Act and the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 308 and 309 thereof (49 Stat. 858;

---

*Published in Federal Register, 29 F.R. 3698.

16 U.S.C. 825g, 825h), and the Natural Gas Act, as amended, particularly sections 15 and 16 thereof (52 Stat. 829, 830; 15 U.S.C. 717n, 717o) *orders:*

(A) Delete § 1.31 of Part 1, Rules of Practice and Procedure, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, and insert in lieu thereof the following:

"§ 1.31. Exceptions to intermediate decisions, briefs; briefs and oral arguments before the Commission.

(a) *Briefs on exceptions, briefs opposing exceptions, filing of*

Any party or staff counsel desiring to appeal to the Commission shall, within 30 days after the service of a copy of an intermediate decision (initial or recommended by subordinates, or tentative by Commission), or such other time as may be fixed by the Secretary, file exceptions to the decision or part thereof in a brief (designated "Brief on Exceptions"). "Briefs Opposing Exceptions" may be filed in response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Secretary. No further response will be entertained unless the Commission, upon motion or its own initiative, so orders.

(b) *Nature and service of briefs on exceptions and of briefs opposing exceptions*

(1) Briefs on exceptions shall contain (i) a short statement of the case, (ii) a summary of the basic position of the party filing, (iii) the grounds upon which the exceptions rest and (iv) the argument in support with appropriate references to the record and legal authorities. There may also be included specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions. Exceptions to the form of order or rule shall specify the portions thereof to which exception is taken, and may set forth a form of order or rule suggested in lieu of that served. Briefs opposing exceptions shall generally follow the same style prescribed for briefs on exceptions, but may omit a statement of the case if it was correctly stated in a brief on exceptions.

(2) Briefs on exceptions and briefs opposing exceptions shall be self contained and limited to fifty pages in length, provided that for good cause the limitation on length may be altered or waived for either class of briefs upon application to and order of the Chief Examiner of the Commission, or an examiner acting in his absence, within the time limited for filing of the respective briefs.

(3) Subject to the foregoing requirements, briefs shall conform to the applicable provisions of sections 1.15, 1.16, and 1.17, as to copies, form, and service, but need not be verified under oath. Fifteen copies of each such document shall be filed with the Commission in addition to the copies served on the parties to the proceedings.

(c) *Failure to except or to object to rulings on evidence results in waiver*

Failure to file a brief on exceptions within the time allowed under this section shall constitute a waiver of all objections to the intermediate decision served. Objections to any part of an intermediate decision which is not the subject of exceptions may not thereafter be raised before the Commission in oral argument, or in an application for Commission rehearing, and shall be deemed to have been waived. The Commission may refuse to consider exceptions to a ruling admitting or excluding evidence unless there was an objection at the time the ruling was made or within any deferred time provided by the presiding officer.

(d) ***Oral argument on exceptions***

Any party or staff counsel filing a brief on exceptions or brief opposing exceptions may by motion request an opportunity to present oral argument to the Commission on the intermediate decision. Such motion must be filed within the time limited for the filing of briefs opposing exceptions. If oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the briefs.

(e) ***Briefs and oral argument on waiver of intermediate decision***

Parties requesting a decision by the Commission without an intermediate decision in a proceeding in which the Commission has not presided at the reception of the evidence shall include their requests for opportunity to file briefs or to make oral argument in the motion for waiver of the intermediate decision, as provided in § 1.30(c). Such briefs and argument as may be ordered shall conform to the requirements of § 1.29 insofar as applicable."

(Secs. 308, 309, 49 Stat. 858, 16 U.S.C. 825g, 825h; secs. 15, 16, 52 Stat. 829, 830, 15 U.S.C. 717n, 717o.)

(B) This amendment shall be effective May 1, 1964, except that it shall not apply to intermediate decisions issued before May 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

APPLICATIONS BY INDEPENDENT PRODUCERS PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT—MISCELLANEOUS AMENDMENTS, DOCKET NO. R-241; RATE FILINGS AND CERTIFICATE APPLICATIONS BY INDEPENDENT PRODUCERS—MISCELLANEOUS AMENDMENTS, DOCKET NO. R-244

ORDER NO. 278

AMENDING SUBCHAPTERS E AND G OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued March 18, 1964)**

Though initiated separately, these two proceedings* are concerned with closely related proposals to amend the Commission's Regulations Under the Natural Gas Act with respect to the requirements to be followed by independent producers of natural gas in filing rate schedules and applying for certificates of public convenience and necessity or for authority to abandon service. Accordingly, we are considering the proposals simultaneously and, to avoid any possible confusion, will dispose of all the amendments proposed in the two dockets as hereinafter ordered.

The amendments are designed to simplify the filing requirements and expedite Commission action on applications and rate filings through the use of forms by which summaries of contract provisions and other information normally supplied

---

****Published in the Federal Register, 29 F.R. 3609.**

***In Docket No. R-241, the Notice of Proposed Rulemaking, issued May 14, 1963, was published in the Federal Register May 23, 1963 (28 F.R. 5161). The Notice in R-244, issued July 15, 1963, was published July 20, 1963 (28 F.R. 7433).**

in the body of an application would be made conveniently available on the first page of the filings.

In response to the invitation in the two notices, comments were received from six producing companies, one pipeline company, two distributing companies and two state commissions.

All respondents favored the proposals in Docket No. R-241 and some recommended that various items be added to the form (§ 250.5) to emphasize gas quality, and delivery conditions under the contract, percentum of ownership of co-owners, names of signatory sellers, dates of fixed escalations and resulting prices, take-or-pay clauses, depths of producing horizons and description of any options granted in the contracts. We do not believe that the possible value of such information is sufficient to justify the added burden which would be imposed upon the producer-applicants.

Of the four producer companies commenting on the proposals in R-244, two were opposed. Others indicated objection to certain portions of the amendments but we are of the opinion that they are not of sufficient merit to overbalance the public interest which would be served by our adoption of the proposed amendments substantially as proposed.

One point requires clarification. The amendments proposed in R-244 are not intended to secure information with respect to the assignment of non-productive acreage. It is clear, however, that the assignee of any such acreage which is dedicated under the assignor's sales contracts, while not required to secure approval of the assignment, is now required, and will continue to be required under the amendments herein adopted, to obtain certificate authorization to sell gas from such acreage. Such assignees (farmouts) will be required to indicate that the sale for which a certificate is applied results from a farmout agreement and to complete the applicable portions of Part II of the Contract Summary. See § 157.24(a) and the *note* and item (5) in § 250.5.

Question was raised as to what may appear to be an unnecessary duplication of filings where a partial assignment of interests is involved. See § 154.92(d)(2) which requires the assignee to file copies of the assignor's contract and the instrument of assignment. We have found, however, that this minor degree of duplication is justified and that filed rate schedules of both the assignor and the assignee must be complete in themselves if the Commission staff in its administration of the Act and outside parties referring to these schedules are to be able to proceed with accuracy and dispatch. The assignor's rate schedule, following a partial assignment, must include both his basic contract *and* the instrument of assignment to show its current status. By the same token, the assignee's rate schedule must contain the same documents. Thus, the rights and obligations of each with respect to the assignor's basic contract, a portion of which was assigned, will be apparent from an examination of the filed schedule of each.

We have concluded, therefore, to adopt the amendments substantially as they were proposed in the two notices. However, one change in form, but not in substance, is being made. In Docket No. R-244, a new form, "Summary to be filed by assignee as a successor in interest" (§ 250.9) was proposed in the notice. But since all applicants are also required to file the form of "Contract summary" specified in § 250.5, we have revised the latter to include the information contained in § 250.9, as noticed. The amendment to § 157.24(a) which, as proposed, required the use of two forms if the applicant is a successor in interest, has been changed to require only the one form, Part I of which is to be completed by all applicants. Applicants who are successors in interest will, in addition, complete Part II to the extent applicable.

One amendment made herein was not proposed in either of the notices. It amends § 154.102(a) to provide that three copies shall be filed of a motion to make a suspended rate schedule effective at the end of the period of suspension. The lack of such a provision seems to have caused some confusion as to how many copies should be filed.

Upon consideration of the entire record in this proceeding which includes the notices of proposed rulemaking and all the comments, views and data filed in response thereto, *the Commission further finds:*

(1) Adoption of these amendments to the Regulations Under the Natural Gas Act are necessary and appropriate to the administration of the Natural Gas Act.

(2) For the reasons heretofore expressed, good cause exists for the adoption herein of the amendment to § 154.102(a) without giving the prior notice required by section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 4, 7 and 16 thereof (52 Stat. 822, 824, 825, 830; 56 Stat. 83, 84, 76 Stat. 72; 15 U.S.C. 717c, 717f, 717o), *orders:* [Omitted in printing—see 29 F.R. 3699.]

(B) The amendments adopted herein shall become effective on May 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL., AND GENERAL CRUDE OIL COMPANY (OPERATOR), ET AL., CI61–1280

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued March 18, 1964)

On February 14, 1964, General Crude Oil Company (Operator), *et al.*, (General Crude) filed a motion for reconsideration of our order of January 23, 1964, 31 FPC 178, rejecting General Crude's offer of settlement in the above-entitled proceedings.

In its settlement proposal, General Crude proposed, *inter alia*, that a certificate be issued in Docket No. CI61–1280 at an initial rate of 20.4¢ per Mcf and that the rate in effect subject to refund in Docket No. RI63–389 remain in effect subject to refund. The rate in effect subject to refund in Docket No. RI63–389 is 21.6¢ per Mcf.

According to the application in Docket No. CI61–1280,[1] all of the gas production property from which sales are proposed therein was formerly covered by Pan American Petroleum Corporation's (Pan American) Rate Schedule No. 173. A certificate was issued to Pan American authorizing sales from this acreage (and other acreage) at an initial rate of 17.5¢ per Mcf in Docket No. G–3216 on November 2, 1954. Pan American's effective rate at the time of the assignment to General Crude (subject to refund under section 4(e) of the Natural Gas Act) was 20.4¢ per Mcf. The last rate of Pan American not subject to refund was 18.0¢ per Mcf.

As we stated in our order of January 23, *supra*, the issuance of a certificate at the rate proposed by General Crude would violate the principles expressed in our recent Opinion No. 408, *Graridge Corporation (Operator), et al.*, Docket No. G–19246, et al., issued October 31, 1963, 30 FPC 1156. We there held that a certificate issued to a successor in interest should put the successor in the same position in which the predecessor would be, had the latter retained the property transferred. To grant a certificate to General Crude on the terms proposed would put General Crude in a more favorable position than Pan American, its assignor. The settlement terms proposed by General Crude are not sufficient reason to permit a waiver of the principles expressed in *Graridge.*

---

[1] Exhibit A thereto.

The Commission finds:

The motion for reconsideration filed by General Crude Oil Corporation in the above-entitled matters on February 14, 1964, does not present sufficient reason for changing our determinations made in our order of January 23, 1964, herein.

The Commission orders:

The Motion for Reconsideration of Order Rejecting Offer of Settlement filed by General Crude Oil Company in these proceedings on February 14, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AZTEC OIL & GAS COMPANY (SUCCESSOR TO HASSIE HUNT TRUST AND HERMAN BROWN), DOCKET NO. CI64–367

FINDINGS AND ORDER AFTER STATUTORY HEARING, CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND CONDITIONALLY APPROVING SETTLEMENT PROPOSAL

(Issued March 19, 1964)

On September 23, 1963, Aztec Oil & Gas Company (Applicant) filed in Docket No. CI64–367 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corporation for resale for ultimate public consumption from the North Rousseau Area, Lafourche Parish, Louisiana, all as more fully set forth in the application.

Applicant has acquired an undivided interest in the leases and lands owned by Hassie Hunt Trust and Herman Brown who have applied for certificates to make sales from the subject properties in Docket Nos. CI61–645 and CI61–709, respectively.

On January 7, 1964, Applicant submitted an offer of settlement and a motion for approval thereof similar to those proposals submitted and approved with respect to the applications for certificates consolidated with *Union Texas Petroleum, et al.,* Docket No. G–13221, *et al.* Applicant proposes a reduction in initial price to 20.625¢[1] per Mcf at 15.025 psia including tax reimbursement; a moratorium on future rate changes through March 31, 1968; an agreement to refund to the purchaser the difference between the amounts actually collected for gas delivered under Applicant's FPC Rate Schedule Nos. 15 and 16 and the amounts which would have been collected under the settlement rate, together with interest at the rate of 7 per cent per annum which shall not have accrued after December 31, 1963; an extension of make-up periods for prepaid gas to 4 years; and a condition that the settlement rate is subject to prospective adjustment dependent upon the final determination in Docket No. AR61–2, *et al.*

---

[1] The initial contract price is 23.55¢ per Mcf including tax reimbursement. Applicant has accepted a temporary certificate conditioned to an initial price of 23.25¢ per Mcf and subject to the obligation to refund to the purchaser any amount collected in excess of the rate found to be required by the public convenience and necessity down to 20.0¢ per Mcf, together with interest.

We find this proposal, generally, to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 thereof to include gas required to be taken during the moratorium period but paid for and not taken, and our approval is conditioned upon such determination. Thus, prepayments, if any, shall be made during the moratorium period at a rate no higher than the rate in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Docket No. AR61-2 seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in the instant case which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of Docket No. AR61-2 should go into effect upon conclusion of judicial review of our final order therein. We can not now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding, and our approval of the settlement will be so conditioned.

Applicant proposes to refund to the purchaser the difference between the amounts actually collected for gas delivered and the amounts which would have been collected under the settlement rate, together with interest which shall not have accrued after December 31, 1963. It is the Commission's present policy to require that interest accrue and be paid on such refunds through the last day of the month in which the settlement proposal has been submitted. Therefore, we shall require that interest accrue and be paid on the refunds made to the purchaser through January 31, 1964.

Petitions to intervene have been filed by Long Island Lighting Company, The Brooklyn Union Gas Company, and the Philadelphia Gas Works Division of The United Gas Improvement Company. A notice of intervention has been filed by the Public Service Commission of the State of New York.

No opposition to Applicant's settlement proposal and motion have been received.

At a hearing held on March 12, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits attached thereto and the offer of settlement, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Aztec Oil & Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is

required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should amend its related rate schedules as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Aztec Oil & Gas Company, upon the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application and settlement proposal herein.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The certificate granted in paragraph (A) above is granted upon the express condition that Applicant comply fully with the terms of this order and the settlement proposal, which settlement is expressly approved under the conditions of this order.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved, except as specifically provided by the settlement proposal. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(E) Applicant shall amend its related rate schedules to reflect the settlement rate and to provide for an extension of the make-up periods for prepaid gas to 4 years; provided, however, the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are hereby waived insofar as they apply to the reductions in rates.

(F) Within 90 days after the date of this order, Applicant shall refund to Texas Gas Transmission Corporation the amounts actually collected for gas delivered under Applicant's FPC Gas Rate Schedule Nos. 15 and 16 and the amounts which would have been collected under the settlement price approved herein, together with interest at the rate of 7 percent per annum which shall have accrued through January 31, 1964. Within 30 days from the date that the refunds have been made, Applicant shall submit in triplicate a report of such refunds together with a release from the purchaser.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-9

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 19, 1964)

On July 16, 1963, as supplemented on September 9 and November 5, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-9 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional compressor horsepower at the Jal No. 4 plant, Lea County, New Mexico, the operation of certain existing facilities and the construction and operation of certain other facilities, all in Lea County, in order to provide additional capacity necessary to receive the prorated allowables from the wells presently connected to Applicant's Jal production area 225 psi system and to re-establish operating capacity and flexibility for the connection of new wells in said area, all as more fully set forth in the application, as supplemented.

Specifically, Applicant proposes the following:

(a) To install an additional 1,760 horsepower at the Jal No. 4 plant increasing the total horsepower from 9,450 to a total of 11,210;

(b) To operate existing gathering Trunk Lines L and M now serving respectively Jal plant Nos. 3 and 4, and,

(c) To construct and operate 2.6 miles of 16-inch pipeline in conjunction with the additional compressor facilities and a 17-mile segment of the existing and certificated 16-inch gathering Trunk Line A which line now serves Jal No. 1 plant.

Applicant presently operates, among others, two gathering systems in the Jal area with respective operating pressure of 225 psi and 580 psi. The 580 psi system (Trunk M) transports gas from newly-attached wells to the Jal No. 4 plant. Applicant states that when such wells are no longer capable of flowing against such a pressure, they are reattached to the 225 psi system. The parallel and interconnected Trunks A and L of the 225 psi system transport gas to the Jal Nos. 1 and 3 plants, respectively.

Applicant states that it has expended substantially all of the operating flexibility and capacity of the 225 psi system through the reconnection thereto of numerous wells previously producing into the 580 psi system. Applicant states further that it will therefore be impossible in the future to produce the prorated allowable from each well connected to the 225 psi system. To obviate this problem, Applicant proposes to provide a separate gathering trunk operating at a pressure in the order of 425 psi for those wells which are capable of producing their prorated allowable against a working pressure of 425 psi. The application indicates that there are 98 wells now attached to the 225 psi system which are able to flow against an operating pressure of 425 psi and which are consuming approximately 43,000 Mcf of the 225 psi system's daily capacity.

Applicant proposes, therefore, to isolate a 17-mile segment of Trunk A and to connect said segment by means of the proposed 2.6 miles of 16-inch pipeline to the proposed compressor units at the Jal No. 4 plant. Gas from the above-mentioned 98 wells will be produced into the isolated segment and transported at 425 psi to the No. 4 plant.

On January 3, 1964, Transwestern Pipeline Company (Transwestern) filed a petition to intervene in this proceeding; however, on February 3, 1964, Transwestern filed a notice of withdrawal of said petition.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 12, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of the proposed facilities and the operation of existing facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the operation of existing facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to operate existing facilities, as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–156

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 19, 1964)

On January 7, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64–156 an application pursuant to Section 7(b) of the Natural Gas

Act for permission and approval to abandon by sale to E. G. Rodman, approximately 1.3 miles of 4.5 inch O.D. pipeline extending from the South Cowden Gasoline Plant of Inland Natural Gasoline (Inland) to Applicant's 20 inch Sweetie Peck-Goldsmith line, located in Ector County, Texas, together with a purchase meter station located at the outlet of the said plant, all as more fully described in the application on file with the Commission.

Applicant states that by use of the facilities above described it is currently purchasing gas from Inland under terms of an agreement dated June 25, 1956. Due to a decline in volumes of gas available to Inland for processing it proposes to discontinue the sale of gas to Applicant and they have agreed to the termination of the June 25, 1956, contract.

The facilities above described will be no longer required by Applicant after cessation of deliveries of gas by Inland and it proposes to sell them for a consideration equal to the original cost of $17,416 less accrued depreciation of approximately $3,649, which is the sum of $13,766.75.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 12, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by El Paso Natural Gas Company, of the facilities hereinbefore described, as more fully described in the application, in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of transfer of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64-149

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 19, 1964)

On December 26, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP64-149 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the twelve-month period commencing on the date of issuance of such authorization and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to Applicant, all as more fully set forth in the application.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000, and no single project will exceed a cost of $500,000, which costs are to be financed from funds on hand.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system supplies of natural gas in various producing areas generally co-extensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct during the twelve-month period commencing on the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the twelve-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64–130

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 19, 1964)

On December 9, 1963, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP64–130 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 of miscellaneous natural gas gathering facilities necessary to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to Applicant, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of such facilities is not to exceed a maximum of $2,500,000, with no single project to exceed a cost of $500,000, which costs Applicant proposes to finance from general funds or from revolving credit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP64-114

ORDER DENYING PETITION TO INTERVENE

(Issued March 19, 1964)*

On February 10, 1964, The Superior Oil Company (Superior) filed a petition to intervene in the above-entitled proceeding which involves an application for a certificate of public convenience and necessity filed by Trunkline Gas Company (Trunkline) seeking authorization to increase its pipeline capacity in order to serve the increased requirements of some of its existing customers. Notice of Trunkline's application was issued January 28, 1964, and published in the Federal Register on February 1, 1964, 29 F.R. 1664.

In support of its alleged right to intervene in Docket No. CP64-114 Superior claims that Trunkline owes it in excess of two million dollars for gas taken but not paid for, and that Trunkline may be proposing an uneconomic expansion of its system in Docket No. CP64-114 which might have the effect of impairing Trunkline's financial integrity. Superior also alleges that Trunkline is restraining competition and commerce by its agreement to purchase volumes of gas to be produced from Vermilion Area Block 14 Field, Louisiana, from Pan American Petroleum Company (Pan Am) and Union Oil Company of California (Union) under an arrangement whereby Trunkline will not purchase gas from other producers to the extent that Pan Am and Union are able to meet Trunkline's future need for gas. Superior also contends that Trunkline has refused to purchase gas produced from Superior's uncommitted reserves in the Block 14 Field despite the fact that Superior has offered such gas to Trunkline in an effort to alleviate the drainage Superior is suffering by virtue of Trunkline's purchases of gas produced from the Block 14 Field from Pan Am and Union.

On February 13, 1964, Trunkline filed an "Answer and Objection to Superior Oil Company's Petition to Intervene" requesting that the Commission deny Superior's petition to intervene because of Superior's failure to demonstrate any proper basis for intervening in the hearing regarding Trunkline's application in Docket No. CP64-114.

We agree with Trunkline that Superior has shown no basis for being permitted to intervene in the proceeding regarding Trunkline's expansion application in Docket No. CP64-114. By our order issued March 9, 1964, in *Trunkline Gas Co.* v. *The Superior Oil Co.*, Docket No. RI64-273, *et al.*, *supra*, p. 506, we determined the rates which Trunkline is currently obligated to pay to Superior for gas purchased under Superior's FPC Gas Rate Schedules Nos. 1 and 3. Consequently, there is no longer pending before us a question as to the amount Trunkline may be indebted to Superior for gas taken but not paid for under Superior's Rate Schedules Nos. 1 and 3. Even if there were such an issue pending before us, it would be a matter to be disposed of in Docket No. RI64-273, *et al.*, where the question was originally raised, rather than in the proceeding regarding Trunkline's application in Docket No. CP64-144.

Superior's claims with respect to Trunkline's contracts to purchase additional gas from Pan Am and Union are likewise irrelevant to the instant proceeding. The applications for such sales (Docket Nos. CI64-668 and CI64-669) were noticed on January 14, 1964, and this notice was published in the Federal

---

*Rehearing denied by order issued May 5, 1964, 31 FPC 1118.

Register on January 21, 1964, 29 F.R. 510. Superior, however, failed to file a petition to intervene in those proceedings within the period prescribed in the notice. Having failed to intervene in the proceeding directly concerned with such contracts Superior cannot collaterally attack the matter here.[1]

In short, Superior has failed to state any grounds which would justify its being permitted to intervene in the proceeding regarding Trunkline's application in Docket No. CP64–114. All the matters raised by Superior are either irrelevant to the issues to be considered in Docket No. CP64–114 or are already the subject of decisions which have been made or which should be made in other proceedings as hereinbefore described.

The Commission finds:

Good cause has not been shown by Superior for its being permitted to become an intervener in the proceeding regarding Trunkline's application filed in Docket No. CP64–114.

The Commission orders:

The petition to intervene in Docket No. CP64–114 filed February 10, 1964, by The Superior Oil Company is hereby denied.

---

[1] We note that while Superior claims the contracts between Trunkline and Pan Am and Union deprive Superior of the chance to sell its uncommitted reserves in Block 14 to Trunkline, it has in fact contracted to sell these reserves to American Louisiana Pipe Line Company (see motion filed May 6, 1963, in Docket No. G–6067 for modification of Superior's certificate of public convenience and necessity). We also note that an inspection of the contracts between Trunkline and the two producers fails to support Superior's allegation that Trunkline thereby precluded itself from making additional purchases from other producers. The provision in question is merely a clause providing that if upon redetermination of producers' dedicated reserves more gas is found to exist under the dedicated acreage than originally estimated, Trunkline will purchase additional amounts to the extent it then has need for additional gas. The provision, however, expressly states that in determining Trunkline's purchase obligations there shall be considered not only the contracts it had entered into prior to the effective date of the underlying contract but all other "* * * new purchase contracts and obligations entered into by * * *" Trunkline up to the time of such redeterminations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

JACK W. GRIGSBY, ET AL., DOCKET NOS. G–16665, G–19741, RI61–171, RI62–128, RI63–152, RI64–258

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued March 20, 1964)

On February 5, 1964, Jack W. Grigsby, *et al.* (Grigsby) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure.[1] The offer involves proposed increased rates for sales of natural gas made to Texas Eastern Transmission Corporation (TETC) by Grigsby. The offer relates to sales made under Supplement Nos. 3, 5, 6, 7, 8 and 9 to Grigsby's FPC Gas Rate Schedule No. 4 in the Bethany-

---

[1] Although Grigsby's offer specifically relates only to its own interest under its rate schedule, it is deemed to be applicable also to the signatory parties covered by his rate schedule to the extent that they comply with the provisions of this order.

Longstreet Field, De Soto Parish, North Louisiana. Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and excepting for Supplement No. 9, were made effective by Grigsby in accordance with the Natural Gas Act.

Under the terms of the offer, Grigsby proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from the rate schedule and to establish a 16.7756¢ per Mcf rate, inclusive of tax reimbursement, for the subject sale. No protests or objections to the offer have been filed.

The proposed settlement is consistent with the provisions of the Seventh Amendment to the Commission's Statement of General Policy No. 61–1, issued November 27, 1963, 30 FPC 1370, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Grigsby's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Grigsby's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Grigsby on February 5, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Grigsby on February 5, 1964, is hereby approved in accordance with the provisions of this order.

(B) Grigsby shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 16.7756¢ per Mcf rate, inclusive of tax reimbursement, specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 4 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Grigsby, and any other signatory party has complied with the terms and conditions of the order, the rate and charge of 16.7756¢ per Mcf, inclusive of tax reimbursement, at 15.025 psia, specified in its offer of settlement, shall be effective as of the date of issuance of this order, further, the above designated proceedings shall be deemed terminated, as to Grigsby, and as to any other signatory party covered by the subject rate schedule who filed an executed contract amendment in accordance with paragraph (B) hereof. As to any signatory party who does not so comply, these proceedings shall remain in full force and effect.

(D) The acceptance by the Commission of Grigsby's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Grigsby, including area rate or other similar proceedings.

Before Commisssioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. G-15438 AND CI64-669; UNION OIL COMPANY OF CALIFORNIA, CI64-668

DECLARATORY ORDER AND ORDER CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND CONDITIONALLY ACCEPTING RATE FILINGS

(Issued March 20, 1964)

On December 9, 1963, applications for certificates of public convenience and necessity were filed by Union Oil Company of California (Union Oil) and Pan American Petroleum Corporation (Pan American) in Docket Nos. CI64-668 and CI64-669, respectively.

Notice of such applications was issued under the lead docket *Marathon Oil Company, et al.*, Docket No. G-11821, *et al.* on January 14, 1964, and published in the Federal Register on January 21, 1964 (29 F.R. 510).

Each applicant requests authorization to sell gas to Trunkline Gas Company (Trunkline) from a portion of undedicated "deep" rights underlying their respective 50 percent leasehold interests in Block 26 Offshore Vermilion Parish, Louisiana, at an initial price of 19.5¢ per Mcf. Other elements of the proposal which affect sales heretofore permanently certificated [*Trunkline Gas Company*, Opinion No. 321, 21 FPC 704 (1959)] include the following:

(1) Reduction of Pan American's effective rate of 22¢ per Mcf plus 2.05¢ per Mcf tax reimbursement,[1] to 19.5¢ per Mcf, plus 1.75¢ per Mcf tax reimbursement for gas sold from the "shallow" rights underlying its 100 percent leasehold interest in Blocks 14 and 15 and its 50 percent interest in a small portion of Block 27.[2]

(2) Reduction of Pan American's effective rate of 22¢ per Mcf to 19.5¢ per Mcf for gas sold from the "shallow" rights underlying its 50 percent interest in Block 26, deemed to be located in the Federal domain.

(3) Reduction of Union Oil's effective rate of 22¢ per Mcf to 19.5¢ per Mcf for gas sold from the "shallow" rights underlying its 50 percent interest in Block 26.[3]

Both applicants further propose to amend the contracts covering the previously certificated sales and have the terms of such contracts, as amended, apply to the sales in Docket Nos. CI64-668 and CI64-669. The amendments will:

(1) Replace periodic price increases of 2.0¢ per Mcf every 4 years with periodic increases of 1.0¢ per Mcf every 4 years, the first to be due on January 1, 1968.

(2) Replace annual take-or-pay-for-volume provisions based on an average daily contract quantity of 1 Mcf for every 8,000 Mcf of the underlying reserves with specific take-or-pay-for-volume provisions.

(3) Provide for adjustments in the rates to conform to the area rate or rates ultimately determined in Area Rate Proceeding, AR61-2.

---

[1] The tax reimbursement of 2.05¢ per Mcf is being collected subject to refund in Docket No. G-20288 due to questionable interpretation of the tax reimbursement provisions of the contract. Pan American does not herein propose to settle the Docket No. G-20288 refund matters.

[2] See discussion of the petition for declaratory order, *infra*.

[3] The presently effective rate for gas sold from Union Oil's "shallow" rights underlying its 50% interest in Block 27 is 20.625¢ per Mcf. See order of June 24, 1963, in *Union Texas Petroleum, et al.*, Docket No. G-18221, *et al.*, 29 FPC 1283, approving Union Oil's settlement in that proceeding.

On January 29, 1964, the Public Service Commission of New York (New York) filed a notice of intervention in Docket Nos. CI64–668 and CI64–669. However, on February 24, 1964, New York withdrew its intervention stating that such withdrawal was based upon the circumstances involved in the particular proceedings, i.e., reductions in price under previously committed reserves. New York states that the proposals here are *sui generis* and that the initial prices proposed ". . . would be deemed by us to be unwarrantedly out of line in virtually every other context."

The proposal of Union Oil and Pan American is contingent upon (1) the Commission's approval thereof and the issuance of certificates in Docket Nos. CI64–668 and CI64–669 prior to April 1, 1964, and (2) the issuance of a certificate to Trunkline in Docket No. CP64–114 prior to April 1, 1964.

A certificate will be issued to Trunkline in Docket No. CP64–114 by separate order of this date. However, for the reasons discussed below, we cannot unconditionally approve the Union Oil and Pan American proposal. The proposal is, in general, in the public interest, so we shall approve it conditionally and allow Pan American an opportunity to comply with our condition.

The reason that we cannot unconditionally approve the proposal is that we are of the view that Pan American has no certificate authority to make the sales from the "shallow" rights underlying Block 27. We shall therefore condition our approval of the proposal and our issuance of certificates upon the filing by Pan American of an application for a certificate of public convenience and necessity for authorization to make the sales from the "shallow" rights underlying its leasehold interest in Block 27. The absence of certificate authorization was brought to Pan American's attention by a letter of the Secretary of January 9, 1964. Pan American's response to the Secretary's letter was a "Petition For Declaratory Order", filed January 29, 1964, in Docket No. G–15438. Pan American requests that we find that the sales from the "shallow" rights have been certificated. Pan American's arguments are, (1) the original certificate of public convenience and necessity in Docket No. G–15438 furnished authority to Pan American under Section 7 of the Act to sell and deliver natural gas produced from the reserves identified in Supplement No. 2 to Pan American's FPC Gas Rate Schedule No. 258 (the "shallow" rights in Block 27) and, (2) if the original certificate in Docket No. G–15438 did not furnish authority, then, the Commission's letter of September 2, 1960, accepting for filing Pan American's Supplement No. 2 to its FPC Gas Rate Schedule No. 258 together with Pan American's letter to the Commission of September 22, 1960, advising of commencement of deliveries, furnished Pan American such authority.

As to argument (1), it is clear that our order accompanying Opinion No. 321 issued May 22, 1959, *supra*, granted Pan American no more than it had applied for. Pan American in its application sought authority to make sales of gas in interstate commerce upon the following pertinent terms:

> (1) "5.(b) The source of gas sold pursuant to the terms of said contract is gas produced by Applicant from Blocks 14, 15 and 26 Fields, Vermilion Area, Offshore Vermilion Parish, Louisiana, as defined in said contract.
>
> (2) "6. That attached hereto, marked Exhibit 'A' and made by reference a part hereof, is a key map of the facilities of Applicant which will be in use in connection with the production of the gas covered thereby. The facilities shown on said map are production facilities."

[The map shows shaded Blocks 14, 15 and 26 with facilities. No part of Block 27 is shaded and no wells or facilities are shown on Block 27.]

> (3) "8. That this application covers only the sale of gas made under and pursuant to the terms of the gas sales contract referred to in Paragraph 5(a) hereof . . . and this application is specifically limited to such sale."

(4) "10. That this application shall not be deemed to involve a request for a Certificate of Public Convenience and Necessity broader in scope than the prayer hereof."

Although the contract in Article IV provides that Seller *may*, with Buyer's approval, deliver gas produced from additional acreage under lease to Seller, it further provides that "[s]uch delivery of gas produced from additional acreage or reserves shall be in accordance with a written instrument in form satisfactory to both parties."

The latter provision of the original contract is merely an expression of future possibilities. The important fact is that Pan American prayed in its application for a certificate coextensive with its contract with Trunkline—as the contract was then written.[4] The certificate which it received was the certificate which it applied for. No authorization to make sales from the Block 27 was either applied for or granted. Nor could the mere filing of a later agreement to sell additional gas retroactively extend the breadth of the certificate granted.[5]

As to Pan American's argument (2), the simple answer is that the Secretary's letter of September 2, 1960, could not have provided the requisite certificate authority for Pan American did not apply for it and, more importantly, Section 7(c) requires notice and hearing prior to the issuance of a certificate of public convenience and necessity or a substantive amendment to an outstanding certificate. Furthermore, the letter of the Secretary accepting Pan American's rate filing contained the express proviso that ". . . [t]his acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended. . . ." Still further, Section 154.101 of the Commission's regulations under the Natural Gas Act provides, "Acceptance for filing of any rate schedule or part thereof, . . . is not to be construed as approval by the Commission, nor to serve in lieu of any requirement of Section 7 of the Natural Gas Act."

The Block 27 reserves constitute a relatively small part of the reserves involved in the overall transaction Pan American's and Union Oil's leasehold interests in Block 27 are limited to 320 acres). Problems concerning this aspect should not be allowed to defeat the whole proposal, when these problems can be cured by acceptable conditions. We shall therefore approve the proposal conditioned upon Pan American's filing an application for a certificate of public convenience and necessity for authorization to make its share of the sales from the "shallow" rights in Block 27.

The question arises as to what price should be allowed for Pan American's share of the sales from the "shallow" rights of Block 27. As noted above, Union Oil settled as to its share of such sales in the Union Texas Petroleum Proceeding at a rate of 20.625¢ per Mcf. Other terms of Union Oil's settlement are set out in the proposal and the order approving same, *supra*. As a basis of settlement, we shall require that Pan American's certificate application provide that the terms (except refund terms) contained in the Union Oil settlement of Docket No. CI62-806 as amended by Supplement No. 5 to Union Oil's Rate Schedule No. 61 (Amendment of November 14, 1963) apply to Pan American's "shallow" sale from Block 27.

---

[4] We are not here considering a contractual time limitation which may conflict with Section 7(b) of the Act.

[5] Union Oil, 50 percent co-owner of the Block 27 "shallow rights", filed an application for a certificate in Docket No. CI62-806 for authorization to make its sales from Block 27 even though its original contract with Trunkline was almost identical to the original Pan America-Trunkline contract. The certificate was granted upon settlement. See footnote 3, *supra*.

The fact remains, however, that Pan American has been collecting 24.05¢ per Mcf for its share of the Block 27 "shallow" gas since August 30, 1960, without certificate authorization. Union Oil, which properly filed a certificate application, was given a temporary authorization which provided a conditional initial rate of 21.25¢ per Mcf until the application for a permanent certificate was acted upon. Had Pan American filed an application it, undoubtedly, would have received a similarly conditioned temporary certificate. Pan American must not be allowed to profit by its failure to comply with the Act, so we shall further condition our approval of the instant proposal upon Pan American's agreement to refund to Trunkline all amounts collected above 21.25¢ per Mcf for gas sold from Block 27 from the date of initial delivery through March 31, 1963, and all amounts collected above 20.625¢ per Mcf since that date. These refunds requirements are consistent with those in Pan American's settlement of its Union Texas Petroleum Proceeding dockets. See orders of November 19, 1963, 30 FPC 1324, and February 4, 1964, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* Pan American's application for a certificate when filed consistent with the terms of this order, will be noticed for a statutory hearing.

Pan American will also be required to file a Rate Schedule consistent with this order for the Block 27 sale.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Union Oil Company of California and Pan American Petroleum Corporation are natural-gas companies within the meaning of the Natural Gas Act, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The petition for Declaratory Order filed by Pan American on January 29, 1964, in Docket No. G–15438 should be granted.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to Union Oil Company of California and Pan American Petroleum Corporation in Docket Nos. CI64–668 and CI64–669 upon the conditions set forth herein for the sales of natural gas in interstate commerce for resale as proposed and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications herein.

(B) The certificates issued by paragraph (A) above, are granted upon the express conditions that Union Oil complies fully with the terms of the contract amendment dated November 14, 1963, referred to in paragraphs (H) and (I) below and that Pan American complies fully with the terms of the contract amendment dated November 18, 1963, referred to in paragraphs (H) and (I) below, except insofar as said Pan American amendment applies to sales from the "shallow" rights of Block 27.

(C) The certificates issued by paragraph (A) above, are granted upon the further express condition that Pan American complies with ordering paragraphs (D) and (E) below.

(D) Prior to April 1, 1964, Pan American shall file with the Commission in accordance with Section 7 of the Natural Gas Act and the Commisson's rules and regulations, an application for a certificate of public convenience and necessity for authorization to make the sales of natural gas in interstate commerce from the property described in what has been identified as Supplement No. 2 to its Rate Schedule No. 258; such application shall provide the same terms as the settlement proposal of Union Oil in Docket No. CI62–806 (except as to refunds) as amended by Supplement No. 5 to Union Oil's Rate Schedule No. 61 (Amendment of November 14, 1963) and shall provide that Pan American agrees to refund to Trunkline all amounts above 21.25¢ per Mcf collected from the date of initial delivery from Block 27 through March 31, 1963, and all amounts above 20.625¢ per Mcf collected since that date, together with interest on all amounts to be refunded computed at a rate of 7 percent per annum to accrue through December 31, 1963.

(E) Prior to April 1, 1964, Pan American shall file a rate schedule for its Block 27 "shallow" sale consistent with the requirements of paragraph (D) above.

(F) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the notice provisions of Parts 154.92(b) and 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of rate schedule supplements as required by this order and the proposal of Union Oil and Pan American herein.

(G) The grant of certificates herein is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(H) Upon compliance with the terms of this order, the following are accepted for filing effective April 1, 1964:

Rate schedule No.	Supplement No.	Description
Pan American 258	3	Amendment of 11/18/63.
Pan American 258	4	Notice of rate change (except as it applies to Block 27).
Union Oil 42	3	Amendment of 11/14/63.
Union Oil 42	4	Notice of rate change.
Union Oil 61	5	Amendment of 11/14/63.

(I) Upon compliance with the terms of this order, the following are accepted for filing effective April 1, 1964, or on the dates of initial deliveries thereunder, whichever are later:

Rate schedule No.	Supplement No.	Description
Pan American 388		Contract of 6/26/58.
Pan American 388	1	Amendment of 11/18/63.
Union Oil 85		Contract of 6/17/58.
Union Oil 85	1	Amendment of 11/14/63.

(J) The petition for declaratory order filed on January 29, 1964, by Pan American in Docket No. G–15438 is hereby granted and it is hereby declared that Pan American has no authorization under Section 7 of the Natural Gas Act to make sales of natural gas for resale in interstate commerce from its "shallow" rights in Block 27, offshore Vermilion Parish, Louisiana.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP64–114

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 20, 1964)

On November 20, 1963, Trunkline Gas Company (Applicant) filed in Docket No. CP64–114 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of increased volumes of natural gas for resale to certain of its existing customers, all as more fully set forth in the application.

Applicant proposes to construct and operate the following facilities:

(a) 3,000 additional horsepower at each of the following existing main line compressor stations: Station No. 57, Pollock, Louisiana; Station No. 75, Shaw, Mississippi; Station No. 93, Dyersburg, Tennessee, and Station No. 112, Johnsonville, Illinois.

(b) 4,000 horsepower at a new compressor station to be designated Station No. 210, Kaplan, Louisiana.

(c) 6,000 horsepower at a new compressor station to be designated Station No. 121, Tuscola, Illinois.

The proposed new facilities will increase the design capacity of Applicant's pipeline system from 830,000 Mcf to 890,000 Mcf per day.

Further, Applicant proposes herein to sell an additional 25,000 Mcf of natural gas per day, commencing April 1, 1964, and a further increase of 25,000 Mcf per day commencing November 1, 1964, to Consumers Power Company. Also, Applicant proposes an additional total increase of 961 Mcf per day to three other existing customers.

Applicant states that it has obtained amendments to existing gas purchase contracts with Pan American Petroleum Corporation and Union Oil Company of California, providing for price reductions regarding existing supplies purchased from those producers in Vermilion Parish, Offshore Louisiana, as well as the dedication of additional supplies, scheduled to become effective April 1, 1964.[1] Applicant states further that it proposes to utilize such price reductions, together with the economies of the herein proposed increased sales, so as to provide a reduction in the level of its rates, following the necessary authorization, to become effective April 1, 1964. Further, Applicant proposes a revision in its R-1 and R-2 Rate Schedules so as to provide different rate levels for winter and summer deliveries and, also, proposes the introduction of a G-2 Rate Schedule.

---

[1] These amendments were filed by the suppliers with the Commission in Docket Nos. CI64–669 and CI64–668 on December 6, 1963, and December 9, 1963, respectively. By order, issued March 20, 1964, in said dockets the Commission conditionally issued certificates to Pan American and Union.

The proposed facilities are estimated to cost approximately $8,700,000, which cost will be financed from funds on hand.

On February 10, 1964, The Superior Oil Company filed a petition to intervene in opposition in this proceeding. However, by Commission order, issued March 19, 1964, said petition was denied.

Several other petitions to intervene and a notice of intervention in support have been filed herein. In each case, the burden of such filings has been that the petitioners did not request formal hearing in these proceedings and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the shortened procedure is being used herein, no further action on the various intervention petitions appears necessary.

After due notice, no other petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be conditioned upon the rates to be charged by Applicant being no higher than those in the pro forma tariff sheets included in Exhibit P of the subject application.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this orders issues.

(D) The certificate issued by paragraph (A) above is hereby conditioned upon the rates to be charged by Applicant being no higher than those in the pro forma tariff sheets included in Exhibit P of the subject application.

OPINION NO. 422

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62–1544; AMERICAN PETROFINA COMPANY OF TEXAS, CI61–1418; BUSMORE OIL & GAS COMPANY, OPERATOR, CI61–1641; CHEROSAGE ENTERPRISES INC., ET AL., CI62–1459; CLARK FUEL PRODUCING COMPANY (OPERATOR), ET AL., CI61–1279; COATES, GEORGE H., CI62–355; COX, EDWIN L., CI62–621; H. H. PHILLIPS, JR., ET AL., CI62–954; GULF OIL CORPORATION, CI62–607; HAMON, JAKE L. (OPERATOR), ET AL., CI61–922; HAMON, JAKE L., CI61–1745; HUDSON, W. H. (OPERATOR), ET AL., CI62–1074; HUMBLE OIL & REFINING COMPANY, CI62–704; HUNT, LAMAR, CI61–730; SOHIO PETROLEUM COMPANY (OPERATOR), ET AL. (FORMERLY KATZ OIL COMPANY, (OPERATOR), ET AL., CI61–627; MCWOOD CORPORATION, CI61–839; MCWOOD CORPORATION, CI62–703; W. RHINEHART MILLER & HEWITT B. FOX D/B/A MILLER & FOX (OPERATOR), ET AL., CI62–624; MONSANTO CHEMICAL COMPANY, CI61–876; MPS PRODUCTION COMPANY (OPERATOR), ET AL., CI62–726; MPS PRODUCTION COMPANY (OPERATOR), ET AL., CI62–738; SKELLY OIL COMPANY, CI63–73; SPENCER, EMORY M. (OPERATOR), ET AL., CI61–1451; STANDARD OIL COMPANY OF TEXAS (DIVISION OF CALIFORNIA OIL COMPANY), CI61–1377; STANDARD OIL COMPANY OF TEXAS (DIVISION OF CALIFORNIA OIL COMPANY), CI62–1140; SUN OIL COMPANY, CI61–657; SUN OIL COMPANY, CI61–1101; SUN OIL COMPANY, CI61–1584; SUN OIL COMPANY, CI62–276; SUN OIL COMPANY, CI61–956; SUNRAY MID-CONTINENT OIL COMPANY (NAME CHANGED TO SUNRAY DX OIL CO.), CI61–1103; TEXACO INC., CI61–961; TEXACO INC., CI61–1757; TEX-STAR OIL & GAS CORP. (OPERATOR), ET AL., CI62–729; UNION PRODUCING COMPANY, CI62–639

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1964)*

Syllabus

1. Considerations other than "in-lineness" are not valid where, as here, only disputed issue is price level at which certificates should be granted. P. 630.

---

*Initial decision appears on p. 647. Order issued April 30, 1964, partially granted rehearing, etc., 31 FPC 1041. Memorandum Opinion 422–A, issued May 27, 1964 granting stay, etc., 31 FPC 1313.

2. "In-line" practice of initial price regulation to meet standard of Section 7, is in full accord with CATCO; is the only appropriate method and is proper one to be followed here. P. 630.

3. *Affirming* exclusion of cost and financial requirements evidence, Commission *notes* such action is administratively essential to achieving "in-line" determination prior to resolution of area rate proceedings and makes it incumbent on Commission to give special consideration to field price evidence as to shifts in pricing. P. 631.

4. Fact that some of permanently certificated sales have been approved in uncontested proceedings does not, standing alone, destroy their precedental value in formulation of price line. P. 631.

5. Court opinions establishing "suspect price doctrine" do not support proposition that temporary authorizations have no relevance in determining "in-line" price. P. 632.

6. Absent ability to consider temporary authorizations in instant proceedings Commission would not be basing its decision on "substantial volumes of gas moving in interstate commerce." P. 632.

7. A blind application of doctrine that if certificate application is challenged no weight can be given contract prices in determining price line would leave Commission without substantial evidence on which to base its decision. P. 635.

8. Commission *concludes* some measure of weight should be given to guideline price in determining initial price issue for post Policy Statement contracts. P. 636.

9. Commission *finds* 16 cents per Mcf is in-line price for producers sales in Texas Railroad District No. 4, under post Policy Statement contracts here involved. P. 637.

10. 16-cent determination not only preserves, but actually rolls back, initially considered price line for period in issue. P. 637.

11. There is no justification for any allowance above 16 cents for sales by certain producers claiming special circumstances. PP. 637, 638.

12. Certificates conditioned to provide for moratorium on filing of all price increases in excess of 18 cents pending decision in area rate proceedings or January 1, 1968. P. 638.

13. Commission *defers* decision with respect to refund issue [where no refund condition in temporary authorization]; *allows* parties to file further briefs on said issue. P. 639.

14. Commission *issues* permanent certificates of public convenience and necessity under Section 7, of the Natural Gas Act. P. 640.

Commissioner Ross *dissenting*.

***Edwin S. Nail, Joseph W. Morris* and *N. Kenneth Scott, Jr.* for Amerada Petroleum Corporation**

***Charles Patrick De Roche* for Cherosage Enterprises, Inc.**

***Anthony G. Riddlesperger* and *John E. Thomason* for Gulf Oil Corporation**

***Sherman S. Poland* for George H. Coates, W. L. Cotton, Skelly Oil Company and Tex-Star Oil and Gas Corporation**

***Tom P. Hamill* for Socony Mobil Oil Company, Inc.**

***W. T. LaGrone* for Jake L. Hamon.**

***Thomas G. Crouch* and *Robert W. Henderson* for Lamar Hunt**

***William K. Tell, Jr.* for Sohio Petroleum Company, (successor to Katz Oil Company).**

***Gerald D. James* for Emory M. Spencer**

Justin R. Wolf and *Charles A. Case, Jr.* for Standard Oil Company of Texas

Alfred C. DeCrane Jr. and *James J. Flood, Jr.* for Texaco Inc.

W. O. Crain, O. Huffman Lewis and *Vernon W. Woods* for Union Producing Company

Albert C. McClain and *Jesse Foster* for Humble Oil & Refining Company

E. P. Childers for Edwin L. Cox

Kent H. Brown, Barbara M. Suchow and *Charles J. Cox* for New York Public Service Commission

Morton L. Simons, David K. Kadane, Edward M. Barrett and *Bertram D. Moll* for Long Island Lighting Company

Edwin F. Russell and *Harry G. Hill, Jr.* for the Brooklyn Union Gas Company

J. H. Mulhern, E. Kirby, F. Broadfoot, J. Lacy and *W. R. Duff* for Public Service Electric and Gas Company

Robert E. May, John A. Ward, III, Phillip D. Endon, Charles Heidrick, Colbert Peurifoy and *Edward Cage* for Sun Oil Company

Donald Blanken, Henry P. Sullivan, Samuel G. Miller and *Vincent P. McDevitt* for Philadelphia Electric Company

J. David Mann, Jr., William W. Ross and *John E. Holtzinger, Jr.* for the United Gas Improvement Company

Herbert E. Squires and *Alan R. Squires* for Pennsylvania Public Utility Commission

Robert L. Russell and *John J. Keating* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and Davis S. Black.

O'CONNOR, *Commissioner:*

This is a certificate proceeding under Section 7 of the Natural Gas Act involving 35 separate applications by 26 producers, individually or as operator, for sales of gas in Texas Railroad Commission District No. 4 to various pipelines for resale in interstate commerce. An initial decision was issued on July 23, 1963. The matter is now before the Commission on exceptions to that decision filed by 18 producers,[1] the Eastern Seaboard Interveners,[2] and The Public Service Commission of the State of New York, which concurs in the Eastern Seaboard exceptions. One request has been made for oral argument before the Commission, this by Cherosage Enterprises Inc., *et al.*, applicant in Docket No. CI62–1459.

---

[1] Gulf Oil Corp., Edwin L. Cox, Union Producing Co., Sohio Petroleum Co. (Operator), *et al.*, Humble Oil & Refining Co., Jake L. Hamon and Jake L. Hamon (Operator), *et al.*, Amerada Petroleum Corp., Sun Oil Co., George H. Coates, Tex-Star Oil & Gas Corp. (Operator), *et al.*, Skelly Oil Co., Texaco Inc., Standard Oil Co. of Texas, MPS Production Co. (Operator), *et al.*, Lamar Hunt, Cherosage Enterprises, Inc., *et al.*, Clark Fuel Producing Co. (Operator), *et al.*, and Emory M. Spencer (Operator), *et al.* By notice issued August 7, 1963, the time limitation on the filing of exceptions was extended to and including September 11, 1963. American Petrofina Co. of Texas, in a letter dated October 24, 1963, requested waiver of the deadline and sought to adopt as its own the exceptions of another producer. The tendered filing was rejected by the Secretary on November 4, 1963.

Exceptions also were filed by W. L. Cotton (Operator), *et al.*, applicant in Docket No. CI61–1572. The production therein involved ceased on May 31, 1963, because of exhaustion of the reserves and application has been made for abandonment of the sale. The docket was severed from these proceedings by order issued November 21, 1963, in *The Atlantic Refining Co., et al.*, Docket No. G–10143, *et al.*

[2] The Brooklyn Union Gas Co., Long Island Lighting Co., Philadelphia Electric Co., and The United Gas Improvement Co.

Factual and Procedural Background

The proceeding which now confronts us had its genesis with the issuance on August 30, 1962, of the opinion in *Skelly Oil Company, et al.*[3] In that opinion we determined the "in-line" price in District No. 4 was 15 cents per Mcf[4] including all reimbursements and charges, for contracts entered into prior to the promulgation of the Statement of General Policy No. 61-1 on September 28, 1960. We accordingly conditioned the certificates issued therein to the producer applicants to prohibit a total initial price in excess of the "in-line" price until lawfully changed in the manner provided by the Act. Four applicants[5] were not granted certificates in that proceeding on the ground that the contracts had been entered into after September 28, 1960, and the record did not reveal "the effect, if any, which should be given to the prior establishment of the 18-cent area ceiling upon the determination of the appropriate price at which we should issue permanent certificates for these contracts."[6] We indicated that these applications would be set for a further hearing in conjunction with other certificate applicants whose contracts were contemporaneously executed after the announcement of the guideline ceilings in the Policy Statement. In referring to this severance action the opinion made clear that we were not prepared, in advance of a hearing on the issue, to say that the ceiling prices set out in the Policy Statement are entitled to no weight in determining the initial price under contracts executed after announcement of the ceilings; that we had rejected the contention that the announcement in September 1960 of an 18-cent ceiling in District No. 4 fixed that price as the "in-line" price as of that date; and that the issue of the ceiling's effect on subsequently executed contracts should be the subject of a further hearing.[7]

Two other documents bearing on this proceeding were issued concurrently with the *Skelly Oil Company* decision. One was the Fifth Amendment to the Statement of General Policy No. 61-1 promulgating a new ceiling price level of 16 cents per Mcf on initial sales in Texas District No. 4 contracted for from and after August 30, 1962,[8] and the other an order formally severing the four dockets from *Skelly* and consolidating and setting for hearing all pending certificate applications involving contracts for sales of gas in Texas District No. 4 executed between September 28, 1960, and August 30, 1962. That order, which was the first issued in this proceeding, provided in part: "In such a hearing all of the applicants will have an opportunity to show whether the appropriate price at which they should be permanently certificated should be limited to the 15-cent per Mcf price which we found to be the in-line price as of September 28, 1960, the 16-cent per Mcf price which is being adopted as the future area ceiling price for this area, or the 18-cent per Mcf price established on September 28, 1960."[9] We later indicated that no restriction in the determination of the in-line level was intended by this language but meant only to convey the thought that all parties at the hearing ". . . would have free rein to show the proper in-line price, wherever it might happen to fall."[10]

---

[3] Opinion No. 362, 28 FPC 401, modified on rehearing by Opinion No. 362-A, 28 FPC 1065 (1962).

[4] All prices are at 14.65 psia.

[5] Katz Oil Co. (Operator, Docket No. CI61-627; Jake L. Hamon, Docket No. CI61-922; Sun Oil Co., Docket No. CI61-956; Texaco Inc., Docket No. CI61-961.

[6] 28 FPC 401, 412 (1962).

[7] *Id.* at 417-418.

[8] 27 F.R. 8918, 28 FPC 441 (1962).

[9] 28 FPC 397 (1962).

[10] 29 FPC 171, 173, fn. 4 (1963).

The examiner's decision adequately recounts and summarizes the sales here involved. For convenience, the extent of such sales are recategorized, with some variations, as follows:

1. Twelve sales under contracts executed between October 1960 and November 1961 involving estimated monthly deliveries of 1,391,756 Mcf to South Texas Natural Gas Gathering Company at proposed total initial prices ranging from 16 cents to 19.795 cents per Mcf.

2. Thirteen sales to Tennessee Gas Transmission Company under contracts dated between October 1960 and March 1962 for 570,628 Mcf monthly at initial contract prices from 16.5 cents to 17.24347 cents per Mcf.

3. Five sales totalling 441,365 Mcf per month at a price of 18 cents per Mcf and two sales for 145,500 Mcf per month at 16 cents per Mcf, all to Natural Gas Pipeline Company of America under contracts executed between November 1960 and July 1962.[11]

4. Three sales under contracts executed in April, May and June 1961 to Ben Bolt Gathering Company, totalling 55,800 Mcf per month, at prices of 15.944 cents for one and 16 cents per Mcf for the other two.

The hearing in this proceeding extended intermittently from October 29 through December 12, 1962. During its course three events of significance transpired:

(a) On December 6, 1962, the presiding examiner granted a joint motion by Long Island Lighting Company, Philadelphia Electric Company and The United Gas Improvement Company, in which the New York Public Service Commission concurred, and more limited motions by Public Service Electric and Gas Company and the staff counsel, excluding from the record exhibits No. 1 through 15 submitted by the applicants and the related testimony of their witnesses. This material is of the type generally referred to as economic and financial requirements evidence, and included cost trend exhibits, depth of drilling data, projected demand for gas in the United States from 1960 to 1970, cost-of-service evidence, and evidence intended to prove the *de minimis* effect of the contract prices on the purchased gas costs of one of the distributor interveners. In excluding this material, the examiner indicated that certain of the proffered evidence was substantially similar to evidence found irrelevant in the *El Paso*,[12] *Skelly*, and *Texaco Seaboard*[13] certificate cases to the determination of the initial price issue in independent producer certificate cases. Upon appeal from the examiner's ruling we held, in letter-orders dated January 16, 1963, that no "extraordinary circumstances" had been shown to be present as required by Section 1.28(a) of the Rules of Practice and Procedure to justify an interlocutory appeal. We thereupon barred the tender of the appeal papers, making no ruling at that time on the merits of the appeal. Petitions for judicial review of our order filed by Texaco Inc., Texaco Inc., *et al.*, and Sun Oil Company were dismissed by the Court of Appeals on June 24, 1963 (CADC, No. 17608, 17652, and 17700, respectively).[14] A petition for certiorari filed in the Supreme Court by Texaco Inc., *et al.* was denied by order issued December 9, 1963. (375 U.S. 941, No. 475, Oct. term, 1930.)

(b) The second event concerned a motion by Texaco Inc. for the production of all books, papers, records, memoranda, etc., in general, writings of any kind whatsoever, utilized by us in determining the initial service rate for Texas District No. 4 as set out in the Statement of General Policy No. 61–1 and in the Fifth Amendment thereto. The applicant also requested the issuance of a subpoena *duces tecum* and *ad testificandum* directing the Commission's Secretary to produce the papers called for in its motion and to appear before the examiner to testify. Since the application was addressed directly to the Commission, the examiner took no action on the request. The original application being denied under Section 1.12(e) of the Rules of Practice and Procedure by the expiration of a 30-day period without Commission order, an application for reconsideration was filed on December 31, 1962. This application was denied by us by order issued January 30, 1963, for reasons clearly specified therein.[15] Texaco's unsuccessful appeal to the Court of Appeals for the District of Columbia in case No. 17608, *supra*, included a motion for a writ of mandamus to compel production of the Commission records. The petition for certiorari similarly included an appeal from the court's refusal to enter a writ at that time.

---

[11] The two sales here referred to are by Skelly Oil Co. in Docket No. CI63–73 and by Amerada Petroleum Corp., *et al.*, Docket No. CI62–1544, the lead docket in this proceeding.

[12] *El Paso Natural Gas Co., et al.*, Opinion No. 358, 27 FPC 1134 (1962).

[13] *Texaco Seaboard Inc., et al.*, Opinion No. 383, 29 FPC 593 (1963), confirmed on rehearing, Opinion No. 383–A, issued August 27, 1963, 30 FPC 613 (1963).

[14] Opinion filed October 17, 1963, 329 F. 2d 223, cert. den., 375 U.S. 941.

(c) On November 29, 1962, in a motion addressed to the Commission the Eastern Seaboard Interveners, referring to the fact that unconditioned temporary authorizations were in effect in almost all dockets, requested that these temporary authorizations be vacated entirely or, in the alternative, that floorless refund conditions be imposed. On February 5, 1963,[16] we issued an order denying the motion on the ground, among others, that the Commission otherwise ". . . would be in a position of having induced producers to dedicate their gas to the market upon one set of conditions, and then imposing more stringent conditions upon them." We conluded that "Such a course of action, except under the most extraordinary conditions, would appear to be inconsistent with the Commission's obligation to act upon applications with 'such certainty as to allow the exercise of choice upon [the producers'] part.' *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 270 F. 2d 404."

The Examiner's Decision

The initial decision by the presiding examiner would grant permanent certificates to the applicants subject to a condition prohibiting any total initial price greater than 15 cents per Mcf, such price to continue until lawfully changed. The decision also would order refunds, in those authorizations having the applicable conditions, of all amounts collected over 15 cents per Mcf. In addition the examiner would modify the take-or-pay requirement in each contract to be subject to our final order in the Docket No. R–199 rulemaking proceeding as of the effective date of that order, with the proviso that the producers would not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

Exceptions to the Examiner's Decision

The Eastern Seaboard Interveners and the New York Public Service Commission take issue only with the refusal of the examiner to order refunds in the dockets in which refund conditions were not included in the temporary authorizations. They also request that the decision be modified to require each pipeline purchaser to flow such refunds through to its customers. In all other respects they ask that the decision be affirmed. The remaining exceptions, all by producers, are directed against each condition which the examiner would include in their certificate. Thus exceptions have been filed to the examiner's conclusion as to the lack of any effect of the guideline rates on the appropriate initial price at which permanent certificates should be issued, the application of the "hold the line" price doctrine and the correlative principle of in-lineness regulation pending the determination of just and reasonable rates, the date of the contract test in the determination of the "in-line" price applicable to these sales, the "in-line" price itself, the ordering of any refunds whatever and, finally, the conditioning of the take-or-pay requirements. Except for the last two mentioned, all exceptions concern the initial price question in one form or another and even the amount of refunds is affected by the resolution of this issue. Accordingly, we direct our attention first to this subject.

---

[15] 29 FPC 171 (1963).

[16] 29 FPC 218 (1963).

Before so beginning, however, it is appropriate to take notice at this point of the recent decision by the Court of Appeals for the District of Columbia[11] unanimously affirming the conditioned initial price of 15 cents per Mcf determined by us to be required by the public convenience and necessity for the issuance of permanent certificates in the *Skelly* proceeding. Starting with the basic premise that "The Commission was obligated to be guided by *Atlantic Ref. Co.* v. *Public Service Comm'n*, 360 U.S. 378" and that, by that decision, the Commission is required to decide the "in-line" price in granting permanent certificates, the court approved our determination to hold initial prices to the "in-line" level computed as of the time the contracts there involved were executed. In finding that the data relied upon by the Commission adequately supported the price condition, the court (as had the Commission in that case) gave controlling weight to the numerous permanent certificates which had been issued for contracts executed in the relevant time period covering a large volume of gas produced in the particular pricing area. Moreover, it should be observed that the court sanctioned fully our refusal to admit into evidence and give consideration to the cost and financial requirements material offered by certain of the producers in that case. We further note the court's agreement that while the guideline prices could not conclusively fix an "in-line" price, guidelines could not be ignored altogether in "in-line" determinations.

In reaching our conclusions herein we have taken full cognizance of the court's decision referred to above, which was rendered during our consideration of this case and prior to the preparation of this decision. In our opinion, the findings which we now make are in full accord with that decision, including the determination of the "in-line" price for these sales, a finding which, as indicated herein, is of necessity predicated on considerations other than those able to be utilized in *Skelly*. The remand by the court of the refund issue in *Skelly*, and the effect of that action on the question of the refunds to be ordered in this proceeding is treated separately on page 638.

Initial Price

As in past area certificate proceedings, general exceptions have been registered to the "in-line" method of determining the initial price and to the application of that method to the dockets at bar. These exceptions allege, in substance, that the "in-line" price determinations are posited on the erroneous theories (1) that the "in-line" price is the sole standard in determining whether conditioned or unconditional certificate should be issued, (2) that the price required by the public convenience and necessity can never be greater than the "in-line" price, and (3) that once an "in-line" price determination is made, future initial contract prices cannot be made permanent unless such prices are equal to or less than the "in-line" price. To the extent that in-lineness of the proposed initial contract prices is not the full measure of the standard utilized in determining whether the sales are required by the present or future public convenience and necessity, we agree with these parties. We do not agree, however, that considerations other than in-lineness of the proposed initial prices are valid where, *as is here the case*, the only disputed issue is the price level at which certificates should be granted. In *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (DC Cir. 1963), the court held that the Commission acted properly in holding the price issue controlling, ". . . it being conceded that the other requirements of public convenience and necessity have been fully met by the proposed sale." Consequently, little value is to be derived from dwelling on other considerations when, in the course of prior phases of the proceeding, the issues have been so narrowed as to leave only the price question for final resolution.

---

[11] *P.S.C. of New York* v. *F.P.C.*, No. 17582, *et al.*, 329 F. 2d 242 (CADC, January 28, 1964).

As stated in the *Skelly* opinion, our principal guide to the determination of a proper initial price for the producers is the Supreme Court's opinion in *Atlantic Refining Co.* v. *F.P.C.* (*CATCO*).[18] The Court in that case made clear that where ". . . the proposed price is not in keeping with the public interest because it is out of line or because its approval might result in a triggering of general price rises . . . the Commission in the exercise of its discretion might attach such conditions as it believes necessary." From *CATCO* and its various judicial and Commission interpretations and implementations, which have now reached substantial proportions both in numbers and in the amount of natural gas production involved, has come our "in-line" practice of initial price regulation to meet the standard of Section 7. In our opinion, the application of this method in the cases beginning with *CATCO*-on remand[19] is in full accordance with the mandate of the Supreme Court, is the only method so appropriate, and is the proper method to be followed in determining the initial price issue in this proceeding.

It is appropriate to consider at this juncture the examiner's exclusion of evidence by his ruling of December 6, 1962. The attempted appeals from this ruling were denied by us for two reasons: First, because the examiner refused to certify that extraordinary circumstances existed necessitating prompt decision by the Commission to prevent detriment to the public interest,[20] and secondly, because the pleadings submitted to us[21] demonstrated neither a conclusive need for our intervention at that point in the proceeding nor probable cause for modifying, let alone reversing, the action taken below. It is significant to note that when these orders were issued we were engaged in a general review of the basic utility of economic and financial evidence in certificate cases, and when we had already found in *Skelly* that evidence of this nature is normally not relevant.[22] Our decision in this regard has since been buttressed by our conclusions set out in the *Texaco Seaboard*, *Placid Oil* and *United Gas Pipe Line* cases,[23] and by the court's decision affirming the initial price condition in *Skelly*, wherein it stated that consideration of the proffered cost and financial requirements evidence "was not essential." We have thoroughly and completely considered the arguments presented in the December 1962 appeals and in the exceptions to the examiner's decision which go to the exclusion of the offered evidence. Without needlessly resummarizing the various studies presented and the facts shown by this material, amply set out in the intermediate ruling, we conclude, for the reasons expressed in our prior opinions and orders and in the December 6, 1962 ruling, that the examiner did not err in excluding the evidence specified. We therefore adopt the ruling of the examiner as our own for the purpose of this decision. We note, however, that the refusal to permit the producers to attempt to show cost and other economic justifications for a higher price line over that prevailing in an earlier period, administratively essential if we are to achieve "in-line" determinations prior to the resolution of area rate proceedings, makes it incumbent on the Commission to give special consideration to the field price evidence as to shifts in the pricing line.

---

[18] 360 U.S. 378 (1959).

[19] *Continental Oil Company, et al.*, Opinion No. 351, 27 FPC 96, 99–102; order denying rehearing and clarifying opinion, 27 FPC 592 (1962).

[20] Transcript p. 1049.

[21] Appeals from the examiner's ruling were submitted by Gulf, Texaco, Sun and Standard, and jointly by Amerada, Cox, Gulf, Hamon, Humble, Hunt, Skelly, Sohio, Spencer and Texaco.

[22] See also, *Socony Mobil Oil Co., Inc.*, 27 FPC 347 (1962).

[23] *Texaco Seaboard Inc., et al.*, Opinion No. 383, issued March 27, 1963, 29 FPC 593, *Placid Oil Co., et al.*, Opinion No. 398, issued July 17, 1963, 30 FPC 283; *United Gas Pipe Line Co., et al.*, Opinion No. 399, issued July 17, 1963, 30 FPC 329. In response to applications for review of each of the listed opinions the Commission has refused to modify its findings in regard to evidence of this type.

As in *Skelly* the most important evidence in determining the proper initial price to be allowed for these sales is the field price exhibit submitted by staff. This study shows pertinent data for all sales in Texas District No. 4 with total initial rates of 14 cents per Mcf or more under contracts executed between January 1, 1955, and August 31, 1962, on file with the Commission. The examiner, relying on the exhibit, derived an "in-line" price of 15 cents per Mcf, including all allowances, for the contracts in this proceeding. In so doing he limited his consideration exclusively to sales under contracts executed between September 28, 1960, and August 30, 1962, for which permanent certificates had already been issued. His compilation shows that six such contracts have been made permanent at 14 cents per Mcf (205,500 Mcf),[24] one at 14.7 cents per Mcf (17,280 Mcf), six at 15 cents per Mcf (107,836 Mcf), and one at 17.24 cents per Mcf (25,950 Mcf). He discounted the effect of the 17.24-cent sale for the reason that it was permanently certificated in a shortened procedure case.[25] The examiner also alluded to the fact that, excluding the sales here involved, there have been nine temporary authorizations issued at 14 cents per Mcf (171,800 Mcf), one at 14.5 cents per Mcf (35,000 Mcf), one at 15 cents per Mcf (6,000 Mcf), and one at 18 cents per Mcf (31,000 Mcf).[26] He held, however, that temporary authorizations, being issued *ex parte* and without a hearing, "have no value as precedents for determining in-line prices because the prices contained in the temporary certificates are not necessarily prophetic as to price at which the permanent certificates will be issued." He therefore gave no weight whatever to the prices under temporary authorizations issued during the period.

The fact that some of the permanently certificated sales have been approved in uncontested proceedings does not, standing alone, serve to diminish or destroy their otherwise precedential value in the formulation of a price line. The notice of application issued by us in all cases sets out the initial contract price at which certification of the sale is sought and the absence of any contest on the price issue, we believe, may justifiably be taken to mean that interested consumer groups and our staff have no objection to the issuance of a certificate at the rate proposed.

---

[24] The volume stated in parentheses is the estimated total first month production at each of the price levels under the rate schedules represented.

[25] A number of applicants point out in their exceptions that 13 out of 14 permanent certificates listed by the examiner, rather than only the one, were in fact issued in noncontested proceedings.

[26] The limited number of temporaries is attributable to the fact that all pending applications for sales in District No. 4 having an initial price of 15 cents per Mcf or more were to have been consolidated into this proceeding. The one sale at 15 cents not included apparently was overlooked. The 18-cent sale, which is by Lamar Hunt in Docket No. CI61-1736, was involved until recently in another proceeding, *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, issued December 9, 1963.

Moreover, we disagree with the examiner that the series of court opinions establishing the "suspect price doctrine" support the proposition that temporary authorizations have no relevance in this determination. The courts rendering those opinions were addressing themselves to situations wherein not only were numerous uncontested contracts readily available for consideration, but where other certificates had been rejected upon judicial review for being issued at excessive rate levels. The facts before us are considerably different. First, unlike *UGI* and the subsequent cases relying upon it,[27] and, in fact, unlike any previous "in-line" determination rendered by this Commission, the record before us contains neither substantial numbers of relevant permanently certificated contracts nor evidence of substantial volumes of gas moving under permanent certificates. Secondly, the certificates herein asserted to be "suspect" have not been judicially rejected, but rather are temporary authorizations. As we previously indicated in *Texaco Seaboard*,[28] permanent certificates are decidedly more persuasive and relevant in "in-line" determinations than are temporary authorizations, but this does not thereby render temporary authorizations *per se* inadmissible. The soundness of this principle is readily apparent when viewed in the light of the facts before us, where, absent the ability to consider these authorizations, we would not be basing our decision upon "substantial volumes of gas moving in interstate commerce."

The examiner's basic error is that by confining his consideration to the relatively few noncontested permanent certificates granted during the time period he ignored the bulk of the evidence. It is not by chance that with the single above-noted exception the only permanent certificates granted during the period were at prices of 15 cents per Mcf or lower, because all applications for higher prices were opposed by some or all of the interveners herein. If these permanent certificates are to control, then the "in-line" price for sales representing over seven times the minimal volumes of gas permanently certificated during this period is being determined, not upon consideration of a hearing record, but by the unreviewable fiat of the interveners. Further, sanctioning his approach under the instant circumstances would bring about the realization of the Ninth Circuit's forewarning as expressed in the *UGI* case:

> As previously indicated, the price line is intended to reflect current conditions in the industry. Therefore comparative prices on which it is based must be prices under which a substantial amount of natural gas presently moves in interstate commerce. *The limitation urged by UGI could well defeat this objective by restricting the comparison to a small number of contracts under which little gas moves today. It could, in fact, require a rollback to prices having no current relevancy.*[[29]] [Emphasis added.]
>
> Assuming the criteria employed by the Commission to be otherwise acceptable, we hold that the consideration for comparative purposes of producer prices not previously scrutinized does not evidence an abuse of discretion.[30]

---

[27] *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (10th Cir., 1963); *UGI* v. *F.P.C.*, 290 F. 2d 147 (5th Cir., 1962); *UGI* v. *F.P.C.*, 290 F. 2d 133 (5th Cir., 1961); *UGI* v. *F.P.C.*, 287 F. 2d 159 (10th Cir., 1961, *PSC of New York* v. *F.P.C.*, 287 F. 2d 146 (D.C. Cir., 1960).

[28] 29 FPC 593 (1963).

[29] The court at this point observed that virtually none of the other sales in the area had been scrutinized in rate or certificate proceedings. In the present case the only permanently certificated sales in this period were those few uncontested sales at the lowest end of the pricing scale.

[30] 283 F. 2d 817 (9th Cir., 1960), cert. denied, 365 U.S. 881 (1961).

The volume of gas here in issue represents the largest proportion of the gas sold in interstate commerce in Texas District No. 4 under contracts executed in the period under consideration. Unlike the situation in *Skelly* there is no substantial volume of gas presently under permanent certification. Examination of the staff exhibit reveals that the permanently certificated sales considered by the examiner in fixing the "in-line" price amount to only 1.39 percent of the volumes for all sales shown and to no more than 2.05 percent of the sales permanently certificated in the District contained in the exhibit. The sales by Sotex, Docket Nos. CI61–1377 and CI62–1140, are themselves larger than all 26 sales cited by the examiner while those by Sun in Docket Nos. CI61–657 and CI61–956 have in themselves nearly twice the monthly volumes of the permanently certificated sales. In such circumstances it can hardly be maintained that the "in-line" test of the "prices under which a *substantial* amount of natural gas presently moves in interstate commerce"[21] has been fully met by the examiner. In our opinion it would be manifestly improper to base an "in-line" price upon the initial prices permitted in these few isolated and inherently nonrepresentative sales whose total volume does not even begin to approach the amount of natural gas production involved in these dockets.

The interveners urge, and the examiner holds, that if 15 cents is "in-line" for the past and our task is to "hold the line" the price should remain at 15 cents for any subsequent period. This reasoning ignores the crucial fact that "the key element in our in-line determination is the time at which the contract in issue was executed."[22] We do not believe that our task of assuring adequate supplies of gas in interstate commerce at the lowest reasonable price can be adequately discharged by an approach which requires us to shut our eyes to the evidence presented in later proceedings. A rule of law that would deprive producers of any opportunity to show that the initial prices in the 1950's did not suffice for the 1960's or, conversely, that would deprive consumer groups of an opportunity to show a decline in the price level, is not fair to the producers or in the long-term interest of consumers. Nor is such a rule even suggested by the decisions of the courts. The Supreme Court in *CATCO* emphasized the necessity for the Commission to scrutinize the level of initial rates, to make sure that they are in line and will not trigger a further escalation of producer prices. Holding the line in the present market means stopping unjustified escalations of field prices; it means price stability. It does not mean that, irrespective of evidence to the contrary, an absolute price freeze is to be imposed until some future date when area proceedings ultimately establish just and reasonable rates.

We believe the beginning point in our determination of the "in-line" price for the period in question must be the contract prices at which substantial volumes of gas were sold during the period. These contract prices are, of course, only the beginning, and not the end of our inquiry because our task is to scrutinize these initial prices and not to rubber stamp them. But clearly these contract prices cannot be ignored.

The record reveals the following information with respect to applications filed with the Commission for certificates for sales of gas in Texas District No. 4

---

[21] *Id.* at page 824.

[22] *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438, 1442. See also *Atlantic Refining* v. *F.P.C.*, 316 F. 2d 677 (CADC, 1963) affirming a Commission decision expressly holding the contract date to be critical.

under contracts executed between September 28, 1960, and August 30, 1962, with initial prices of 14 cents per Mcf or more:

Contract price (cents)	Number of contracts	Permanent or temporary certificate price (cents)	Estimated first month volumes
14.0	15	14.0	377,300
14.5	1	14.5	35,000
14.7	1	14.7	17,280
15.0	7	15.0	113,836
15.944	1	15.944	22,500
16.0	8	16.0	323,350
16.4965	1	16.4965	9,280
16.5	2	16.5	31,366
17.0	3	17.0	405,000
17.24	3	17.24	87,250
17.24347	10	17.24347	504,222
18.0	9	18.0	769,031
19.795	1	18.0	540,000

The total initial contract prices range from 14 cents per Mcf to 19.795 cents per Mcf. By volumes, 17 percent of the sales were contracted at prices between 14.0 and 15.944 cents per Mcf, 11 percent at prices from 16.0 through 16.5 cents per Mcf, 31 percent at prices between 17.0 and 17.3 cents per Mcf, and 40 percent of the production is priced by contract at 18 cents per Mcf or more. Thus, the sales at prices of 16 cents per Mcf and above account for fully 82 percent of the gas presently moving in interstate commerce under contracts executed in the time period here under consideration. The weighted average contract price for all sales listed in the foregoing table is in excess of 17.176 cents per Mcf.

By comparison a listing of contracts executed during the two years preceding September 28, 1960, a period approximately equivalent in duration to that here involved, shows the following distribution:

Contract price (cents)	Number of contracts	Permanent or temporary certificate price (cents)	Estimated first month volumes
14.0	30	14.0	1,514,000
14.5	14	14.5	720,225
14.6	2	14.6	86,350
14.7	1	14.7	90,000
14.8	2	14.8	102,000
15.0	15	15.0	1,309,860
15.5	1	15.5	45,000
16.0	12	15.0	1,118,250
16.0	18	16.0	1,553,420
16.5	1	15.0	600,000
16.5	8	16.5	446,325
17.0	2	15.0	333,733
17.0	4	17.0	562,000
17.24	8	17.24	1,223,604
17.2416	2	17.2416	39,031
17.24347	3	17.24347	86,000
18.0	5	18.0	335,865
19.5	1	19.5	1,000,000
20.0	5	18.0	621,810
20.045	6	18.0	957,720

As may be seen the total initial prices for these contracts ranged up to 20.045 cents per Mcf. A volumetric breakdown similar to that given above reveals that 30 percent of the gas was priced between 14.0 and 15.99 cents (as against only 17 percent in the later period), 29 percent between 16.0 and 16.99 cents (against 11 percent), 18 percent between 17.0 and 17.99 cents (13 percent less than in the later period), and 23 percent at 18 cents and above (17 percent less than the amounts later priced at this level). The weighted average price is 16.50 cents per Mcf, more than six-tenths of a cent under the weighted average in the 1960–1962 period. It is obvious from these figures that the general level of contract prices increased in the latter period.

We are, of course, aware that "the acceptance of questioned existing prices as a guide in setting the line might itself have the anomalous effect of creating a standard by which the questioned rates would then be judged." We, therefore, cannot and do not find that the 17.2-cent contract price average is the "in-line" price. However, a blind application of the doctrine that if a certificate application is challenged no weight can be given to the contract price in determining the price line would leave the Commission without substantial evidence on which to base its decision. We believe that the fact that the great bulk of the gas moving in interstate commerce in the area during this period was contracted for and temporarily authorized at initial rates between 16 and 18 cents per Mcf must be considered in fixing the "in-line" price for this period. Refusal to consider the temporarily authorized prices, in the circumstances of this proceeding, and reliance only on the few permanently certificated prices can only result in a complete stagnation of prices at the "in-line" level initially determined for this District, a level based on prices being paid for gas under contracts drawn up long before these contracts were executed.

We have been told by the court that "the price line is intended to reflect *current* conditions in the industry." Of the 62 contracts for sales of gas executed in the District post-September 28, 1960, within the range of our consideration, over 80 percent have initial prices at or in excess of 16 cents per Mcf. With a few exceptions, the sales below 16 cents per Mcf are for relatively small volumes, a factor which, together with the location of the gas in relation to the lines of prospective purchasers, presumably influenced the amount the contracting purchaser was willing to pay for the specific production.[33]

A major issue in this case is the effect of our policy Statement on the prices in contracts executed after September 28, 1960, when it was issued. The Policy Statement expressly provided that the price levels announced therein were only "for the purpose of guidance and initial action by the Commission and their use will not deprive any party of substantive rights."[34] The applications for rehearing of the Policy Statement filed almost immediately after its issuance were met with a reiteration of this basic premise, namely that the price standards set out in the Policy Statement were not final determinations and would be "subject to all the requirements of the Act and our Rules with respect to hearings."[35] It is and should have been obvious at all times that the Commission's announcement of a guideline price could not deprive interested parties of their right to a hearing to contest a particular application and the interveners who correctly thought that the Commission's ceilings were not "in-line" have consistently asserted their right to such a hearing.

---

[33] Of the 24 contracts priced below 16 cents (not including the one sale herein at 15.944 cents), 14 are for sales to Valley Gas Transmission Company which operates entirely as a gatherer, purchasing gas at less than the price line in order to resell at a rate acceptable to major interstate pipelines. In *Skelly* we specifically referred to the activities of Valley, indicating that its sales are not comparable to the normal producer-pipeline sales. *Cf. Hassie Hunt Trust,* Docket No. G–19115, where the exclusion of Valley Gas Transmission Company sales in Texas Railroad District No. 2 was dissented to by Commissioners O'Connor and Woodward on grounds inapposite to the instant proceedings. The remaining 10 sales are made to a company which, though classified technically a pipeline, operates in this area in a fashion similar to Valley.

[34] 24 FPC 818, 819 (1960).

[35] 24 FPC 1014 (1960).

Our original guideline for Texas District No. 4 indicated that the maximum price which would be consonant with the public convenience and necessity was 18 cents. In *Skelly*, however, we specifically held that the impact of our announcement of the original guidelines upon contracts subsequently executed was an issue that could not then be determined. Consequently we severed out the "post-policy" contracts from the determination, for the purpose of evaluating this impact in later proceedings. That such severance was propitious was indicated in the recent affirmance of the *Skelly* opinion in *P.S.C. of New York* v. *F.P.C.*[36] where the court concluded that:

> As the Commission states, its Policy Statement was a guide to its future action and 'cannot effect an automatic approval of proposed rates, particularly where the contracts were entered into before the Policy Statement.' *The Commission could not have ignored altogether its own Policy Statement*, but was not required to be controlled thereby in deciding, in the Section 7 proceedings, that the in-line price should be fixed at a less amount on the basis of the evidence analyzed in its opinion. [Emphasis added.]

It is apparent from an examination of the instant record that the issuance of the Policy Statement had at least the effect of holding down contract prices to an 18-cent level. Many producers contended that on encountering a pipeline buyer willing to pay 18 cents as an initial rate they stopped searching for a higher paying purchaser and concluded their contracts. Other producers indicated that where their asking price was in excess of 18 cents, they reduced their price demand down to the 18-cent figure in reliance on the ceiling level. The impact of the Policy Statement and the Fifth Amendment thereto on Skelly Oil Company and Amerada Petroleum Corporation was especially forceful. These companies point out that their contracts executed in June and July 1962 had an initial price of 18 cents per Mcf but were voluntarily amended by them in October 1962, subsequent to the Fifth Amendment, to reduce the price to 16 cents per Mcf. The same 2-cent reduction was applied to all other contract prices. Although both sales were temporarily authorized by us at the 18-cent rate, no gas was delivered by either producer prior to the price reductions and all deliveries made subsequent thereto have been at the 16-cent price.[37] To now hold that the promulgation of the 18-cent area ceiling is to be viewed as having absolutely no weight in the determination of the price at which certificates should issue in these dockets is to refuse to acknowledge the purpose of the Policy Statement and its effectiveness as a ceiling on prices in contracts executed after its issuance.

It is with the foregoing in mind that we conclude, as did the court in *P.S.C. of New York* v. *F.P.C.*, that some measure of weight should be given to the guideline price in the determination of the initial price issue for the contracts consolidated into this proceeding. We do not suggest, however, that these sales be certificated to an amount at or even approaching 18 cents per Mcf, for to do so would be to ascribe an irrebuttable conclusiveness to our unilaterally determined guideline price as it existed, and would fail to take into account the variety of other factors influential in our determination.

In the final analysis our action in fixing the price at which these sales should be certificated requires an exercise of our informed judgment and utilization of the expertise developed in the handling of thousands of producer certificate applications. *CATCO* requires that we hold the line pending the determination of just and reasonable rates. This line cannot, however, always be ascertained with mathematical precision. In *Skelly* a 15-cent price was selected on the basis that the contracts previously certificated and thus not involved in that proceeding represented a substantial amount of natural gas and because almost all the contracts above that level were involved in litigation. In this case there is no adequate group of contracts, in litigation or otherwise, made in the relevant time period and involving substantial quantities of natural gas which can be looked to in fixing the line without considering the contracts in issue. The record makes it clear that the lowest price at which substantial volumes of new gas were sold in interstate commerce in the area during the period in question was 16 cents per Mcf. While there is evidence that points in the direction of a higher price we believe the teachings of *CATCO* require that we draw the line at the lowest reasonable level. It is, therefore, our considered opinion, and we so find, that the price required by the public convenience and necessity for these sales is 16 cents per Mcf, including all reimbursements and charges, and that certification of prices above this rate would not be in the public interest and would not serve the public convenience and necessity. We shall, therefore, condition the certificates issued in these dockets to this price.

---

[36] No. 17582, *et al.*, 329 F. 2d 242 (D.C. Cir., January 23, 1964).

[37] The amendment by Skelly was accepted by the Commission on December 13, 1962, and designated as Supplement No. 1 to Rate Schedule No. 176. Amerada's amendment was accepted by letter-order dated January 4, 1963, and is carried as Supplement No. 1 to its FPC Rate Schedule No. 100.

We are supported in our conclusion that 16 cents is the "in-line" price for the contracts before us in the period 1960–1962 by the fact that such a price is in line with the 15-cent price we fixed in *Skelly* for the contracts executed in the late 1950's. This is true because many of the previously permanently certificated sales, upon which we based our prior determinations, contained escalation clauses which would permit these producers to charge up to one cent more for their gas in the period which we are considering. In banning indefinite escalation clauses the Commission expressly approved definite escalations at five-year intervals and a one-cent increase every five years is a common provision in producer contracts. We do not mean to suggest that in any circumstances the mere passage of time will justify an increase in the initial price for gas. Our decision herein draws the line substantially below the average going price for gas in the area and in fact, two cents per Mcf below the Commission's guideline ceiling price prevailing at the time these contracts were executed. The 16-cent determination herein thus not only preserves, but actually rolls back, the initially considered price line for the period in issue.

A few producers excepting to the examiner's decision indicate particular circumstances in their sales which they claim warrant special consideration. Thus, Clark Fuel Producing Company points out that it produces its gas from two fields and then pays a gatherer from 1.74 to 2.24 cents per Mcf for transportation of the gas 22 and 33 miles to the main line of its purchaser. It contends that its sale is more nearly comparable to a sale by a gatherer to a pipeline. Gulf Oil Corporation notes that it delivers its gas at points on its purchaser's pipeline located approximately one mile off the producing leases, seeking more for this service. Both refer to a large volume (480,000 Mcf per month) gathering company sale in District No. 4 permanently certificated at 17 cents per Mcf. However, we notice in the staff exhibit that with one exception all sales permanently certificated in this District at 15 cents and above have either a "field" or "plant" delivery, meaning that a certain amount of gathering has taken place before delivery is made. The sales involved in the present case are almost all field delivery. It must also be recalled that the 15-cent "in-line" price which we have found applicable to the pre-Policy Statement contracts similarly included all reimbursements and charges affecting the base initial price. In determining the total price applicable to the sales herein we have taken into consideration not only the matter of delivery point but also other factors shown in the staff exhibit such as pressure, heating value, escalations,[28] and first month's production. We see no justification for any allowance above 16 cents for any of these sales.

Price Increases

With two exceptions the contracts in these dockets provide for periodic increases in the price of the gas to be delivered to the pipeline purchasers. The majority of the escalations are for one cent per Mcf each five years, although some provide for an escalation each four years of the contract term. In others the escalation is a fraction over or under one cent per Mcf. On February 24, 1964, we issued an order in another proceeding[29] imposing a moratorium on all price increases in excess of 18 cents per Mcf on sales in District No. 4 on the ground that any rate increase filings to a level higher than that amount would have an adverse impact on the pricing structure in this area through the operation of price redetermination clauses. In our opinion the same moratorium should be applied as a condition to the certificates issued in this proceeding. The accompanying order includes this provision.

Refunds and Take-or-Pay

The examiner's decision requires refunds in eight dockets in accordance with conditions imposed in the temporary authorizations. Such refund requirement is hereby confirmed with the exception of the following sales: First, the Sun Oil Company sale, authorized in Docket No. CI62-276, never commenced, and consequently, no refunds would be in order. Secondly, because the total price temporarily authorized MPS Production Company (Operator), Docket No. CI62-726, Amerada Petroleum Corporation, Docket No. CI62-1544, and Skelly Oil Company, Docket No. CI63-73, was 16 cents, the same price we herein determine as "in-line," no refunds are required.

The temporary authorizations issued in the remaining dockets do not provide for refunds in the event the initial public convenience and necessity price is found to be lower than the prices permitted under the authorizations. Based on our conclusion in *Skelly* that refunds should not be ordered where the temporary authorization does not contain an express condition, the examiner denied a request to order refunds in these dockets. The Court of Appeals, in its decision, has now clearly stated that our power to order refunds does not depend upon an explicit refund provision in the temporary authorizations. "Should the occasion be appropriate for its exercise the power resides in the Commission when it grants a permanent certificate. To hold that it may not then require refund of excessive prices previously permitted without notice or hearing or mature consideration, since the Commission acted on an emergent and temporary basis, would be inconsistent with the regulatory responsibility of the Commission to aid in the ascertainment and authorization of just and reasonable rates."[60]

---

[28] Cherosage Enterprises, Inc., *et al.*, contends that its 18-cent price is justified, in part, because its contract contains no provision for price escalations, periodic or otherwise. As we have indicated, most other contracts in this proceeding and throughout District No. 4 call for a price increase of one cent each five years. Allowance of the 18-cent price to Cherosage on this basis would permit it to collect an amount 2 cents over the other producers receiving certificates for five years and, for an additional five years, one cent above the increased prices, all without a refund obligation. We may assume that prior to the expiration of either of these periods, an area proceeding will long since have been concluded for District No. 4 establishing a just and reasonable rate for all gas production in the area. Accordingly, we see no reason to grant Cherosage any special allowance for this feature.

[29] *Hassie Hunt Trust, Operator, et al.*, Docket No. G-19115, *et al.*, Order Granting Application for Reconsideration and Modifying Opinion and Order, 31 FPC 447.

The court has also stated, however, that the existence of the power to order refunds at the time of permanent certification does not mean that its exercise is mandatory. The standard to be followed is the standard of equity, and the decision as to whether refunds should be ordered is to turn on equitable considerations. The existence of a refund requirement is one such consideration but is not controlling; the public interest factors must also be weighed and may be adequate to offset the absence of an explicit condition.

In view of this recent decision, we conclude that the public interest would best be served by deferring for the present the decision whether refunds should be ordered in these remaining dockets, and if so, the extent of such refunds. The parties to the proceeding will be given an opportunity to submit further briefs on the issue of refunds and a determination will be made thereafter. At present it is considered that oral argument before the Commission on this issue will not be necessary.

The order accompanying the initial decision conditions the take-or-pay requirement in each contract to be subject to the provisions of our final order in the rule-making proceeding in Docket No. R–199. This, as well as the limitation in the condition that the producers will not be required to accept provisions for less than 80 percent of the annual contract quantities, is in line with the general practice in our recent decisions. The exceptions to the condition will be denied.

One producer, Cherosage Enterprises, Inc., *et al.*, has requested that oral argument be granted before the Commission. We conclude that no useful purpose would be served by such argument and that the request should be denied. The exceptions not discussed herein are immaterial to the result in this case or are without substantial support or reasonable basis in law and should be denied. The examiner's decision, to the extent not inconsistent herewith, should be adopted as part of this opinion and order.

The Commission further finds:

(1) The following applicants:

	Docket Nos.
Amerada Petroleum Corporation, *et al*	CI62–1544
American Petrofina Company of Texas	CI61–1418
Busmore Oil & Gas Company, Operator	CI61–1641
Cherosage Enterprises Inc., *et al*	CI62–1459
Clark Fuel Producing Company (Operator), *et al*	CI61–1279
Coates, George H	CI62–355
Cox, Edwin L	CI62–621
H. H. Phillips, Jr., *et al*	CI62–954
Gulf Oil Corporation	CI62–607
Hamon, Jake L. (Operator), *et al*	CI61–922
Hamon, Jake L	CI61–1745
Hudson, W. H. (Operator), *et al*	CI62–1074
Humble Oil & Refining Company	CI62–704
Hunt, Lamar	CI61–730
Sohio Petroleum Company (Operator), *et al.* (formerly Katz Oil Company (Operator), *et al.*)	CI61–627
McWood Corporation	CI61–839

---

[60] *P.S.C. of New York v. F.P.C.*, 329 F. 2d 242 at 249.

	Docket Nos.
McWood Corporation	CI62-703
W. Rhinehart Miller & Hewitt B. Fox d.b.a. Miller & Fox (Operator), *et al*	CI62-624
Monsanto Chemical Company	CI61-876
MPS Production Company (Operator), *et al*	CI62-726
MPS Production Company (Operator), *et al*	CI62-738
Skelly Oil Company	CI63-73
Spencer, Emory M. (Operator), *et al*	CI61-1451
Standard Oil Company of Texas (Division of California Oil Company)	CI61-1377
Standard Oil Company of Texas (Division of California Oil Company)	CI62-1140
Sun Oil Company	CI61-657
Sun Oil Company	CI61-1101
Sun Oil Company	CI61-1584
Sun Oil Company	CI62-276
Sun Oil Company	CI61-956
Sunray Mid-Continent Oil Company (Name changed to Sunray DX Oil Co.)	CI61-1103
Texaco Inc	CI61-961
Texaco Inc	CI61-1757
Tex-Star Oil & Gas Corp. (Operator), *et al*	CI62-729
Union Producing Company	CI62-639

are engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are or, upon commencement of the sale, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and conditions attached to the certificates herein issued, the applicants referred to in paragraph (1) are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in paragraph (1) above for the sale of gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) Each certificate issued severally as provided in paragraph (A) above is hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 16 cents per Mcf at 14.65 psia from the date of issuance of this order and until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) above shall file supplements to their presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(D) The certificate herein issued to Sun Oil Company in Docket No. CI62-276 is conditioned upon its being accepted in writing by the applicant within 30 days of the issuance of this order.

(E) Within 60 days from the date of issuance of this order each of the applicants in Docket Nos. CI61-1451, CI62-607, CI62-639, and CI62-729 shall refund to the respective pipeline purchaser, with interest, a sum equal to the difference between the price charged to and collected from such purchaser and the total price set forth in paragraph (B) above, applied to all volumes paid for by such purchasers under the contracts which form the subject matter of this proceeding from the date of the contract until the effective date of this order. The interest charge specified herein shall be calculated at the rate of 7 percent per annum and shall continue until full refund has been made.

(F) Within 10 days of the date of the refunds provided in paragraph (E) above, each of the applicants shall file with the Commission an officially certified statement showing the amount of the refund, its manner of computation, the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(G) The decision whether refunds should be ordered as a condition to the other certificates herein issued is deferred for subsequent determination. Within 30 days from the date of issuance of this order the parties to this proceeding, to the extent desired, may file briefs directed to the issue whether refunds should be ordered in any or all of the dockets and the extent of such refunds, if any. Replies may be filed within 10 days of service of the briefs herein provided.

(H) Each certificate issued in paragraph (A) above is further conditioned to provide for a moratorium on the filing of all price increases in excess of 18 cents per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR64-2 or until January 1, 1968, whichever is earlier.

(I) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R-199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(J) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(K) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(L) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(M) The motion for opportunity to present oral argument before the Commission is denied.

(N) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

Commissioner Ross *dissenting.*

Ross, Commissioner *dissenting:*

I dissent to the 16¢ in-line price determination for the reason that there is no proper evidence in this case to sustain such a result. As a matter of fact, the majority itself has summarized its difficulties by saying, "In this case there is no adequate group of contracts, in litigation or otherwise, made in the relevant time period and involving substantial quantities of natural gas which can be looked to in fixing the line without considering the contracts in the issue."

Originally, the sole purpose of this hearing was conceived as a vehicle to see if the in-line price of 15¢ prior to September 28, 1960 was affected by the issuance of the Policy Statement. The majority in the *Skelly* opinion stated, as to the four certificate cases which gave rise to this proceeding,

> The precise question of the weight to be given in a certificate case to the area price in effect at the time a producer contract is executed has not previously been an issue before this Commission. . . . It [the record] contained inadequate information for evaluating the effect, if any, of the Commission's enunciation of an 18-cent ceiling upon the in-line price in the area at the time the four post-area ceiling contracts were made. . . . We do not suggest that the Commission's announcement of ceiling prices as a guideline for conditioning certificates and suspending rate increases necessarily had the effect of raising the in-line price to that level but the Commission is not prepared in advance of a hearing on the issue to say that its own ceiling prices are entitled to no weight in determining the initial price under contracts executed after the ceiling prices were put into effect . . . and we have placed in the hearing crucible the issue of the effect of the ceiling upon subsequent contracts—a hearing which can be concluded promptly under the new guideline enunciated in this opinion for determining the initial price. [*Skelly Oil Co.*, 28 FPC 401.]

The majority now is faced with a situation of its own making. Apparently they now recognize that the Policy Statement by itself is not sufficient to raise the in-line price, note for example their statement that only "some measure of weight should be given to the guideline price . . ."[1] Thus, it now becomes necessary to dream up some other grounds which, by so doing, raise all kinds of other policy considerations and which in the interests of orderly regulation should be pointed out. It could be that this is substantially a case of "chickens coming home to roost." In any event, it appears that the rule of this case is that when the normal evidentiary basis for establishing an in-line price is absent, then anything else will do because as a last resort the Commission can always say, "On the final analysis our action in fixing the price at which these sales should be certificated requires an exercise of our informed judgment and utilization of the expertise developed in the handling of thousands of producer certificate applications." To this I would refer interested readers to my dissent in *Skelly*. As to our expertise and as to the thousands of producer certificate cases which the Commission has handled, I must say I would be more impressed if, in the last ten years, at least one just and reasonable producer price had been established by which to measure these prices.

---

[1] See explanation and decision of Examiner Binder issued July 23, 1964, in this case and Examiner Weston's decision issued January 14, 1964, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, which dispose of the reliance argument very effectively.

If one is to take the Commission's expertise with a few grains of salt, then the justification for the 16¢ in-line price appears to rest on other grounds. First, the Commission says the result must be correct because this is really not a case of increasing the in-line price of 15¢ to 16¢ but rather "Our decision herein draws the line substantially below the average going price for gas in the area, and in fact, two cents per mcf below the Commission guideline ceiling price prevailing at the time these contracts were executed. The 16¢ determination herein thus not only preserves, but actually rolls back, the initially considered price line for the period in issue." Really! To take a price which the majority itself already has held to be excessive in a prior proceeding by 3¢ and then use this erroneous price to rationalize a 1¢ increase is going too far for me.

The majority also seek to give the 16¢ an aura of gentility by suggesting that, due to the lapse of time, an extra cent wouldn't be unreasonable. I am personally unfamiliar as to exactly what period of time the majority considered. Was it from September 28, 1960 to October 10, 1960, the date of one of the certificates involved herein? Then again, I don't know how much weight to ascribe to their statement "We do not mean to suggest that in any circumstances the mere passage of time will justify an increase in the initial price for gas." Does this mean that persons presently selling gas at our ceilings who have been so doing for over 5 years can secure an extra cent if it is in their contract? If the answer is no, what is the distinction? To what extent will a lapse in time be a relevent factor in setting area rates?

Another apparent basis for the 16¢ price is the decision of the Court of Appeals in *Public Service Commission of New York* v. *F.P.C.*[2] It certainly is an interesting decision all right but is it authority for the majority's position? I don't think so. The majority cite it essentially as a ground for establishing an "in-line" price by relying upon temporaries when there is no other satisfactory evidence. Actually, the court said in upholding our decision that 15¢ was the proper in-line price and that we were correct in using "the situation prevailing there in the years 1958, 1959 and 1960", and taking as "our most important evidence a study prepared by the Commission staff analyzing contract and price data for the years 1955 and later." The court goes on and characterizes our actions as follows, "In addition, as the opinion points out, nearly all the contracts with prices above 15 cents were subject to litigation. Being under a cloud they were eliminated from consideration. The Commission also placed under the same cloud, or in a suspect category, other contract prices above 15 cents which, though not themselves in litigation, appeared because of the higher prices to be subject to the same infirmities as those which were. The Commission also gave less consideration to prices allowed under temporary certificates than under permanent certificates, because the former were issued ex parte and informally, without full investigation." Following this, the court says, "It is principally urged that the Commission erred in limiting, as above indicated, the evidence upon which it relied."

---

[2] *Public Service Commission of the State of New York* v. *F.P.C.*, Nos. 17582, *et al.*, 329 F. 2d 242. (CADC, January 23, 1964.)

Thus it can be readily seen that the import of the decision is simply we were correct in limiting our consideration to principally the staff study actually used in that case and in not allowing the higher temporary prices to establish a higher in-line price as urged by some of the parties. If we had done otherwise, the result would have been different. In fact, the specific holding of the court is that proceedings such as this "permit the Commission to fix the 'in-line' price, not on a basis of cash outlay or replacement costs, but on the basis of the price level established by comparable sales contracted for those placing gas in the area in interstate commerce."

I question whether this holding justifies our unlimited exercise of expertise, or giving very much weight to the Policy Statement and economic time escalation.[3] The majority on page 630 of their decision apparently agrees for they say, "We do not agree, however, the considerations other than in-lineness, of the proposed initial prices are valid where, *as is here the case* the only disputed issue is the price level at which the certificates should be granted." However, on page 633, the majority apparently rejects this in-line concept by stating, "A rule of law that would deprive producers of any opportunity to show that the initial prices in the 1950's did not suffice for the 1960's or, conversely, that would deprive consumer groups of an opportunity to show a decline in the price level, is not fair to the producers. . . ." I leave to the readers of this opinion the unenviable task of determining the import of these conflicting statements.

The principal error of the majority is found on page 634 where it lists those contracts on which it bases its in-line conclusion. Of the 38 contracts listed having prices in excess of 15¢, 36 or about 95 percent, *are the very contracts whose price is being investigated in this case.* This type of bootstrap rationalization is legally indefensible. In the first UGI case, the Court held:

> When a order certificating an initial rate is under court or Commission review, it is possible that the certificate may be eventually denied or price conditions may be attached. In our opinion an existing rate subject to such a hazard does not provide a reasonably reliable basis upon which to predicate a price line. [*U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824.]

The reason for this holding was explained by the Court in the following language:

> In the event the existing rate is later modified or conditioned as a result of the pending proceedings the foundation of the line derived therefrom would be undermined. Moreover, the acceptance of questioned existing prices as a guide in setting the line might itself have the anomalous effect of creating a standard by which the questioned rates would then be judged. [*U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824.]

Only six months ago, a unanimous Commission specifically recognized the legal effect of that decision:

> The decision of the Ninth Circuit remanding one of the dockets involved in this proceeding, which was followed by other courts in setting aside other orders of the Commission granting certificates for sales from Southern Louisiana at prices of 21.4 cents and above, has made it clear that sales *which are under Commission or court review are not legally relevant for*

---

[3] As to the necessity to increase levels because of the time factor, I assumed that we were setting an interim price which would only affect a relatively short period of time.

> *purposes of determining an in-line* price. [*Placid Oil Company, et al.*, Docket No. G–13183, *et al.*, Opinion No. 398 issued July 17, 1963; 30 FPC 283, 289; footnotes omitted; emphasis added.]

The majority also errs in predicating its decision on suspect or tainted prices. The suspect price doctrine was erected by the Courts upon the failure of this Commission to adhere to the spirit, if not the letter of the law established in *CATCO*.[4] The command is flat. It says that contract prices under review by the Court or pending review, or even like prices in the same area though not currently subject to review, cannot be used as a basis for an order certificating an initial rate.[5] The Commission has more or less adhered to this mandate—until now. Thus, in the predecessor *Skelly* case, a unanimous Commission carefully analyzed the law of those court decisions and then concluded:

> Thus we must eliminate from the discussion the prices involved in the P.S.C. v. F.P.C. remand. With one minor exception, this leaves no producer prices under permanent certificate above 15 cents at the time the record was closed in this proceeding as shown by the second column of the table. [*Skelly Oil Co., supra*, p. 409.]

The table on page 634 used by the majority to justify its conclusion includes prices which have received *ex parte*, emergency temporary authorization. My legal objections to the use of temporaries in fixing an in-line price have been stated many times before. Nevertheless, it is significant that, for the first time, the majority indiscriminately lumps temporaries with permanently certificated prices. Only 17 months ago in the *Skelly* opinion a unanimous Commission held:

> The prices under temporary certificate fall into approximately the same price categories as those subject to review and thus under the court's reasoning must be regarded as suspect. [*Skelly, supra*, p. 409.]

As stated above, the Commission gave no weight to suspect prices in *Skelly*.

The majority purports to justify its use of temporaries and suspect prices for reasons which are wholly unacceptable.

The majority's major reason for utilizing temporaries and suspect prices is to avoid an "arbitrary freeze". There are two responses. First, the same majority had no difficulty in finding the same in-line price in *United*[5a] and *Placid, supra*, that was initially determined in *CATCO* on remand (Opinion No. 351), even though the contracts covered a greater span of time than they do here. But perhaps more important, I would have thought that if there were insufficient evidence to support a change in an earlier price determination, the majority would adhere to the one previously established, instead of grasping for straws to support a higher price. The majority's attitude falls far short of the *CATCO* spirit, as evidenced in *UGI:*

> We believe that the Supreme Court meant to impress upon the Commission an interpretation of the "public interest" which, in the context of a rising natural gas market, demands a real administrative effort to hold back prices. [*U.G.I.* v. *F.P.C.*, 287 F. 2d 146, 150.]

Were it not for the majority's predilection towards a 16¢ result in this case, we might have expected to have found an approach to an in-line determination at least resembling that utilized in the four most recent proceedings of this kind.[6]

---

[4] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378.

[5] See *U.G.I. Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9), cert. denied, 365 U.S. 881; *P.S.C. of N.Y.* v. *F.P.C.*, 287 F. 2d 146 (CADC), cert. den. 365 U.S. 880: *U.G.I. Co.* v. *F.P.C.*, 287 F. 2d 159 (CA10); *U.G.I. Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), cert. den. 366 U.S. 965; *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (1963).

[5a] *United Gas Pipe Line Co.* Docket, No. CP60–36, *et al.*, Opinion No. 399, July 17, 1963, 30 FPC 329.

[6] *Hassie Hunt Trust*, Opinion 412 issued December 9, 1963, 30 FPC 1438; *United Gas Pipe Line Co., supra; Placid Oil Co., supra*, and *Texaco Seaboard Inc.*, Opinion 383, March 27, 1963, 29 FPC 593. The same is true of *Skelly, supra*.

In those cases, the Commission used contracts executed during the most recent three year period which were permanently certificated. A table showing the permanent contracts executed between August 31, 1959 and August 31, 1962 follows:

Price (cents)	Number of contracts under permanent certificates	Estimated first month volumes (mcf)	Price (cents)	Number of contracts under permanent certificates	Estimated first month (mcf)
14.0	27	933,500	15.5	1	45,000
14.5	4	142,000	16.0	1	450,000
14.6	2	86,350	17.0	2	492,371
14.7	1	17,280	17.2	2	52,610
14.8	1	40,000			
15.0	22	1,457,836		63	3,716,947

The above table fails to list the several contracts executed during this period at prices under 14 cents. For the period from the magic escalation date of the majority, i.e., September 28, 1960, there were 23 such contracts permanently certificated at prices between 9.0 cents and 13.8 cents (and two temporaries at 12.2 cents).[7]

This quantum of the above evidence may not be sufficient to satisfy the majority; but after all, the burden of proof is on the applicants.[8] As the Court has held: ". . . the burden of protecting the public interest has fallen on Sections 7 and 4 *where the burden of proof is on the independent producer.*" (*Atlantic Refining Co.* v. *FPC*, supra; emphasis added.)

Before leaving the advisability of relying upon temporaries, I would like to point out the fact that a number of the temporaries are subject to refund with floors in every case below 16¢. As every one knows, temporaries are frequently granted at high prices with not too much concern if there is a refund condition attached. Thus, if weight is to be given to temporaries, the majority should recognize that the refund price is an equally significant factor.

The majority put itself in a box and closed the top when it inflated a solid in-line price, determined after a hearing, to 16¢ and then remanded those contracts executed after September 28, 1960 for a second hearing. The instant opinion is nothing more than a forced rationalization in support of that earlier position. Obviously, the majority strains to justify a higher price than that decided in *Skelly* and affirmed on appeal. Otherwise, the retrial of those cases would be most embarrassing.

In summary, when the forest of verbiage shielding the majority opinion is exposed to the light of day, three important issues emerge from the shadows. First, can the issuance of the Policy Statement—in itself and without reference to any other facts—issued *ex parte* by the Commission serve as a tool to escalate prices for contracts executed after issuance of the Statement? Second, can temporaries alone justify an in-line price, particularly in the light of the majority's policy of refusing to entertain an interested party's objection to temporary certification of a contract if the price is below that listed in the Policy Statement? Finally, can the Commission use the incredible bootstrap of basing its decision as to the proper initial rate for contracts on those very contracts which are being tried? The answer is plainly no to each question, and I suspect the majority would agree were it not for their unfortunate decision to retry the District 4 contracts in the first place.

---

[7] Several of these sales were to gathering companies, and therefore not entitled to much weight, in my opinion.

[8] There are 57 untainted prices here, excluding prices under 14¢. There were 48 in *Skelly, supra.*

On the basis of the foregoing, I therefore hold that the proper in-line price is 15¢.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

BINDER, *Presiding Examiner:* This proceeding involves applications filed by 29 different producers seeking certificates of public convenience and necessity pursuant to Sections 7 (c) and (e) of the Natural Gas Act in 36 dockets for sales of natural gas to be produced by them in Texas Railroad Commission District No. 4.[1] The sales proposed are to be made to four different pipelines for resale in interstate commerce.[2] Pursuant to Commission order issued August 30, 1962, these 36 dockets were consolidated for hearing. The contracts under consideration were executed at various dates between September 28, 1960, the date of the issuance of the Commission's First Statement of General Policy 61-1 and August 30, 1962, the date of issuance of the Fifth Amendment to such policy statement, 28 FPC 441, which was also the date the Commission issued its opinion and accompanying order in the *Matter of Skelly Oil Company, et al.*, Docket No. G-18638, *et al.*; Opinion No. 362 (*Skelly*), 28 FPC 401. This amendment reduced the ceiling price of new gas in Texas Railroad Commission District No. 4 from 18 cents per Mcf to 16 cents per Mcf (at 14.65 psia).

The initial prices set forth in the producers' contracts under consideration here range from 15.944 cents per Mcf to 19.795 cents per Mcf (14.65 psia).[3] Based on the initial applications, the volumes proposed to be sold by the various producers range from an estimated first-month's volume of 550 Mcf to an estimated first-month's volume of 540,000 Mcf.

The following table sets forth the names of the producers, the docket numbers, the contract dates, the estimated first-month's volumes as furnished by the applicants, and the initial price per Mcf as contained in the contracts.[4] The dockets are set forth in the ascending order of the initial prices contained in the contracts.

---

[1] Since the institution of these proceedings Sun Oil Company (Sun) has withdrawn its applications in Dockets CI61-754 and CI61-755.

[2] The pipelines involved are Tennessee Gas Transmission Company, Natural Gas Pipeline Company of America, Ben Bolt Gathering Company, and South Texas Gathering Company.

[3] These prices include the taxes at the date of the execution of the contracts. The contract in Docket No. CI61-1757 relating to Texaco Inc. is the contract which contains the lowest price under consideration, *i.e.*, 15.94 cents per Mcf, and the contract in Docket CI61-1377 relating to Standard Oil Company of Texas (Sotex) is the contract containing the highest initial price, *i.e.*, 19.795 cents per Mcf. Early in the hearing Sotex counsel stated that it would accept a permanent certificate in this docket continuing in effect the conditioned price of 18 cents per Mcf, specified in its temporary authorization issued in May of 1961 which price Sotex has been collecting since it started deliveries.

[4] The table contains no information relating to Sun's dockets CI61-754 and CI61-755 because the applications in these dockets have been withdrawn.

	Docket No.	Contract date	Estimated first-month volumes	Initial contract price per Mcf in cents
Texaco Inc	CI61-1757	6- 1-61	22,500	15.944
Busmore Oil & Gas Co	CI61-1641	4- 1-61	30,000	16.
Cotton, W. L. (operator), *et al*	CI61-1572	4- 1-61	30,000	16.
Miller & Fox (operator), *et al*	CI62-624	5-20-61	3,300	16.
MPS Production Co. (operator), *et al*	CI62-726	11-27-61[a]	57,000	16.
MPS Production Co. (operator), *et al*	CI62-738	11- 1-61	57,000	16.
Sun Oil Co	CI62-276	8-21-61[a]	550	16.
Texaco Inc	CI61-961	12- 1-60	9,280	16.4965
Hudson, W. H	CI62-1074	3- 5-62	5,106	16.5
Hunt, Lamar	CI61-730	10- 1-60	26,260	16.5
Sun Oil Co	CI61-956	12- 1-60	300,000	17.
Cox, Edwin L	CI62-621	10- 1-61	30,000	17.
Sohio Petroleum Co	CI61-627	10-17-60[c]	75,000	17.
Clark Fuel Producing Co. (operator), *et al*	CI61-1279	2- 1-61	58,800	17.24
Sun Oil Co	CI61-1584	3- 1-61	2,500	17.24
Sunray Mid-Continent Oil Co., *et al*	CI61-1103	12-23-60	10,000	17.24347
Tex-Star Oil & Gas Corp., *et al*	CI62-729	6- -61[b]	30,000	17.24347
American Petrofina Co. of Texas	CI61-1418	12- 8-60	15,000	17.24347
Dunlap Oil Corp	CI62-954	1-15-62	15,000	17.24347
Humble Oil & Refining Co	CI62-704	12-20-61	60,000	17.24347
McWood Corp	CI61-839	11-22-60	54,250	17.24347
McWood Corp	CI62-703	11-22-60	49,972	17.24347
Monsanto Chemical Co	CI61-876	11- 8-60	15,000	17.24347
Sun Oil Co	CI61-657	10- 4-60	240,000	17.24347
Sun Oil Co	CI61-1101	12- 8-60	15,000	17.24347
Cherosage Enterprises Inc., *et al*	CI62-1459	4-10-62	8,680	18.
Coates, George H	CI62-355	8-15-61	180,000	18.
Gulf Oil Corp	CI62-607	10-20-61	120,000	18.
Hamon, Jake L. (operator), *et al*	CI61-922	11-21-60	58,333	18.
Hamon, Jake L	CI61-1745	6- 1-61	58,333	18.
Skelly Oil Co	CI63-73	7- 2-62	10,500	18.
Spencer Emory M., *et al*	CI61-1451	11-15-60	45,000	18.
Standard Oil Co. of Texas (Division of California Oil Co.).	CI62-1140	3- 1-62	155,000	18.
Union Producing Co	CI62-639	10-20-61	112,685	18.
Amerada Petroleum Corp., *et al*	CI62-1544	6-15-62	135,000	18.
Standard Oil Co. of Texas (Division of California Oil Co.).	CI61-1377	3-14-61	540,000	19.795

[a] Ratified contract dated 11-1-58.

[b] Ratified contract dated 5-20-55.

[c] On April 9, 1962, the interests of Katz Oil Company in the leases in this docket were transferred to Sohio Petroleum Co. ("Sohio") effective as of March 1, 1962.

By letter order dated May 25, 1962, the Commission ordered the substitution of Sohio for Katz in Docket No. CI61-627 and further granted Sohio temporary authorization to continue the sale and delivery of gas without refund condition at the contract price of 17 cents per Mcf. The aforesaid gas purchase contract has been designated as Sohio Petroleum Co., FPC Gas Rate Schedule No. 71.

It will be observed that there is one contract at 15.944 cents per Mcf; six contracts at 16 cents per Mcf; one contract at 16.4965 cents per Mcf; two contracts at 16.5 cents per Mcf; three contracts at 17 cents per Mcf; two at the 17.24 cents per Mcf level; ten contracts at 17.24347 cents per Mcf; ten contracts at 18 cents per Mcf; and one contract at 19.795 cents per Mcf.

Generally speaking the sales fall into four groups:

1. Thirteen sales, involving estimated monthly deliveries of approximately 1,400,000 Mcf to South Texas Natural Gas Gathering Company at proposed initial contract prices ranging from 16.0 cents to approximately 19.8 cents per Mcf and averaging approximately 17.4 cents per Mcf.

2. Thirteen sales, totaling about 570,000 Mcf per month, to Tennessee Gas Transmission at approximately 17.24 cents per Mcf. (Actually, twelve of the thirteen sales to Tennessee call for this price; the thirteenth by W. H. Hudson, CI62-1074 involves a sale to Tennessee for which estimated monthly volumes are shown at approximately 5100 Mcf and calls for an initial price of 16.5 cents.)

3. Seven sales, totaling approximately 585,000 Mcf per month, to Natural Gas Pipeline Company of America at a price of 18.0 cents per Mcf.

4. Three sales, totaling approximately 56,000 Mcf per month, to Ben Bolt Gathering Company at a price of 16.0 cents per Mcf for two of the sales and 15.944 cents for the third.

The Commission announced in Skelly that it was by separate order severing the applications of four producers who were applicants in that case for permanent certificates, but whose contracts were executed

> between September 28, 1960, when the existing 18-cent area ceiling was adopted and the effective date of the amended area ceiling in this area which we are adopting simultaneously herewith.

These four producers, their docket numbers, initial contract prices estimated first month's production and contract dates are as follows:

	Docket No.	Price (cents)	Estimated first month's production (Mcf)	Date of contract
Katz	CI61-627	17	75,000	10-17-60
Hamon	CI61-922	18	58,333	11-21-60
Sun	CI61-956	17	300,000	12- 1-60
Texaco	CI61-961	16.4965	9,280	12- 1-60

The Commission in its order in the instant proceeding consolidated with these four dockets all of the other dockets set forth in the caption. The reason advanced by the Commission for severing these four dockets from Skelly was that

> . . . the record in this case does not focus upon the effect, if any, which should be given to the prior establishment of the 18-cent area ceiling upon the determination of the appropriate price at which we should issue permanent certificates for these contracts. [*Skelly*, p. 412.]

In addition, the Commission said:

> . . . our determination to sever these four relatively small applications and to consider the price at which they should be permanently certificated in a new proceeding, together with the other temporary certificates issued in Texas District No. 4 since the establishment of the 18-cent ceiling price, resulted not from any unwillingness to expose these parties to the test of a hearing record, but rather from our conviction that the present record provided an inadequate basis for determining the proper initial price for these contracts.
>
> The precise question of the weight to be given in a certificate case to the area price in effect at the time a producer contract is executed has not previously been an issue before this Commission. The *CATCO* case and our other recent certificate decisions all involved contracts executed before area prices were announced. The record in this proceeding also focused on the question of the in-line price for the period prior to the announcement of area ceilings. It contained inadequate information for evaluating the effect, if any, of the Commission's enunciation of an 18-cent ceiling upon the in-line price in the area at the time the four post-area ceiling contracts were made.
>
> * * * * * * *
>
> * * * *We have rejected, after hearing, the contention that the establishment of the 18-cent ceiling in September 1960 fixed that price as the proper in-line price in Texas Railroad District 4 as of that date; and we have*

> *placed in the hearing crucible the issue of the effect of the ceiling upon subsequent contracts*—a hearing which can be concluded promptly under the new guidelines enunciated in this opinion for determining the initial price. [Underscoring supplied; *Skelly*, pp. 417–418.]

The matters which have been put in issue in this proceeding are (1) the effect of the ceiling [in the Commission's Policy Statement issued September 28, 1960] upon subsequent contracts; (2) the level of the public convenience and necessity initial price at which the producer sales herein should be permanently certificated and (3) whether refunds should be ordered on amounts collected heretofore pursuant to temporary authorizations permitting the producers to collect prices in excess of such public convenience and necessity initial price level as may be determined upon in this proceeding.

I. *The Effect of the "Ceiling" Upon Subsequent Contracts*

In the light of the Commission's numerous decisions endeavoring to "hold the line" on initial prices in granting certificates of public convenience and necessity as required by the Supreme Court's decision in CATCO[5] and as required by the substantial number of decisions in the courts of appeal interpreting *CATCO*[6] it is hardly likely that the Commission in establishing price ceilings for new contracts in its Statement of General Policy 61–1, or in any of the amendments to such statement intended to breach or undermine the "hold the line" price doctrine it was admonished by the courts to apply and maintain in Section 7 producer cases. Nor is there good ground to assume or conclude that the Commission issued its Statement of Policy containing ceiling prices for the purpose of bringing about an increase in the "in-line" prices above those which existed immediately prior to the issuance of such document.[7] Moreover, it should be obvious that were the Commission to engage in such an improper purpose it would be reversed by the courts on appeal not long after it had implemented such purpose through the issuance of an order in a contested Section 7 proceeding. Accordingly, if the relevant evidence developed during the course of a contested Section 7 hearing showed that the "ceiling price" was in fact higher than the "in-line" price at the time of the issuance of the policy statement, the former price could not serve as the measuring rod in determining whether or not to impose a price condition. Further, the issuance of the Fifth Amendment to the Statement of General Policy on August 30, 1962, could have had no possible impact and no meaning insofar as either "in-line" or ceiling prices between September 28, 1960 and August 30, 1962, are concerned. The reason is that the Fifth Amendment is not by its terms retroactive and could have an impact only insofar as contracts executed after August 30, 1962, are concerned and there are no such contracts involved in this proceeding. Secondly, no prices higher than the "in-line" price should be employed as the measuring rod for determining the public convenience and necessity price for contracts made immediately after the Commission had made an official determination of where the "in-line" price was located. To hold that it would be appropriate to employ higher prices than such "in-line" price would be to hold directly in contravention of the admonition of the Supreme Court in *CATCO* to "hold the line" and would be directly contrary to the views expressed in the substantial number of Court of Appeals cases interpreting the Supreme Court's holding in *CATCO*.[8] Further, the Statement of General Policy prices was not issued to modify or reverse CATCO or any other court decisions, and in any event they could not effectively do so under the existing law.

---

[5] *Atlantic Rfg. Co.* v. *Pub. Serv. Comm'n.*, 360 U.S. 378 (1959).

[6] *Cf. United Gas Improvement Co.* v. *Federal Power Com'n.*, 5 Cir., 290 F. 2d 133 (1961); *United Gas Improvement Co.* v. *Federal Power Com'n.*, 10 Cir., 287 F. 2d 159 (1961); *Public Serv. Com'n. of New York* v. *Federal Power Com'n.*, 109 U.S. App. D.C. 292, 287 F. 2d 146 (1960); *United Gas Improvement Co.* v. *Federal Power Com'n.*, 9 Cir., 283 F. 2d 817 (1960).

[7] As the Commission noted in Skelly "We have rejected, after hearing, the contention that the establishment of the 18-cent ceiling in September 1960 fixed that price as the proper in-line price in Texas Railroad Commission District 4 as of that date; . . ." The "in-line" price immediately prior to September 28, 1960, was not higher than 15 cents per Mcf (*Skelly*).

The Commission's Statement of General Policy 61-1 was adopted *ex parte*. Accordingly, insofar as the ultimate determination of the appropriate Section 7 public convenience and necessity price is concerned, the price ceilings contained in such policy statement do not constitute an order binding on the distributors, the public service commissions (who frequently intervene in contested Section 7 proceedings), or upon any party to this contested proceeding. Nor does such policy statement have any evidentiary value which is capable of being measured in any meaningful way because the weight given the various factors going into the formation of the ceiling prices have never been explained or defined in any decision or public statement issued by the Commission. Further the policy statement does not constitute a directive that the ceiling price was thereafter to be considered the public convenience and necessity initial price for the area to which it was related because under the decided cases the public convenience and necessity price must be referenced to the "in-line price" at the time of the execution of the contract in the area where the gas is being produced.

The Commission's price ceiling serve the limited purpose of advising the industry and all other persons of a Commission policy to the effect that normally it will issue certificates of public convenience and necessity to producers in non-contested certificate proceedings at prices no higher than the ceiling and that such producers normally can obtain temporary certificates permitting producers to collect from purchasers at prices no higher than ceiling during the effective period of the temporary certificate in the circumstances described in Section 157.28 of the Commission's regulations (*i.e.*, in *ex parte* situations). However, even in situations where the contract price was at or below the announced ceiling prices, the Commission has exercised its discretion in the granting of temporary certificates both *before and after Skelly* by inserting conditions therein requiring refunds of monies received in excess of the "rate determined to be required by the public convenience and necessity" after a hearing on the merits.

The insertion of conditions of this character in the temporary certificates shows that the applicants had no basis for claiming that the issuance of the policy statement assured them of receiving ceiling prices in any permanent certificate of public convenience and necessity which might be issued after a contested hearing. On the contrary, the insertion of these conditions in the temporary certificates showed that the applicants might obtain less than ceiling if and when a permanent certificate were issued. The insertion of these rate conditions in the temporary certificates illustrated graphically that the Commission never intended that its ceiling prices were to be relied upon as representing the "in-line" price or a rate which was necessarily the "rate . . .

---

[8] See footnotes 5 and 6, *supra*.

required by the public convenience and necessity."[9] Moreover, since the Skelly determination every temporary certificate issued by the Commission in Texas Railroad Commission District No. 4 relating to a contract executed prior to the issuance of the Fifth Amendment proposing prices in excess of 15 cents has been conditioned down to a floor of 15 cents per Mcf (14.65 psia).

The Commission's exercise of discretion in inserting refund conditions in temporary certificates whenever it considered it appropriate to do so, even where the contracts were at or below the ceiling prices, indicated clearly to every producer who accepted such a conditioned certificate that there could be no sound basis for assuming that reliance could be placed upon the ceiling prices announced in the policy statement as affording a right, in the event of a contest, to the agreed upon contract price as long as the latter was at or below the ceiling price. Such reliance would be illusory and wholly inconsistent with the issuance of a refund condition in the temporary certificates. In fact if such an understanding or purported reliance were sound, all the applicants here would be entitled to a permanent certificate at the contract rate without the necessity for a formal hearing and no reasonable purpose would be served by setting this matter down for a hearing in which the rate level was to be considered a major issue, as the Commission contemplated that it would be when it issued Skelly.[10]

The courts have held, and it is still the law, that where there is a contest in which the matter of the initial price becomes an issue there must be a hearing and the applicant must establish, among other things, that the initial price he is seeking is "in-line".

This legal principle was recognized and implemented by the Commission's order issued on January 30, 1963, 29 FPC 171, in the instant proceeding after Texaco had applied for a *subpoena duces tecum* requiring the Commission's Secretary to produce various materials upon which the Commission relied in setting the level of the ceiling prices contained in its policy statement.

---

[9] In Dockets Nos. CI61–1451, *Emory M. Spencer (Operator), et al.*, and in CI62–729, *Tex-Star Oil & Gas Corporation (Operator)* in this proceeding, the Commission issued temporary authorizations in Texas Railroad Commission District No. 4 *prior to Skelly* and after the issuance of the Policy Statement which conditioned the first docket on the refunding of "amounts in excess of the amount resulting from the rate finally determined to be proper . . .", and conditioned the second docket, on the refunding "with interest at 7 percent of any amounts collected in excess of 12.12268 cents per Mcf which amount may be in excess of the rate determined to be required by the public convenience and necessity . . .".

The effective dates of the certificates issued to Emory M. Spencer (Operator), *et al.*, and Tex-Star Oil & Gas Corporation (Operator) are May 25, 1961, and May 4, 1962, respectively.

Spencer's initial contract price was 18 cents per Mcf. Tex-Star's initial contract was at 17.24347 cents per Mcf.

In Dockets Nos. CI62–1544, *Amerada Petroleum Corporation, et al.*; CI62–607, *Gulf Oil Corporation;* CI62–726, *MPS Production Company* (Operator); CI62–73, *Skelly Oil Company;* CI62–276, *Sun Oil Company;* and CI62–639, *Union Producing Company* in this proceeding, the Commission issued temporary authorizations subsequent to Skelly each conditioned on the refunding of "any amounts collected plus interest at 7 percent per annum, in excess of 15.0 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity . . .".

The respective effective dates of the temporary certificates for these producers were as follows: *Amerada Petroleum Corporation, et al.*, October 8, 1962; *Gulf Oil Corporation*, October 8, 1962; *MPS Production Company (Operator), et al.*, January 30, 1963; *Skelly Oil Company*, October 8, 1962; *Sun Oil Company*, February 20, 1963; and *Union Producing Company*, October 8, 1962.

The initial contract prices for Amerada, Gulf, Union and Skelly were 18 cents per Mcf and the initial contract prices for MPS and Sun were 16 cents per Mcf.

[10] *Skelly*, Opinion No. 362, p. 412.

In denying Texaco's application the Commission stated:

> Our opinion in *Skelly* makes it clear that the Policy Statement sets forth *only "guideline" prices* at which the Commission indicated it would exercise its discretion *in the absence of protest* by intervening parties to certificate sales in a particular area. *It did not purport to fix the "in-line" price which CATCO and the UGI cases which followed it makes clear are, in the absence of a compelling showing to the contrary, to be the public convenience and necessity price fixed after the statutory Section 7 hearing.*
>
> *The burden of justifying the price at this hearing rests with the producer-applicant, but to the extent that contract provisions allow, this price may be higher or lower than the guideline price as the evidence demonstrates.* [pp. 172–173 footnotes omitted; italic supplied.]

The Commission's statement in the Texaco order issued in the instant case quoted above was repeated on February 7, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 29 FPC 273 when the Commission issued an order denying Texaco's request for a *subpoena duces tecum* in that case. An important footnote in the Commission's order denying Texaco's applications reads as follows:

> 5. Our reference in Skelly to the fact that the producers in those proceedings would be free to show whether the in-line price at the time of their contracts was the original ceiling price established on September 28, 1960, the lower price found to be the in-line price prior to that date or the 16-cent price established in the 5th Amendment to the Statement of General Policy does not mean that they are confined to any of these three separate prices if the relevant in-line price is in fact at some other level. *By this language we meant only to convey the thought that at this hearing all parties would be free to show the proper in-line price, wherever it might happen to fall.* [p. 275; italics supplied.]

The Commission in this footnote again said that the objective of the hearing was to show the locus of the "in-line" price beginning with the period starting on September 28, 1960, and ending August 30, 1962. This directive to find the "in-line" price for this period was made in the context of a holding that the "in-line" price for the period immediately preceding September 28, 1960, was 15 cents per Mcf. The Commission in *Skelly* relied heavily on the CATCO and UGI cases requiring the Commission to hold the line and the Commission held the line at 15 cents per Mcf. The problem to be resolved here is whether in the period immediately following September 28, 1960, up to August 30, 1962, the "in-line" price should be placed at a higher level than 15 cents per Mcf because weight should be given to the 18-cent ceiling price, or because of other considerations.

As he pointed out, the Commission realized that the 18-cent price ceiling did not establish such figure as the "in-line" price in September 1960. Nor could any reasonable consideration of the policy statement be read as making the document a form of promissory note to the industry, authorizing prices higher than "in-line" prices so long as they did not exceed 18 cents per Mcf in future certificates of public convenience and necessity which the Commission might issue. The policy statement containing the 18-cent ceiling price did not stem from any quasi-judicial hearing, was binding on no one, and neither denied nor granted any rights. It was not an order and the document was not adjudicatory in any sense.

Further, the degree of importance which the Commission attached to any of the numerous factors to which it hinged its conclusions concerning ceiling prices has never been disclosed. In these circumstances when the Commission "placed in the hearing crucible the issue of the effect of the ceiling upon subsequent contracts . . .",[11] the producers took various approaches in their attempt to resolve this issue.

For example, some of the producers testified that they "relied" on the Policy Statement as authorizing them to receive differing contract prices, without price conditions so long as such prices were not above 18 cents per Mcf.

Since the Commission in *Skelly* had "rejected, after hearing, the contention that the establishment of the 18-cent ceiling in September 1960 fixed that price as the proper in-line price as of that date"[12] and since there is no basis in the evidence for concluding that the 18-cent price became the in-line price immediately after September 28, 1960, or at any time between September 28, 1960 and August 30, 1962,[13] the testimony of reliance on the ceiling price during the period between September 28, 1960 and August 30, 1962, could hardly be considered a seriously responsive answer to the "precise question of the weight to be given in a certificate case to the area price in effect at the time a producer contract [was] executed" in this case.[14]

Other producers including Texaco sought a *subpoena duces tecum*, among other reasons, for the ostensible purpose of obtaining evidence from the Commission's records which they could employ in resolving the issue of the weight to be given the ceiling prices in determining the appropriate public convenience and necessity price in this proceeding.[15]

Texaco offered evidence by its own witnesses, largely of an economic nature[16] but since no one in this proceeding knows how much weight was given by the Commission to any of the factors referred to in the policy statement or specifically how these factors were considered, Texaco's evidence could hardly be considered responsive to a determination of the issue of the weight to be given to the Commission's ceiling prices. Moreover, Texaco's economic evidence was excluded for the additional reasons set forth in the examiner's ruling of December 6, 1962.

Sun, on the other hand, attempted to make a full rate case presentation and its evidence was also rejected for the reasons set forth in the examiner's December 6, 1962 ruling.

The Commission's statements in Skelly reflect its position that such decision did not purport to modify or reverse the principles expressed in the *CATCO* and *UGI* cases to the effect that the appropriate public convenience and necessity price in the absence of a showing to the contrary, is to be referenced to the "in-line" price in the area under consideration as of the time of the execution of the contract and that in determining such "in-line" price the Commission is not required to determine whether the "in-line" price is the just and reasonable price.

The announcement of the ceiling prices in the policy statement were not intended to require a change in the character of these proceedings from that which antedated the policy statement. The Commission's orders in issuing temporary certificates and in denying Texaco's applications also reflected a Commission view that it understood that the "in-line" price might very well be different than the ceiling price. In addition, the orders denying the subpoena applications reflects the Commission's opinion that the ceiling price levels were not to be considered paramount to or substitutes for the "in-line" price levels in determining whether or not to condition a permanent certificate as to price after a contested hearing.

---

[11] *Skelly*, Opinion No. 362, p. 418.

[12] As a matter of fact the Commission issued its Fifth Amendment on August 30, 1962, the day it issued Skelly, fixing the ceiling price at 16 cents per Mcf. There is no basis in the evidence for concluding that between September 28, 1960 and August 30, 1962 that either the price or the cost of producing gas went down. (*Skelly*, Op. No. 362, p. 418.)

[13] *Skelly*, Opinion No. 362, p. 418.

[14] *Skelly*, Opinion No. 362, p. 417.

[15] Recently, the Court of Appeals for the District of Columbia granted a Commission motion to dismiss Texaco's appeal from a Commission order denying Texaco's application for a *subpoena duces tecum*. Nos. 17608, 17652, 17700 (June 24, 1963).

[16] Texaco in this proceeding offered evidence of essentially the same character as was rejected by the Commission in *Skelly*, Opinion 362, pp. 410 and 411.

Certainly the price ceilings were not issued for the purpose of affording the producers the right to the ceiling price or the "in-line" price whichever was higher, for such a purpose would erode the basic admonition of CATCO to "hold the line". It should be recalled that in Skelly the Commission found that the "in-line" price was 15 cents up to September 28, 1960, and the Commission held such line up to the latter date. As we have noted, one of the purposes of this hearing is to determine whether the Commission has good ground to permit the "in-line" price in certificate cases to be raised to consumers after September 28, 1960, by giving weight to a ceiling price in effect at the time the producer contracts involved in this proceeding were executed. The ceiling price, as the discussion hereinafter shows, was 3 cents higher than the "in-line" price. The importance of giving weight to the in-line price rather than the ceiling price may be highlighted by reference to the statements of the Chairman of the Commission in a speech on September 19, 1961, to the Independent Natural Gas Association where he pointed out that:

> I am fully aware of the great responsibilities of the Commission in the field of producer rates. This year the industry will probably sell something in the order of 13 trillion cubic feet of gas. A difference of a cent a thousand cubic feet is equal to $130,000,000 a year. A cent a thousand difference in the value of the estimated proven reserves is equal to approximately 2½ billion dollars. If we calculate on the basis of the estimates of recoverable gas in the ground in the United States, each cent per thousand is roughly equal to 15 billion dollars. These are indeed astronomical figures, even in Texas, so large that in computing them I checked several times to be sure I was not running in an extra string of zeros.

The importance to consumers and to producers of even a one cent increase in the "in-line" price cannot be minimized. Accordingly, it is clear that even a one cent increase in the "in-line" price from 15 cents to 16 cents is a matter of very great importance, and that an increase in the "in-line" price should not be put into effect simply on the basis of an ex parte policy statement which the Commission advised the Court of Appeals was not an order, was binding on no one, and which did "not modify the procedures under which certificates are granted. . . ."[17] Nor should the "in-line price be considered to have suffered a change because some producers misunderstood the meaning and effect of the policy statement and placed unwarranted reliance on it as affording them higher than "in-line" prices for their gas in certificate proceedings.

Certainly where the "in-line" price is at a different level than the "ceiling price" both could not be used at the same time in the same proceeding as the measuring rod in the determination of the locus of the public convenience and necessity initial price. Further, where it appears that the ceiling price is higher than the "in-line" price, the application of the ceiling price instead of the "in-line" price as the basis for determining whether or not a price condition should be imposed would amount to taking a position directly contradictory to the Supreme Court's admonition in CATCO to "hold the line" until the just and reasonable price can be determined under other sections of the Act.

---

[17] See discussion of Commission's motion to dismiss in *Wisconsin* v. *F.P.C.*, 292 F. 2d 753 discussed hereinafter.

In the Commission's initial Statement of General Policy No. 61-1, the Commission stated, among other things, that it considered eight different factors in arriving at its ceiling prices for initial service rates, 24 FPC at 819. These factors were as follows: (1) cost information from all decided and pending cases, (2) existing and historical price structures, (3) volumes of production, (4) trends in production, (5) price trends in the various areas over a number of years, (6) trends in exploration and development, (7) trends in demands and (8) the available markets for gas.

It is clear that the Commission did not limit itself solely, or even principally to a determination of what the "in-line" price in any of the various areas was at the time it issued the initial policy statement or at the times it issued any of the amendments thereto. Instead, it considered many other matters wholly unrelated to a determination of "hold the line" prices and then the Commission stated that it had applied all such considerations to the determination of what has been referred to here as "ceiling prices". Quite obviously the Commission reached its conclusions as to price levels for policy statement purposes by according weight in an unstated amount and in an unexplained manner to the various factors set forth in the policy statement. The factors usually considered in order to establish the locus of an in-line price are much more limited than those employed by the Commission in reaching ceiling prices. The considerations bearing upon in-line prices are related to and based upon a reasonable comparison of the contract prices previously entered into in the area at the time of the contract being considered and are not necessarily related to the various factors upon which the Commission's ceiling prices were based. This was illustrated by Skelly. The ceiling prices reached by considering the factors referred to by the Commission could, depending upon how such factors were employed, be used to place the public convenience and necessity price at practically any figure. As this case developed it was established that the in-line prices were substantially lower than the ceiling prices. This appears to be one of the reasons why Texaco would rather go into a presentation of evidence based upon its own exposition of certain of the factors considered by the Commission in determining ceiling prices rather than into a presentation of evidence relating to "in-line" price. It may also be observed that since there is no way of comparing a known with an unknown, no meaningful conclusion could be reached by any attempted comparison of the economic data offered by a producer, such as Texaco, with the economic data employed by the Commission.

The considerations relating to the determination of the ceiling prices and those relating to the "in-line" prices were of a different character and if the prices were the same for the ceiling prices and the "in-line" prices it would be pure coincidence. The Commission gave some recognition to this fact when it said in *Skelly* that "We have rejected, after hearing, the contention that the establishment of the 18-cent ceiling in September 1960 fixed that price as the proper "in-line" price in Texas Railroad Commission District 4 as of that date . . .". The Commission arrived at the 16-cent price in its Fifth Amendment by considering the same factors as it had considered when it issued its 18-cent ceiling price.[18] The Commission's quoted comments rejecting the claim that the 18-cent price was the "in-line" price are equally applicable to the 16-cent price set forth in its Fifth Amendment.

---

[18] See particularly footnote 1 in the Fifth Amendment.

In its order of January 30, 1963, the Commission explained that the ceiling prices are not the standard for determining the public convenience and necessity initial price but that the "in-line" price is the standard.[19] In addition, as the Commission pointed out, the *CATCO* and *UGI* cases put it under an obligation to condition its permanent certificates of public convenience and necessity to a hold-the-line standard, at least when an applicant's price is the subject of a contested proceeding.

Accordingly, the attempt by Texaco to make an issue in the instant proceeding of the nature or the correctness of the data employed by the Commission or its judgment in fixing the ceiling prices in the policy statement by the use of the data referred to in the policy statement constituted an attempt to raise an issue which was irrelevant to a determination of a "hold-the-line" price, which is the essential standard in determining whether or not to insert a price condition in a certificate order after a hearing on the merits. The examiner issued a 23-page ruling on December 6, 1962, granting motions to strike and exclude evidence offered by various interveners. Such ruling is incorporated herein in full and is made an integral part of this initial decision.

The Commission's position in issuing its orders denying Texaco's applications for *subpoena duces tecum* were completely consistent with views which it has expressed publicly in the past. For example, shortly after the Commission issued its Statement of General Policy 61–1, the State of Wisconsin and its Public Service Commission sought to have the validity of such policy statement reviewed in the Court of Appeals for the District of Columbia.[20]

The background facts were as follows:

The Commission issued its Opinion No. 338 in *Phillips* on September 28, 1960, 24 FPC 537, and at the same time it issued its Statement of General Policy No. 61–1. The State of Wisconsin and its Public Service Commission were important parties to the Phillips case. They considered themselves aggrieved by the issuance of the policy statement and sought review in the Court of Appeals for the District of Columbia.

The response of the Commission to Wisconsin's petition for review of the policy statement was to file a motion with the Court of Appeals to dismiss it on the ground that the Court lacked jurisdiction. In its motion to dismiss the Commission stated to the Court of Appeals that:

> The [Policy] Statement does not direct anyone to act or refrain from acting. It says that it does not fix the ultimate justness and reasonableness of any rate level. (Pet. Exh. A, p. 3) *It does not modify the procedures under which certificates are granted or rates are changed. It denies no rights and imposes no obligations.* [Italic supplied: see page 2 of FPC's motion to dismiss addressed to the United States Court of Appeals in the District of Columbia Circuit.]

The Court of Appeals in *Wisconsin* v. *F.P.C.*, 292 F. 2d 753, held that:

> It is apparent to us that petitioners here were not parties to a proceeding below within the meaning of the statute.[1] This case is controlled by our decision in *United Gas Pipe Line Co.* v. *Federal Power Commission*, 86
>
> [1] Petitioners also contend that they are "aggrieved" and that the action in question is a final "order." Since we hold that petitioners were not parties to a proceeding below, we find it unnecessary to decide, and hence we expressly refrain from deciding these questions.

---

[19] See "Order Denying Application for Reconsideration and Rehearing" in *Amerada Petroleum Corporation, et al.*, Docket CI62–1544, *et al.*, issued January 30, 1963, 29 FPC 171, particularly the last paragraph, page 172.

[20] *Wisconsin* v. *F.P.C.*, 292 F. 2d 753.

> U.S. App. D.C. 314, 181 F. 2d 796, certiorari denied 1950, 340 U.S. 827, 71 S. Ct. 63, 95 L. Ed. 607. Petitioners there sought review under Section 19(b) of an order of the Federal Power Commission adopted pursuant to the rulemaking procedures established by Section 4 of the Administrative Procedure Act, 5 U.S.C.A. § 1003. No quasi-judicial hearings were held. We ruled that we were without jurisdiction to entertain the appeal, and said "[n]ot all orders were made reviewable under Section 19(b) * * *. On its face, the Act contemplates review of a decision based on evidence presented in a quasi-judicial proceeding before the Commission * * *. Unless the case comes to us after such a proceeding, we are given no authority to directly review the Commission's action." Id., 86 U.S. App. D.C. at pages 316-317, 181 F. 2d at page 798.[2]
>
> [2] It is manifest that the mere filing of a petition for rehearing could not make petitioners parties to a proceeding if they were not already so. Under Section 19(a) of the Natural Gas Act, only a party to a proceeding is entitled to seek rehearing. [292 F. 2d 754, 755.]

It appears that the Court of Appeals was impressed with the Commission's explanation to the effect that the Policy Statement did not modify the procedures under which certificates were to be granted and that the Policy Statement denied no rights.

The holding in this case points up the fact that there was no basis for any producer to consider that he was entitled to rely upon it as affording him a right to any contract price up to 18 cents per Mcf.

One of the important facts which should be kept in mind with regard to the Commission's Policy Statement is that its major emphasis is directed towards informing the industry that the Commission would not issue certificates without a price condition where the proposed initial rates included *"rates higher than those indicated in the appendix* attached to" the policy statement "in the absence of compelling evidence calling for other action by the Commission". The Commission, however, has never defined what it considered "compelling evidence."

The Commission's Policy Statement does not even refer to what action the Commission would take as to conditioning prices where the sales are proposed at initial rates at the level or below the level of the prices set forth in the appendix to the statement. Specifically, the policy statement does not say that the Commission would not attach contingent refund provisions in temporary or permanent certificates where the initial rates proposed were at or lower than the price ceilings but, in fact, as we have pointed out above the Commission has in circumstances where it has deemed it appropriate to do so in cases where the initial rates were below the policy statement prices attached such refund conditions in temporary certificates in Texas Railroad Commission District 4 down to a floor of 15 cents per Mcf.

The Commission has never issued any orders or made any statements to indicate that it had changed its position from that set forth in its motion to the Court of Appeals in *Wisconsin* v. *F.P.C.*, nor has it ever indicated that it intended to abandon the "in-line" standard for one involving higher rates than "in-line" prices. On the contrary the Commission's orders in contested hearings have been consistent with its representations to the court in the Wisconsin case and consistent with *CATCO* and the *UGI* cases. The Commission's order in *Skelly* was based on its effort to hold the line as have all other permanent orders issued by the Commission since *CATCO*.

It was, or should have been, clear to the applicants that no independent producer had a reasonable basis to claim reliance upon the appendix to the policy statement as granting him any rights to higher prices than the "in-line" prices as required by the decided cases. Specifically, the policy statement did not establish any producer's entitlement to any specific contract price in a contested certificate proceeding. The policy statement is not an adjudicatory order and it is not a finding covering the locus of the "in-line" price and, therefore, any statement of reliance thereon made by a producer could not be given any weight.

The Commission in Skelly pointed out that the record in that case "contained inadequate information for evaluating the effect, if any, of the Commission's enunciation of an 18-cent ceiling upon the in-line price in the area at the time the four post-area ceiling contracts were made." (*Skelly*, p. 418.)

The Commission also said that "The precise question of the weight to be given in a certificate case to the area price in effect at the time a producer contract is executed has not previously been an issue before this Commission."

No contention was made by any party or the Staff that some percentage of the difference between ceiling prices and "in-line" prices should be employed to determine the public convenience and necessity initial prices for the producers involved in this proceeding. As the evidence introduced in this case has developed, either the producers should be entitled to rely completely upon the ceiling prices contained in the Commission's Statement of Policy to afford them any price arrived at in arm's length bargaining up to the ceiling price, or no weight should be given to the policy statement insofar as the fixation of the appropriate public convenience and necessity price is concerned.

If, arguendo, it were assumed that weight should be given the ceiling prices in the policy statement, the record is bare of any evidence upon which it could be determined that partial rather than full and complete weight should or could be given to the price ceilings contained in the Commission's Statement of Policy.

The most important case involving the problem of public convenience and necessity in a Section 7 producer case is *CATCO*.[11]

As every one in this industry is aware the Supreme Court in *CATCO* held that the attachment of a rate condition

> is not an encroachment upon the initial rate-making privileges allowed natural gas companies under the Act, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., supra*, but merely the exercise of that duty imposed on the Commission to protect the public interest in determining whether the issuance of the certificate is required by the public convenience and necessity, which is the Act's standard in § 7 applications. In granting such conditional certificates, the commission does not determine initial prices nor does it overturn those agreed upon by the parties. Rather, it so conditions the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determine under other sections of the Act. Section 7 procedures in such situations thus act to hold the line awaiting adjudication of a just and reasonable rate. Thus the purpose of the Congress "to create a comprehensive and effective regulatory scheme. *Panhandle Eastern Pipe Line Co.* v. *Public Service Comm'n of Indiana*, 332 U.S. 507, 520 (1947), is given full recognition. And § 7 is given only that scope necessary for "a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by Mobile Gas Service

---

[11] *Atlantic Refining Co., et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378 (1959).

> Corp., supra, at 341. On the other hand, if unconditional certificates are issued where the rate is not clearly shown to be required by the public convenience and necessity, relief is limited to § 5 proceedings, and, as we have indicated, full protection of the public interest is not afforded. [360 U.S. 378, 391-392.]

Accordingly when the Commission attaches a rate condition in a Section 7 producer case it is not engaged in initial rate-making but it is merely exercising its duty to protect the public interest during the period when the just and reasonable rates can be determined under other sections of the Act. *Section 7 procedures in such situations thus act to hold the line awaiting adjudication of a just and reasonable rate.*

To place the line up to 20 percent above "in-line" prices determined as they were in *Skelly*, the *UGI* cases and others under principles established by the courts in contested cases is to avoid the duty which the Supreme Court said was imposed upon the Commission under the Act.

In *The Atlantic Refining Co., Petitioner v. Federal Power Commission, Respondent, et al.*, the United States Court of Appeals for the District of Columbia No. 17,166 decided March 21, 1963, the court noted that:

> . . . the public must be protected from the time the gas first enters interstate commerce. Since there is no mechanism for refund of overcharges under Section 7, *if the Commission is to err in setting an initial rate, it should err on the low side* because the company under Section 4, can immediately increase the rate, subject to disallowance by the Commission after a full rate proceeding, the public being protected as to refunds in the interim.

The court's reference to the lack of a mechanism for refund of overcharges obviously refers to overcharges made in the context of the issuance of a permanent certificate where higher than "in-line" prices were authorized or to a situation where a temporary certificate was issued without refund conditions at higher than "in-line" price.

Both the Court of Appeals for the District of Columbia in The Atlantic Refining Company case and the Circuit Court of Appeals for the Tenth Circuit in *California Oil Company, Western Division* v. *Federal Power Commission*, No. 7148, decided in the March, 1963, Term referred to "the purpose of the Natural Gas Act to 'underwrite just and reasonable rates to the consumers of natural gas'" and both opinions also noted that "As the original § 7(c) provided, it was 'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.'" 52 Stat. 825. "The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Atlantic Refining Co.* v. *Public Service Commission, supra*, 360 U.S. at page 388.

A member of the Federal Power Commission recently expressed some personal views regarding the ceiling prices set forth in the Statement of General Policy and the "in-line" prices as applied in independent producer certificate proceedings. The Commissioner's statement [2a] reads in pertinent part as follows:

> Apparently there has arisen a great deal of misunderstanding with respect to the difference between the so-called "guideline" prices set forth in the General Policy Statement, and the so-called "in-line" price which is determined as a result of hearing in independent producer certificate proceedings.

[2a] Address of Lawrence J. O'Connor, Commissioner, Federal Power Commission, before the Eastern District of the American Petroleum Institute, Pittsburgh, Pennsylvania, May 3, 1963. Commissioner O'Connor joined in the majority opinion in Skelly.

> The "guideline" price as set forth in the Statement of Policy is the maximum price at which the Commission will issue an unconditioned temporary certificate to enable the initiation of service in cases of emergencies under Section 157.28 of the Commission's Regulations under the Natural Gas Act. *In the absence of protest or petition to intervene, after publication of notice, the Commission will issue a permanent certificate at the "guideline" price.*
>
> *The "in-line" price is the adjudicated public convenience and necessity price fixed after the statutory hearing required under Section 7 of the Natural Gas Act.*
>
> I refer to this only because the Commission was, in effect, accused of bad faith in not adhering to the Statement of Policy price in determining the "in-line" price. This happened in the *Skelly* case. One of the producers in that case contended "that if the Policy Statement is to be effective, a producer should be able in good faith to rely on the prices set forth in the Statement—at least until lawfully superseded."
>
> In answer to that contention, the Commission attempted to make its position clear when it stated:
>
> > An important consideration in making our findings in this proceeding is the effect to be given our Statement of General Policy No. 61-1. This Statement was issued September 28, 1960, to assist in meeting the practical problems of regulating the prices of the independent producers pending completion of the various area rate proceedings. It sets forth price levels applicable to various areas in determining whether certificates for new sales should be conditioned upon acceptance of a lower price and increased rate filings should be suspended. * * * However, as the language of the Policy Statement makes clear, the area ceilings are guidelines to future action. *Our Policy Statement cannot effect an automatic approval of proposed rates * * *.* [*Skelly Oil Co.*, et al., 28, FPC 401, 407 Opinion No. 362, Docket No. G-18638, *et al.*, issued August 30, 1962. See also, *Amerada Petroleum Corporation, et al.*, Docket No. CI62-1544, *et al.* "Order Denying Application for Reconsideration and Review," issued January 30, 1963, 29 FPC 171.]
> >
> > *The reason why the Policy Statement cannot effect an automatic approval of proposed rates must be clear to you. The Policy Statement was issued without hearing. Parties had no opportunity to contest the guideline prices set forth therein. Section 7(c) of the Natural Gas Act requires notice of an application be given and a hearing be held prior to the issuance of a permanent certificate. It is only after notice has been published that potential protestants and interveners are made aware of the prices proposed to be charged in the event a permanent certificate is issued. Thus, those parties who have valid protests must be heard prior to final action on the certificate application. They cannot legally be denied the right to hearing afforded by statute.* [Italic supplied.]

The point being made was that the policy statement cannot be converted into an order—certainly it could not be converted into an order binding upon any persons who had no opportunity to be heard and who might be adversely affected thereby.

As we have noted, the Commission in its decision in Skelly, Opinion No. 362 and accompanying order, severed four dockets and consolidated them into the instant proceedings. These dockets were CI61-62 involving Kats (for whom Sohio has been substituted), CI61-922 involving Hamon, CI61-956 involving Sun, and CI61-961 involving Texaco. These dockets will be discussed at this point and thereafter, to the extent reflected in the pertinent and material evidence the examiner will further consider the problem of what weight, if any, could be afforded the policy statement, insofar as the determination of the public convenience and necessity price in this proceeding is concerned.

In connection with the claim of reliance upon the policy statement it is noted that at page 6 of Skelly (Slip Opinion), the Commission quoted Hamon as saying "that if the Policy Statement is to be effective a producer should be able in good faith to rely on the prices set forth in the statement—at least until lawfully superseded."

Presumably Commissioner O'Connor's comments referring to a misunderstanding with respect to the difference between the so-called guideline prices and the "in-line" price, related to the claim of reliance upon the guideline price made by Hamon and by some other producers.

The Commission in *Skelly* again referred to Hamon and pointed out that the then presiding examiner did not recommend the imposition of a price condition, except for Hamon, whose 18-cent price he would reduce to 16.5 cents for lack of arm's length bargaining (p. 406). The Commission said the then presiding examiner had "referred to the Staff's exhibits as showing an existing price level in the 16–17 cent range." (*Skelly*, p. 406.) Later, at page 412, fn 25, of *Skelly*, the Commission said that

> The action taken here [the severance of the Hamon docket] obviates the need for determining in this order whether the Hamon sale was or was not made at arm's length, and we do not adopt the examiner's discussion of this point.

A reading of the Staff's brief in the *Skelly* case shows that the Staff contended that on the basis of Hamon's testimony his agreement with South Texas was not at arm's length, and the examiner after considering the evidence agreed with the Staff. The basis for the Staff's contention was that the purchaser was South Texas Gathering Company; South Texas is wholly owned by Coastal States and the latter and Hamon each had a 50 percent interest in the gas which was being sold to South Texas. Accordingly, the negotiations leading to the execution of the Hamon contract were colored by the fact that there was a very close economic relationship between the seller and the buyer and there was no independent showing that the price agreed upon would be the same as that reached in normal arm's length bargaining by persons not having such a close relationship.[22] The idea that a buyer would engage in as hard bargaining to arrive at the lowest possible price in this situation as he would in the normal situation where there was no relationship between seller and buyer is entitled to be viewed with a reasonable degree of skepticism.

While "the price of gas is of no great concern [to a pipeline], because whatever price it pays can be recovered from the consumer through an increase in rates" [23] the price of the gas would be of great concern to the producer and to the consumer, and is of grave concern to the Commission in this proceeding.

In any event, 18 cents per Mcf was substantially higher than the "in-line" price, as pointed out in the discussion hereinafter. In the circumstances Hamon's as well as the other producers' easy reliance upon a ceiling price which was substantially higher than the "in-line" price as a standard for establishing the public convenience and necessity price was understandable. At the same time, particularly in view of *CATCO*, the *UGI* cases, the Wisconsin case, and the standard for determining the public convenience and necessity price actually employed by the Commission in Skelly, and in view of the marked differences in derivation between ceiling prices and in-line prices, it is most difficult to see how weight could be given to the ceiling prices or any claim of reliance upon ceiling prices as the basis for determining the public convenience and necessity price for gas sold in Texas Railroad Commission District No. 4 subsequent to September 28, 1960. Further, if it were assumed, arguendo, that some weight should be given ceiling prices in this Section 7 proceeding the fact is that there is no evidence in this record showing specifically how such weight could or should be measured, or how the weight to be imputed to the ceiling prices could or should be applied to the varying contract prices of the numerous producers in this proceeding.

---

[22] During the hearing counsel for Texaco took the position that the entire record in Skelly was a part of the record in the instant proceeding. This record, among other things, contains substantial evidence relating to "in-line" prices. The undersigned expressed his agreement with the position taken by Texaco's counsel.

[23] See *Atlantic Refining Co. v. F.P.C., et al.*, United States Court of Appeals for the District of Columbia Circuit, No. 17,166 decided March 21, 1963, 316 F. 2d 677 at p. 679, footnote 11.

The Commission in *Skelly* found that the "in-line" price in Texas Railroad Commission District No. 4 was 15 cents per Mcf up to September 28, 1960.

Hamon has two contracts involved in this proceeding, one made less than two months after September 28, 1960, and one made approximately seven months thereafter, both at an initial price of 18 cents per Mcf.

It is clear that the ceiling prices contained in the policy statement when promulgated on September 28, 1960, did not of themselves constitute an order or a rate adjudication denying or granting any rights to Hamon, UGI, the public service commissions, or anyone else. The policy statement of itself did not limit Hamon in making agreements for the sale of his gas to an 18-cent per Mcf price or any other level. He had and still has the right to make contracts at as high a price as he can obtain.

If the certificate which is issued by the Commission upon the filing of an application by Hamon or any other producer contains a price condition, such condition serves only for an interim period awaiting the determination of the just and reasonable rate level for such producer under other sections of the Act.

The testimony of Hamon and other producers that they are entitled to obtain their contract prices in the certificate proceeding without any price condition because they relied on the price ceilings contained in the policy statement adds up to no more than an unsupported contention that the Commission's policy statement was the equivalent of an order after hearing establishing the ceiling prices as the initial public convenience and necessity prices subsequent to September 28, 1960. In this connection, it should be noted that the public convenience and necessity price for Texas Railroad Commission District 4 was found by the Commission, after an extended hearing on the merits, to be no higher than 15 cents per Mcf up to September 28, 1960, the date of the issuance of the policy statement.

In this proceeding, when Hamon or any other producer asserts that in negotiating a contract he relied upon a ceiling price (which was substantially higher than the "in-line" price at the time) what he is saying is that he was entitled to consider that the policy statement in and of itself effected an automatic approval by the Commission of higher than the "in-line" prices beginning the day after September 28, 1960, so long as such higher prices were not more than 20 percent higher than the in-line prices determined as of the latter date. To accept the producers' contentions concerning their reliance on the ceiling prices would be to hold that the Commission by issuing the policy statement had prejudged the only controverted issue in the proceeding, *i.e.*, the appropriate public convenience and necessity initial price.

On this theory of the case there would be no point in trying out the only matter which has been put in issue by Staff and the interveners.

As Commissioner O'Connor pointed out, however, "Our Policy Statement cannot effect an automatic approval of proposed rates . . .".

The Commission in *Skelly* (p. 407) referred to *Coastal Transmission* and pointed out that the "price guides do not constitute a floor to be used to raise proposed initial prices to the highest levels abstractly permissible thereunder."[34]

Hamon joined with Amerada, Gulf, Humble, Lamar Hunt, Skelly, Sohio, Spencer, Texaco and Union Producing Company in the filing of an initial joint brief. This brief was submitted for the purpose of persuading the examiner and the Commission that the testimony of witnesses Clark, Owens, and Schantz, constituted admissible evidence showing the " 'Reasons Why' These Sales should be Certificated at the Prices Provided in the Various Producer Contracts". In addition the joint brief contended that for various reasons the examiner's ruling of December 6, 1962, should be reconsidered and reversed. The examiner has further considered the arguments made by the parties and adheres to the conclusions expressed in the latter order striking the testimony of the aforesaid witnesses for the reasons expressed therein.

Hamon's certificate should be conditioned at 15 cents per Mcf which as the subsequent discussion shows is the in-line price level in Texas Railroad Commission District 4.

In Docket CI61-627 it appeared that Sohio succeeded to Katz' interests and was substituted for him. Katz had been a party to Skelly and, as we have noted, his docket was severed from the latter proceeding and consolidated with the instant one. Katz testified in both the Skelly case and in the instant proceeding. In the instant proceeding Katz testified that he relied upon the Commission's ceiling prices in the negotiations which led up to the 17 cents per Mcf contract which he executed. Having succeeded to Katz' interests, Sohio claimed in view of Katz' reliance in the course of the negotiations upon the 18 cents per Mcf level ceiling prices it was entitled to obtain a permanent certificate at the contract level, with no price conditions attached to the certificate.

The examiner's views with regard to the matter of reliance by the producers upon the Commission's ceiling prices have been expressed hereinabove and are applicable to Sohio and all other producers who "relied" on the ceiling prices to sustain their contracts with regard to the initial public convenience and necessity price.

The Commission's policy statement was issued on September 28, 1960, and the contract between Katz and South Texas, the purchaser, was dated October 17, 1960.

While Katz testified in the instant proceeding that he had relied upon the ceiling prices in negotiating his contract, the same witness testified with regard to his negotiations with the pipeline, South Texas, in regard to the same contract in the Skelly case and in the latter case he testified that:

> Finally, in August of 1960, we [Katz] entered into finalization of a contract with South Texas, which contract is the October 17th contract referred to above. [Docket G-18638, *et al.*, Transcript p. 274.]

Since in August 1960 when Katz' contract was "finalized" the policy statement had not even been issued, Katz' statement of reliance upon the policy statement as a causative factor in the negotiaton of his 17-cent contract simply cannot be given any weight in this proceeding. Moreover, even if Katz' testimony of reliance were considered credible the effect of giving weight to such testimony would be to substitute ceiling prices which were higher than in-line prices as the standard for determining whether or not a rate condition should be imposed. To take this position would be to destroy a principle established by the courts in the interpretation of Section 7 and to supplant it with a totally different and wholly inconsistent doctrine whose principal effect would be to raise natural gas prices in Texas Railroad Commission District No. 4 and elsewhere above the in-line standard for certificate purposes and thus deprive consumers of the protection which the courts have admonished the Commission to afford them during this interim period while the just and reasonable rates for gas are being determined under other sections of the act.

---

[34] *Coastal Transmission Corp.*, 26 FPC 677 at 682, Docket No. G-18238, *et al.*, Order of November 2, 1961.

Sohio is not entitled to a certificate without a price condition determined at the in-line price.

Sun in Docket CI61–956 is seeking a certificate authorizing a price of 17 cents per Mcf. The major part of Sun's evidence is devoted to a full cost of service presentation such as would be appropriate in a Section 4(e) or Section 5(a) case. This evidence is not admissible in this proceeding for the reasons set forth in the examiner's ruling striking such evidence.[28] The evidence offered by Sun was of no assistance in arriving at any conclusion relative to the weight which should be given the policy statement.

After the examiner's ruling rejecting the bulk of Sun's evidence only the evidence of its witness Hamilton remained. Hamilton did not affirmatively state that in negotiating Sun's contract the company relied upon the Commission's policy statement as the basis for reaching agreements with the buyer or that the policy statement was the equivalent of an order and as an order the policy statement gave Sun the right to any price it could get in this district up to 18 cents per Mcf.

Sun presented no evidence as to the in-line prices in this proceeding. It argues, however, that all of its various prices including that in Docket No. CI61–956 are in-line.

There is nothing in Sun's testimony which would be helpful to reaching a conclusion that any weight could be given the policy statement.

Texaco in Docket CI61–961 is seeking a certificate authorizing 16.9465 cents per Mcf for its gas.

The bulk of Texaco's evidence has been considered and disposed of in the examiner's ruling of December 6, 1962, which is incorporated in this decision as if fully set forth herein. A major part of Texaco's evidence was excluded for the reasons stated therein.

Texaco filed a brief jointly with others. There is nothing helpful in this brief, which has been referred to hereinabove. There is nothing in this brief (which consists in part of a reargument of the ruling of December 6, 1962, striking evidence) which is helpful to a resolution of the weight to be given ceiling prices.

More importantly there is nothing in the separate brief filed by Texaco or in the evidence presented by Texaco which is responsive to the resolution of the problem posed by the Commission in *Skelly*, namely what weight, if any, should be given the ceiling prices.[29]

It must be concluded that the evidence presented in the four dockets severed from Skelly was not helpful to a resolution of the issue posed by the Commission in the severance of these dockets.

---

[28] See also examiner's ruling in *Hassie Hunt Trust, Operator, et al.*, issued May 31, 1962, appeal denied on its merits by the Commission July 19, 1962, where the same contention was made by an applicant.

[29] See discussion of Texaco's evidence in examiner's ruling of December 6, 1962.

We shall turn now to a consideration of the other contracts involved in this proceeding.

Based on the estimated first month's volumes figures supplied by all applicants in these proceedings, the total amount of gas proposed to be delivered on a monthly basis by the producers herein will be approximately 2,635,000 Mcf.

The producers making the five largest sales in this proceeding are Standard Oil Company of Texas (Sotex), Sun, Coates, Amerada, and Gulf Oil Corporation (Gulf). The sales proposed by these five applicants involve a total of 1,688,050 Mcf on an estimated first month's delivery basis. This represents over 60 percent of all the gas proposed to be delivered in these proceedings,[27] and the evidence presented by these five applicants is fully representative of the varying positions of the parties to this proceeding.

The largest volumes of gas proposed to be sold by any individual applicant are those involved in the dockets of Sotex. Sotex has two applications under consideration here (Docket Nos. CI61–1377 and CI62–1140), totaling first month's volumes estimated by the company at 695,000 Mcf per month.

The initial contract price in Docket No. CI61–1377, covering estimated first month's volumes of 540,000 Mcf, was 19.795 cents per Mcf.[28]

The initial contract price in Docket No. CI62–1140, covering estimated first month's volumes of 155,000 Mcf was 18 cents per Mcf.[29]

At the hearing Sotex' counsel took the position that the company "is proceeding with sales under these two contracts pursuant to the regulations as they have been publicly announced and prescribed by the Federal Power Commission". In this connection counsel stated that Sotex would accept a permanent certificate in each of the dockets conditioned at an initial price of 18 cents per Mcf.

Sotex sponsored certain "trend" and other economic evidence through witnesses Owens and Schantz and Exhibits 1, 2, 3, 4, 5, and 7. This was the same evidence as was presented on behalf of Texaco and other parties and is discussed fully in the examiner's ruling of December 6, 1962, excluding such evidence.

Sotex presented no testimony by any witness relating to the negotiations which preceded the execution of the contracts to which they were a signatory. In principle, the legal position of Sotex and Texaco are substantially similar. Texaco's theory of the case is discussed, and a disposition is made of a major part of the latter's theories in the examiner's ruling of December 6, 1962. The examiner's views regarding Texaco's approach are equally applicable to Sotex.

As we have noted, the contract price for Sotex' largest sale involved herein, namely that in Docket CI61–1377, was 19.795 cents. This contract was executed on March 14, 1961 long after the issuance of the policy statement. Since the ceiling price was 18 cents (inclusive of all taxes)[30] there was no supportable basis for any claim that in executing this contract at 19.795 cents Sotex relied upon the ceiling prices. While it is correct to point out that at the hearing Sotex agreed that it would accept a certificate with an 18-cent price level, this does not change the fact that this record contains no support for any claim that in executing its contract in Docket No. CI61-1377 Sotex relied upon the ceiling prices as a basis for executing such contract. Moreover, even if Sotex had negotiated on the basis that it had relied upon the policy statement in reaching an agreement with the purchaser such reliance would not have been helpful to support its cause for the reasons expressed hereinabove.

---

[27] In addition, it should be noted that special attention has been devoted heretofore to the four dockets severed from Skelly, *i.e.*, Docket Nos. CI61–62 covering Sohio's sales (estimated first month's production of 75,000 Mcf); Docket No. CI61–922 covering Hamon's sales (estimated first month's production of 58,333 Mcf). In addition a second Hamon sale in Docket No. CI62–1745, covering estimated first month's volume of 58,333 Mcf, has been considered. Docket No. CI61–961 covering Texaco's sale of estimated first month's production of 9280 Mcf and Sun's Docket No. CI61–956 were also considered earlier but the volumes there considered are also part of the volumes being further specially considered hereinafter in this decision.

[28] The base price in Docket CI61–1377 was 18½ cents per Mcf and the difference between the latter price and the price of 19.795 cents per Mcf reflects the operation of a tax reimbursement clause relative to taxes imposed by the State of Texas. Sotex has never collected more than 18 cents per Mcf for any of its natural gas which is the subject of this proceeding.

[29] Sotex' 1962 contract (CI62–1140) does not provide for reimbursement to the producer of Texas state taxes.

Sotex' contract in CI62-1140 involving estimated first-month's volumes of 155,000 Mcf was executed in 1962.

While Sotex interprets the Commission's Statement of General Policy 61-1 issued September 28, 1960, as on its face affording it a right to at least an 18 cents initial price, this interpretation was rejected by the examiner for the reasons which have been set forth hereinabove.

The second largest total volumes proposed to be sold by an individual producer herein are involved in five applications filed by Sun (Docket Nos. CI61-657, CI61-956, CI61-1101, CI61-1584, and CI62-276). The total first-month's volumes for these five dockets were estimated by the company at 558,000 Mcf. Sun's contract in Docket No. CI62-276 was at a 16-cent price level covering a proposed delivery of estimated first-month's volumes of 550 Mcf. Sun's contract in Docket No. CI61-956 covers an estimated first-month's volume of 300,000 Mcf at 17 cents. Sun's contract in CI61-1584 covers a proposed delivery of estimated first-month's volumes of 2500 Mcf at 17.24 cents per Mcf. Sun's contracts in Docket Nos. CI61-657 and CI61-1101 covers estimated first-month's volumes of 240,000 Mcf and 15,000 Mcf, respectively, at an initial contract price of 17.24347 cents per Mcf.

At the outset of this case Sun's counsel stated that "We are making a companywide cost showing, Mr. Examiner, in support of our certificate applications". Schedule 10 of Exhibit 10 offered in evidence by Sun showed a companywide "cost per Mcf of 26.390 cents".[31]

Sun's essential purpose was to show that the prices contained in its contracts under consideration here were substantially below its claimed cost of service to produce an Mcf of gas. In substance, it would try a full-scale companywide case as part of its Section 7(c) presentation. This approach has been rejected by the Commission in the past and the courts have held that the Commission is not required to try a Section 4(e) or a Section 5(a) case within the confines of a Section 7 certificate case. Sun's cost of service evidence was excluded by ruling of the examiner.

Sun offered the testimony of its witness Hamilton who testified regarding the negotiations leading up to the execution of Sun's contracts. The witness testified as to his knowledge of contracts which were executed in Texas Railroad Commission District No. 4, and as to the length of time over which these negotiations took place. He also claimed that the company considered that the prices negotiated were fair and reasonable because of previous actions by the Federal Power Commission in certificating other sales in Texas Railroad Commission

---

[30] See page 2 of Statement of General Policy No. 61-1 relating to taxes.

[31] In *Sun Oil Company, et al.*, Docket No. G-8288, *et al.*, a combination Section 4(e) and 5(a) case, the presiding examiner issued an initial decision on March 11, 1963, in which he found after a hearing on the merits that Sun's companywide cost of service was 12.476 cents per Mcf. The examiner's decision is still pending before the Commission, following the filing of exceptions.

Districts 2 and 4 without initial price conditions and at initial prices higher than those for which the company agreed to deliver its gas in this proceeding. He also testified that while the negotiations in this case had been carried on prior to September 28, 1960, when the Commission issued its *Statement of General Policy No. 61-1*, 24 FPC 818, the fact in each case was that the negotiations had not been concluded until after the policy statement had been issued and that Sun's contracts had not been actually executed until after the date of the Statement of General Policy.

His statement could be read as implying that Sun relied upon such Statement of General Policy but the witness never affirmatively asserted that the company had in fact relied upon such policy statement in negotiating Sun's contracts.

Sun's principal reliance for obtaining its contract price was not upon the policy statement but upon the evidence which the examiner excluded in a ruling made herein on December 6, 1962. This evidence is described and discussed fully in such ruling.

Hamilton's testimony was not persuasive that Sun's price was arrived at by reason of any reliance upon the Commission's Statement of General Policy.

It may also be noted that in Docket No. CI62-276 Sun sought and obtained a temporary certificate. This certificate contained a refund condition down to a floor of 15 cents per Mcf and required the refunding of "any amounts collected plus interest at 7 percent per annum, in excess of 15.0 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity . . . ."

The fact that the Commission conditioned the 16-cent price in the temporary certificate was clear notice to Sun that it could not rely upon such contract price as necessarily being the public convenience and necessity price in the permanent certificate which it was seeking.[33]

Sun's testimony did not include any evidence which would show the weight, if any, which should be accorded the policy statement in determining the appropriate public convenience and necessity price in this proceeding. Sun's testimony had no relation to in-line prices, was unrelated to the Commission's policy statement, and was not helpful to the resolution of the weight, if any, which should be accorded to the Commission's policy statement in the determination of the appropriate public convenience and necessity price in this proceeding.

The third largest volume proposed to be delivered by any individual producer is covered by an application filed by George H. Coates in Docket No. CI62-355, and he estimated his first month's deliveries as being 180,000 Mcf. The initial price in Coates' contract was 18 cents per Mcf.

Coates did not offer the testimony of any witness to support his claim that in the negotiation of his contract he relied upon the policy statement.

Coates is relying principally on the testimony being offered in this proceeding by Texaco and Sun to support his application. Texaco's evidence and Sun's evidence has been discussed hereinabove, and as has been pointed out hereinabove such evidence is not helpful to the resolution of the issues in this proceeding. Coates offered in evidence his application for a certificate of public convenience and necessity and his rate schedule and presented no witnesses at all. Coates offered no evidence responsive to the problem of the weight to be accorded in this proceeding to the Commission's Statement of Policy.

---

[33] It is realized that the temporary certificate in this docket was not issued until February 20, 1963, long after the contract was executed, but no deliveries under this contract could have been made lawfully prior to such time. However, as pointed out hereinabove, other temporary certificates were issued to other producers in Texas Railroad Commission District No. 4, both before and after *Skelly*, and it would be somewhat naive to believe that the Commission's practices and orders regarding the issuance of temporary certificates, particularly its practices and orders concerning the making of refunds, were unknown to the larger companies in this industry, of which Sun is one of the largest.

In substance Coates is relying upon an interpretation which he has made of the meaning of the Commission's Statement of General Policy to the effect that the policy statement in and of itself authorized him to obtain up to 18 cents per Mcf for his gas. This interpretation has been rejected for the reasons discussed hereinabove.

The fourth largest volume is proposed to be delivered by Amerada Petroleum Company in Docket No. CI62-1544, and the estimated first month's volumes are 135,000 Mcf. Amerada's initial contract price was 18 cents per Mcf. Later Amerada's contract was amended to provide for a 16-cent price per Mcf.

Amerada's contentions as to the appropriate public convenience and necessity price which should be employed here are somewhat different than the contentions made by other producers in this proceeding. Amerada's contract was dated June 15, 1962, and the initial price was 18 cents per Mcf.

While Amerada's contract with the purchaser, Natural Gas Pipeline, specified an initial price of 18 cents per Mcf it also provided for deductions of 2 cents per Mcf until the pipeline received into its facilities some seven billion cubic feet.

On August 28, 1962, Amerada requested a temporary certificate which was issued on October 8, 1962. The temporary certificate contained a condition that the initial price for the services proposed shall be 18 cents per Mcf, subject to Amerada's refunding to the purchaser from the date of first delivery any amounts collected, plus interest at 7 percent in excess of 15 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity in these proceedings. Amerada accepted the certificate on October 18, 1962.

In its brief, Amerada referred to the date when the Commission issued its *Statement of General Policy No. 61-1,* namely September 28, 1960, and the date when the Commission issued its *Fifth Amendment*, namely August 30, 1962, 28 FPC 441, which reduced the price ceilings in Texas Railroad Commission District No. 4 from 18 cents per Mcf to 16 cents per Mcf effective August 30, 1962.

The latter date was also the date when the Commission issued its *Skelly* Opinion No. 362 which held that up to September 28, 1960, the in-line price in Texas Railroad Commission District No. 4 was no higher than 15 cents per Mcf. The Commission also issued its Fifth Amendment on August 30, 1962, fixing 16 cents per Mcf as the ceiling price for Texas Railroad Commission District 4. Following the issuance of the Commission's Fifth Amendment to the General Policy Statement, Amerada and Natural Gas Pipeline amended their contract on October 16, 1962, by reducing the initial price to 16 cents per Mcf.

In substance, the position of Amerada appears to be that it had a right to receive an 18-cent price when it executed its original contract dated June 15, 1962. However, Amerada claimed that it was entitled to 16 cents per Mcf after the Commission issued the Fifth Amendment to the Policy Statement fixing the ceiling price at 16 cents per Mcf.

As pointed out above, the ceiling prices were not issued for the purpose of escalating gas prices to consumers; the 16-cent ceiling price neither gave nor denied rights to any person; and the policy statement and amendments thereto were not orders and were not binding on anyone for any purpose.

The in-line price for gas in Texas Railroad Commission District No. 4 at the time when Amerada's contract price was negotiated was 15 cents per Mcf. Amerada had accepted a certificate containing a refund provision down to a floor of 15 cents per Mcf. The adoption of the Fifth Amendment to the Policy Statement on August 30, 1962, providing a 16-cent price ceiling in Texas Railroad

Commission District 4 did not serve to raise the in-line price to 16 cents as of August 30, 1962, or October 16, 1962, if the in-line price were 15 cents per Mcf at the time.

There is no evidence in this record to show that the in-line price had risen to 16 cents per Mcf after the Commission had issued its Skelly decision or after September 28, 1960.

Amerada's contentions with respect to conditioning its certificate herein at a 16 cents per Mcf level rather than a 15 cents per Mcf level were not based upon any probative evidence in this record. Moreover, Amerada's evidence as a whole does not serve to show that any weight should be given in this proceeding either to the Commission's first price ceiling of 18 cents per Mcf or its subsequent price ceiling of 16 cents per Mcf for Texas Railroad Commission District No. 4.

The fifth largest volume is proposed to be delivered by Gulf Oil Corporation in Docket No. CI62-607. The estimated first month's volumes are 120,000 Mcf, and the initial contract price was 18 cents per Mcf. Gulf's contract with Natural Gas Pipeline was executed on October 20, 1961. Gulf's evidence was considered and discussed in the examiner's ruling of December 6, 1962, and as a result the examiner issued his ruling striking important sections of Gulf's evidence.[33]

Gulf argues that since the wells which will produce the gas proposed to be sold herein required deeper drilling than those which were considered by the Commission at the time it wrote Opinion No. 362 (Skelly), it should receive a higher price for the gas proposed to be sold here. Essentially, this is a cost-of-service approach but it is not a sound cost-of-service approach.

The fact that a well is drilled to greater depths does not itself establish that the producer is entitled to more for his gas. If, for example, the volumes of reserves found at greater depths is greater than the volumes of gas found at a point which is not as deep, the unit cost of the gas which is obtained by drilling deeper may be less than the unit cost of gas which is found at lesser depths. There is no evidence relating to the reserves found in this case as compared to those in the earlier proceeding. There is no evidence as to the comparative costs of producing gas in the new wells as compared to those considered in Skelly.

Gulf did not attempt to present a cost-of-service case, and of course, it would have been inappropriate to have done so. Further, the cost to a particular company of gas produced in a few wells is not an appropriate standard for the purpose of determining the cost of gas in a Section 7 proceeding.[34]

While Gulf executed its contract on October 20, 1961, it did not deliver any such gas until after it had received a temporary certificate on October 8, 1962. On October 8, 1962, temporary authority was issued to Gulf subject to Gulf's agreement to refund to Natural from date of first deliveries any amounts collected plus interest at 7 percent per annum in excess of 15 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity. Accordingly, before Gulf had delivered a single Mcf of gas it was well aware of the fact that it could not rely on the Commission's Statement of Policy as reflecting a Commission intent to authorize it to obtain the ceiling prices in a contested certificate proceeding.

As we have pointed out, the purpose of the Commission since *CATCO* has been to "hold the line." Where it is shown that the ceiling price is higher than the in-line price, it would be violative of the Supreme Court's admonition to permit the ceiling price to be substituted for the in-line price as the standard for determining the public convenience and necessity price. If such a course were followed the court's admonition to hold-the-line would be destroyed, and the benefits to the consumers of the court's holding in *CATCO* and in the various holdings by the courts of appeals subsequent to *CATCO* would be eroded.[25]

---

[33] See particularly pp. 15 and 16 of examiner's ruling of December 6, 1962.

[34] See Commission's order issued February 9, 1962, in *Socony Mobil*, Docket No. G-13780, 27 FPC 347, holding that costs attributable to a single field are of no value and examiner's order in *Hassie Hunt*, G-19115 issued May 31, 1962, appeal denied on its merits July 19, 1962.

In Docket No. G–9520, *et al.*, Gulf's rates were the subject of a Section 4(e) and 5(a) proceeding. The examiner in that case in a decision issued September 24, 1962, [Unreported] found that Gulf's nationwide cost of producing an Mcf of gas was 12.598 cents. The examiner's decision in that case noted that the exploration expenses in 1957, the test period in that case, were the highest in the company's history (pp. 29 and 63 of examiner's initial decision), and that the exploration expenses were substantially lower in the following years. Further, as the examiner noted in his decision (p. 63), if Gulf's costs were updated to 1959, it would have been found on the basis of Phillips' cost-of-service allocation principles that Gulf's cost-of-service would have been lower in 1959 than it was in 1957, but that its rates in 1959 were substantially higher than in 1957.

This comment relating to the examiner's decision regarding Gulf's nationwide cost of service to produce an Mcf of gas is not made for the purpose of applying such nationwide costs to Gulf's prices in Texas Railroad Commission District No. 4 in this case but only to point out that reaching a correct cost of service figure for a comparatively few wells in Texas Railroad Commission District 4 for Gulf on an individual basis as suggested by Gulf's presentation in the instant proceeding would hardly be a feasible method of determining costs. In arriving at Gulf's cost-of-service for Texas Railroad Commission District 4 it would have been necessary on an individual case approach to develop a rate design for the Gulf system including its operations in Texas Railroad Commission District No. 4. Meaningful costs for Section 7 purposes or for any other purposes cannot be made to depend solely on the fact that deeper drilling was required for a comparatively few wells.

It may also be observed that the Commission issued an order on April 21, 1963, approving a rate settlement of Gulf's dockets in Docket G–9520, *et al.* Attached to the Commission's order approving the settlement was an appendix. Such appendix shows (Sheet 10 of 17) that in no case did the Commission authorize any settlement rate in Texas Railroad Commission District No. 4 in excess of 15 cents per Mcf. In these circumstances, and particularly in view of the fact that the in-line price in Texas Railroad Commission District No. 4 as found hereinafter was not in excess of 15 cents per Mcf, it would not appear unreasonable to condition Gulf's certificate in this case at a rate not in excess of 15 cents per Mcf.

Gulf did not offer any evidence which could be used in any way in determining the weight, if any, to be given the Commission's ceiling prices in Texas Railroad Commission District No. 4.

In a speech delivered on July 5, 1963, to the Mineral Law Section of the Texas Bar Association at Dallas, Texas, the General Counsel of the Commission in a correct and succinct explanation of the applicable law said that

> . . . in the *CATCO* case the Supreme Court in June 1959 had made clear that in view of the delays in setting just and reasonable rates under any

---

[25] See *United Gas Improvement Co.* v. *Federal Power Commission*, 283 F. 2d 817 (C.A. 9), certiorari denied 365 U.S. 879, 881; *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 146 (C.A. D.C.) certiorari denied 365 U.S. 880; *United Gas Improvement Co.* v. *Federal Power Commission*, 287 F. 2d 159 (C.A. 10); *United Gas Improvement Co.* v. *Federal Power Commission*, 290 F. 2d 133 (C.A. 5), certiorari denied 366 U.S. 147; *Atlantic Refining Co.* v. *Federal Power Commission*, 316 F. 2d 677 (CADC); *California Oil Co.* v. *Federal Power Commission*, 315 F. 2d 652 (C.A. 10).

> system, the Commission was obliged to consider price at the time it certificated a producer's sale and to take appropriate steps at that time to maintain the price line pending the fixing of area rates. A series of subsequent cases in the courts of appeals have spelled out that this required fixing an in-line price as of the time of the producer's contract with the pipeline—a line reflecting primarily the permanently certificated sales in the particular production area not tainted by procedural irregularity or suspect because they were based on such a tainted sale. [Footnotes Omitted.]

The General Counsel also pointed out that

> There still will remain, however, a hard core of applications for certificates in areas where the consumer groups have not as yet agreed to our guideline rates as fair approximation of the in-line rate set in accordance with CATCO principles. In these cases, which include the Texas Gulf Coast (Texas Railroad Districts 2, 3 & 4) and Southern Louisiana, *formal certificate hearings to fix the in-line price will be required.* This a process which has been greatly simplified by a number of recent Commission cases which have limited the types of evidence which may be considered in such proceedings. . . . [Italic supplied.]

The General Counsel was not speaking for the Commission and, of course, his comments were not binding on it. However, in the examiner's opinion, the General Counsel's statements were a sound reflection of the law applicable in these proceedings.

There is no basis to be found in the evidence presented in this proceeding for placing any weight on the Commission's ceiling prices in determining the appropriate public convenience and necessity price for Texas Railroad Commission District No. 4. On the other hand, the employment of in-line prices constitutes an appropriate standard for conditioning the permanent certificates which will be issued in this proceeding.

II. *In-Line Price*

We will now turn to a consideration of the in-line price for the period September 28, 1960, to August 30, 1962, in Texas Railroad Commission District 4.

The starting point for determining the locus of the in-line price for the applicants in this proceeding is *Skelly*. The examiner takes official notice of the Commission's opinions in *Skelly* (Opinion Nos. 362 and 362-A) and adopts the discussion in such opinions relating to in-line price as an integral part of this decision. [28 FPC 401 and 1065]

The Commission in *Skelly* utilized the Staff's field price evidence in the preparation of a table (appearing at page 408 of its opinion in Skelly) for the purpose of arriving at a judgment as to the locus of the in-line price up to September 28, 1960.

The Commission in *Skelly* concluded that for a period prior and up to September 28, 1960, the in-line price in Texas District was 15 cents per Mcf and on this basis conditioned the certificates in *Skelly* to such price.

The Staff in this proceeding prepared and the examiner received in evidence a field price exhibit (Exhibit 16), showing the pertinent data for all sales in Texas Railroad Commission District 4 dated 1955 and later with total rates of 14 cents or more as accepted for filing by the F.P.C.[30] The only difference between the exhibit in *Skelly* and the one in this proceeding (Exhibit 16) is that the cutoff date in *Skelly* was April 1, 1961, and in the instant case the cut-off date was August 31, 1962.

---

[30] The exhibit contains three schedules. Schedule No. 1 lists the proposed sales which are involved in this proceeding. Schedule No. 2 lists the permanently certificated sales and Schedule 3 lists the temporarily authorised sales.

The in-line price in *Skelly* was determined by reference to the prices contained in other contracts entered into in the area in 1958, 1959, and 1960.

In a brief filed on behalf of a number of distributors[37] who were interveners in this proceeding an analysis of the Staff field price exhibit was made along the lines followed by the Commission in *Skelly.* This analysis also prepared in the form of a table[38] correctly shows data on permanently certificated and other sales under contracts executed between September 28, 1960 and August 31, 1962, as follows:

Total initial price (cents per Mcf)	Permanent certificates		Temporary certificates	
	Number of rate schedules	Estimated first-month production	Number of rate schedules	Estimated first-month production
14.0	6	205,500	9	171,800
14.5			1	35,000
14.7	1	17,280		
15.0	6	107,836	1	6,000
17.24	1	25,950		
18.0			1	31,000
Total	14	356,566	12	243,800

The facts in this case are that since September 28, 1960, six contracts were permanently certificated at 14.0 cents per Mcf; one contract was permanently certificated at 14.7 cents; six contracts were permanently certificated at 15 cents per Mcf; and one contract was permanently certificated at 17.24 cents per Mcf. The only case of a permanent certificate at a price in excess of 15 cents was that of *Dulaney Oil Company*, Docket CI61-1355. The latter sale was permanently authorized in a shortened procedure case. As has been pointed out hereinabove, the ceiling prices are used only where there is no objection by any party, and there is no contest. This was the situation with Dulaney. The shortened procedure cases are of limited value as precedents.[39]

The temporary certificates are issued ex parte, and the prices which holders of such certificates are permitted to collect have no value as precedents for determining in-line prices because the prices contained in the temporary certificates are not necessarily prophetic as to the price at which the permanent certificates will be issued. Moreover, the price contained in the temporary certificate is not reached upon the basis of a hearing adjudicating the locus of the in-line price or initial public convenience and necessity price.

In this case the evidence shows that there were 12 temporary certificates issued in which only one, Lamar Hunt, Docket No. CI61-1736 carried a price in excess of 15 cents per Mcf. The price was 18 cents per Mcf. However, on April 11, 1963, the examiner issued an initial decision conditioning the initial price in *Lamar Hunt*, Docket CI61-1736 at 15 cents per Mcf. The initial decision is pending before the Commission on exceptions filed thereto.

The leading cases which have been cited hereinabove require the Commission to determine the public convenience and necessity price by reference to the in-line price as of the time of the producer's contract with the pipeline. This line should reflect primarily the permanent certificated sales which are reasonably comparable in the particular production area (Texas Railroad Commission District 4 in this case) not tainted by procedural irregularity or suspect because they were based on such a tainted sale.

---

[37] The Brooklyn Union Gas Company, Long Island Lighting Company, Philadelphia Electric Company, and The United Gas Improvement Company.

[38] The table, of course, does not include the contracts which are the subject of consideration here.

[39] In this connection, see examiner's initial decision in *Texaco Seaboard, Inc., et al.*, Docket No. CI61-118, *et al.*, 29 FPC 593, 603 at p. 614 (September 25, 1962).

The application of this principle requires an order in this case conditioning the certificates which should be issued here to an initial price of 15 cents per Mcf.

III. *Refunds*

We now turn to the question of refunds. The Commission in Docket Nos. CI62-1544, Amerada Petroleum Corporation, *et al.;* CI62-607, Gulf Oil Corporation; CI62-726, MPS Production Company (Operator); CI63-73, Skelly Oil Company; CI62-276, Sun Oil Company; and CI62-639, Union Producing Company issued temporary certificate authorizations (which were accepted by the aforesaid applicants) conditioned upon the refunding to the purchasers of "any amounts collected plus interest at 7 percent per annum in excess of 15.0 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity. . . ."

In addition the Commission issued temporary certificates containing refund conditions to Emory M. Spencer in Docket No. CI61-1451 and Tex-Star Oil and Gas Corporation (Operator) in Docket No. CI62-729.

The initial price required by the public convenience and necessity has been determined to be the in-line price for Texas Railroad Commission District 4 at the time the contracts were executed, *i.e.*, 15 cents per Mcf at 14.65 psia for each applicant. In accordance with the Commission's specific directions in the temporary certificates refunds will be required of the aforesaid eight companies of all sums collected by them for gas sold and delivered under the aforesaid temporary certificate authorizations in excess of 15 cents per Mcf plus interest at 7 percent per annum.

The temporary certificates issued by the Commission to the other applicants in this proceeding do not provide for refunds in the event that the initial public convenience and necessity price is found to be lower than the prices authorized under the temporary certificate authorizations.

The Commission in *Skelly* (Opinion No. 362) said, among other things, that

> Unlike the situation in *CATCO* where all of the unconditioned price certificates by which gas was dedicated to interstate commerce were either subject to timely court review because challenged and appealed or (in one case) granted pending such review, the producers here have been operating, pending this hearing on their permanent certificate application, pursuant to effective temporary certificates containing no price condition, the validity of which have never been challenged on appeal. Under these circumstances we believe that there is no basis for ordering refunds for the period, prior to the effective date of the permanent certificates being issued herewith, during which the producers were receiving the temporary certificates. [p. 413.]

On October 15, 1962, in an initial decision issued in Cities Service Company *et al.*, Docket No. G-16563, *et al.*, (Cities Service), the presiding examiner in that case on the basis of the Skelly precedent held that he had no power to require refunds. On April 22, 1963, the Commission issued an order adopting the presiding examiner's decision.

The undersigned considers that he is bound by the Skelly and Cities Service precedents and for that reason will not issue an order requiring refunds in any of the other dockets.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the presiding examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that

(1) Each of the applicants named in the caption of this decision is a natural gas company within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Each of the applicants named in the caption is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the applicants herein together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial price charged by the independent producers named in the caption for the sales proposed in their certificate applications in this proceeding be not greater than 15 cents per Mcf at 14.65 psia and that the take-or-pay requirement in their contracts be revised in accordance with the final order of the Commission to be issued in Docket R-199 commenced by Notice of Proposed Rulemaking dated May 22, 1961, provided, however, that the applicants shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(5) In accordance with the conditions attached to the temporary certificate authorizations granted in Docket No. CI61-1451 to Emory M. Spencer; in Docket No. CI62-729 to Tex-Star Oil and Gas Corporation (Operator); in Docket No. CI62-1544 to Amerada Petroleum Corporation, *et al.;* in Docket No. CI62-607 to Gulf Oil Corporation; in Docket No. CI62-726 to MPS Production Company (Operator), *et al.;* in Docket No. CI63-73 to Skelly Oil Company; in Docket No. CI62-276 to Sun Oil Company and in Docket No. CI62-639 to Union Producing Company, such companies should refund any sums obtained from their pipeline purchasers for gas sold and delivered to them in excess of 15 cents per Mcf at 14.65 psia, together with 7 percent interest per annum on all such sums.

ORDER

WHEREFORE, *It is ordered,* subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to each of the applicants referred to in finding (1) for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) The certificate to be issued to each of such producer applicants is hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than the 15 cents per Mcf at 14.65 psia from the date of issuance of this order until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificate of such producer applicants shall be conditioned so that the take-or-pay for requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R-199 as of the effective date of that order, provided, however, that the producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(D) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer applicants within 30 days of the issuance of this order.

(E) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) In accordance with the conditions attached to the temporary authorizations in Docket No. CI61-1451, Emory M. Spencer; in Docket No. CI62-729, Tex-Star Oil and Gas Corporation (Operator); in Docket Nos. CI62-1544, Amerada Petroleum Corporation, *et al.*; in CI62-607, Gulf Oil Corporation; in CI62-726, MPS Production Company (Operator); in Docket No. CI63-73, Skelly Oil Company; in Docket No. CI62-276, Sun Oil Company; and in Docket No. CI62-639, Union Producing Company, each of such applicants shall refund to their respective pipeline purchasers within 90 days of the issuance of this order any sums collected from such purchasers in excess of 15 cents per Mcf, with 7 percent interest on such sums from the time of receipt to the date of refund and shall report to the Commission in writing the details of such refunds within 15 days after making them.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

SAMUEL BINDER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7149

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued March 23, 1964)

Iowa Power and Light Company (Applicant), incorporated under the laws of the State of Iowa and doing business in that State, with its principal place of business in Des Moines, Iowa, filed an application on February 14, 1964, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of up to 1,095,922 shares of Common Stock, par value $10 per share, to effect one and one-half for one split of the outstanding Common Stock of the Applicant and of Common Stock reserved for issuance under Applicant's Employee Stock Purchase Plan.

The Applicant has outstanding 2,142,361 shares of Common Stock plus 49,481 shares of Common Stock reserved for issuance through its Employee Stock Purchase Plan authorized in Docket No. E-7081 (April 26, 1963). A one and one-half for one split will require an increase of 1,071,181 shares of Common Stock for issuance to holders of outstanding stock and an increase of 24,741 in the number of shares of Common Stock reserved for issuance under the Employee Stock Purchase Plan. On the books of the Applicant, the issuance of 1,071,181 additional shares of Common Stock, par value $10 per share, to holders of outstanding Common Stock, will be reflected by a credit of $10,711,810 to Account 201, Common Stock. This credit will be offset by debits of $8,398,077 to Account 207, Premium on Capital Stock (Common Stock) and $2,313,733 to Account 216, Unappropriated Earned Surplus.

According to the Applicant, the objective of the stock split is to broaden the market for its Common Stock, by increasing the number of shares of such stock and lowering the market price per share, to the end that the Common Stock will become more attractive to a larger number of investors, facilitating future common equity financing for the Company, and in these respects serving the interests of the Company and its stockholders. Increase in the number of shares reserved pursuant to the Employee Stock Purchase Plan will prevent reduction in the percentage of the Applicant's Common Equity assigned to achieve the purposes of the plan.

Written notice of the application has been given to the Iowa Commerce Commission and to the Governor of that State. Notice of the application also was published in the Federal Register on February 28, 1964, (29 F.R. 2801), stating that any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1964, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 31, 1961, *Iowa Power and Light Company* Docket No. E-6974 (25 FPC 1063).

(2) The proposed issuance of 1,071,181 shares of Common Stock to holders of Applicant's outstanding Common Stock and the proposed reservation for issuance and sale of 24,741 shares to Applicant's employees under its Employee Stock Purchase Plan, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) The proposed issuance and sale of Common Stock as described above is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a (a) (1) thereof.

(4) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock are hereby exempted from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7151

ORDER AUTHORIZING ISSUANCE OF PREFERRED STOCK

(Issued March 23, 1964)

Otter Tail Power Company (Applicant), incorporated under the laws of the State of Minnesota, and doing business as a qualified foreign corporation in the States of North Dakota and South Dakota, with its principal place of business in Fergus Falls, Minnesota, filed an application on February 24, 1964, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue and sell 30,000 shares of $4.65 Cumulative Preferred Stock, no par value, and exempting such issuance and sale from the Commission's competitive bidding requirements.

By letter dated January 16, 1964, Docket No. IN-964, the Commission, pursuant to Sec. 34.2 (f) (2) (ii) of its Regulations under the Federal Power Act, authorized Applicant to enter into negotiations for the underwriting and sale of a proposed issuance of up to 30,000 shares of Preferred Stock. The Commission's letter stated that the Applicant should submit evidence of having negotiated with at least three prospective purchasers. Applicant has advised that, pursuant to the authority granted by the Commission's letter, the Applicant discussed the proposed sale of new Preferred Stock with five investment banking firms and then employed Glore, Forgan & Co., and Kalman & Company, Inc., for the purpose of finding purchasers for new Preferred Stock. Glore, Forgan & Co., and Kalman & Company, Inc., discussed the proposed sale of new Preferred Stock with twelve institutions and that, as a result of such discussions, informal commitments were obtained from three insurance companies or their separate but affiliated companies to purchase 30,000 shares of $4.65 Preferred Stock, no par, at a price of $100.00 per share, plus accrued dividends, if any. The names of the insurance companies and the number of shares to be taken by each company, are as follows:

State Farm Mutual Automobile Insurance Company, Bloomington, Illinois	12,500 shares
The Lincoln National Life Insurance Company, Fort Wayne, Indiana	10,000 shares
Continental Assurance Company, Chicago, Illinois	7,500 shares

Applicant proposes to pay a finder's fee of ½ of 1% of the purchase price or $15,000 to Glore, Forgan & Co. and Kalman & Company, Inc. in payment for their services in finding buyers for the new Preferred Stock.

Applicant states it compared the proposed finder's fee with recent underwriting spreads and to information generally available with respect to finder's fees paid by other public utilities, and that it believes that such fee is reasonable.

Applicant requests that the proposed issuance be exempted from the competitive bidding requirements of Section 34.1a (b) and (c) of those Regulations upon findings as set forth in Section 34.1a (a) (4) thereof.

Applicant proposes to utilize the net proceeds from the issuance and sale of the new Preferred Stock estimated at about $2,971,000 to repay short-term bank construction loans incurred in late 1963 and defray a portion of the expense of its construction program in 1964. Total construction for 1964 has an estimated cost of $7,667,000. $2,355,000 will be spent on Applicant's Hoot Lake Plant, $737,000 on its 115 kv Grid, $1,965,000 on other transmission facilities and substations, and most of the balance on distribution facilities.

Written notice of the application has been given to the Railway and Warehouse Commission of Minnesota, the Public Service Commission of North Dakota, the Public Utilities Commission of South Dakota and to the Governor of each of those states. Notice of application was also given by publication in the Federal Register on March 6, 1964 (29 F.R. 3119), stating that any person desiring to be heard or to make any protest with reference to said application, should on or before March 16, 1964, file a petition or protest with the Federal Power Commission, Washington, D.C., 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued October 25, 1957, *Otter Tail Power Company*, Docket No. E-6776 (18 FPC 538).

(2) The proposed issuance of Preferred Stock as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) There is no affiliation, direct or indirect, through directors, officers or stockholders, or the ownership of securities, or otherwise between Applicant and Glore, Forgan & Co. and Kalman & Company, Inc.

(4) The fee proposed to be paid to Glore, Forgan & Co. and Kalman & Company, Inc. does not appear to be unreasonable.

(5) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issuance of Preferred Stock from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(6) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Preferred Stock, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(7) The proposed issuance of Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(8) The period of public notice herein is reasonable.

The Commission orders:

(A) The proposed issuance of Preferred Stock, as described above, upon the terms and conditions and for the purposes specified in the application is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners; Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN AND PRESCRIBING ACCOUNTING THEREFOR

(Issued March 23, 1964)

Pacific Power & Light Company, Licensee[1] for Project No. 2082[2] on September 22, 1959, filed a statement pursuant to Section 4.1 of the Commission's

---

[1] The California Oregon Power Company, original licensee, was merged into Pacific Power & Light Company as of June 21, 1961 and by order of the Commission the license was transferred as of that date.

[2] The Big Bend Development, now called the John C. Boyle Plant, was constructed pursuant to the license issued by this Commission in Project No. 2082 to the California Oregon Power Company (Copco) effective as of March 1, 1956, and it was placed in service in October 1958. This development consists principally of a diversion dam about 650 feet long and about 70 feet high across the stream bed and a powerhouse containing two turbines each rated at 56,000 horsepower and each driving a generator with a name plate rating of 40,000 kw. Appurtenant to the John C. Boyle development is a 230 kv transmission line, 69.9 miles long. The plant is located on the Klamath River approximately 6 miles west of Keno, Oregon.

Five existing developments were added to the project by Amendment No. 3 to the license (Instrument No. 5) accepted by Copco on January 26, 1960 which are described in the findings of the initial decision adopted by the Commission by order issued January 13, 1960, and incorporated by reference in the order issuing license as follows:

> *East Side Development* on Link River consisting of a canal and penstock extending from Link River dam to the powerhouse containing a 4,250-horsepower turbine driving a 3,200-kilowatt generator; *West Side Development* on Link River consisting of a canal and penstock extending from Link River dam to the powerhouse containing a 1,040-horsepower turbine driving a 600-kilowatt generator; *Keno Regulating Dam* on Klamath River consisting of a wood-bent structure with earth abutments and control works for maintaining the level of Ewauna Lake and Klamath River between Keno and Klamath Falls; *Copco No. 1 Development* on Klamath River about 31 miles below Keno consisting of a concrete gravity arch dam with tainter gates creating a reservoir about 4½ miles long; penstocks, a powerhouse containing two 18,600-horsepower turbines each driving a 10,000-kilowatt generator, and a substation; *Copco No. 2 Development* on Klamath River about ¼ mile below the Copco No. 1 Development consisting of a concrete and earth diversion dam, a conduit composed of two tunnels, a wood-stave pipe and penstocks leading to the powerhouse containing two 20,000-horsepower turbines each driving a 13,500-kilowatt generator, and a substation; and appurtenant facilities. [23 FPC 61, 64.]

Also added to the project by Amendment No. 3 was the proposed Irongate Development not included in the scope of this order.

Regulations under the Federal Power Act claiming an actual legitimate original cost as of May 31, 1959 for the John C. Boyle Plant of $14,329,561.73.[3] Licensee also filed, on December 27, 1960, pursuant to Section 4.20 of the Commission's Regulations, individual statements for each of five previously constructed plants hereinafter referred to as the Constructed Plants (Copco No. 1, Copco No. 2, East Side, West Side, Keno Regulating Dam) claiming an actual legitimate original cost, as of March 1, 1956 for those plants aggregating $7,628,239.40.[4]

Licensee has also, from time to time, filed statements pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act claiming for the period March 1, 1956 through December 31, 1960 (1) net additions to the Constructed Plants of $639,717.29 consisting of additions of $811,629.15 and retirements of $171,911.86 and (2) a resulting actual legitimate original cost for those plants as of December 31, 1960 of $8,267,956.69. For the John C. Boyle Plant, Licensee claimed for the period June 1, 1959 through December 31, 1960 (1) net additions of $79,684.92 consisting of additions of $81,048.71 and retirements of $1,363.79 and (2) a resulting actual legitimate original cost as of December 31, 1960 of $14,409,246.65. Licensee's resulting claimed total actual legitimate original cost as of December 31, 1960 for the project was $22,677,203.34.

The Commission's staff made an examination of the books and records of the Licensee and other data for the purpose of ascertaining the correctness of those amounts. Following that study a conference was held by the staff with representatives of the Licensee, at which an agreement, subject to Commission approval, was reached with respect to certain proposed adjustments and accounting dispositions. The adjustments agreed to, resulted in a net increase in claimed initial cost of the newly constructed John C. Boyle Plant as of May 31, 1959 in the amount of $10,830.33; a net decrease in the claimed initial cost of the constructed developments of the project as of March 1, 1956 in the amount of $191,590.32; and a net decrease in the recorded changes in the cost of the constructed developments for the period from March 1, 1956 to December 31, 1960 in the amount of $328,970.27. These adjustments can be summarized as follows:

Description of claimed initial cost	Total	John C. Boyle plant May 31, 1959	Constructed plants Mar. 1, 1956
Land and land rights	$14,790.19	($301.09)	$15,091.28
Interest during construction	11,131.42	11,131.42	
Nonproject items	(206,681.60)		(206,681.60)
Total adjustments of initial cost	(180,759.99)	10,830.33	(191,590.32)
Description of recorded changes		**John C. Boyle June 1, 1959–Dec. 31, 1960**	**Constructed plants Mar. 1, 1956–Dec. 31, 1960**
Nonproject items	($298,414.27)		($298,414.27)
Excessive system overheads	(7,518.19)		(7,518.19)
Understated retirements	(23,037.81)		(23,037.81)
Total adjustments of plant changes	(328,970.27)		(328,970.27)
Total adjustments	(509,730.26)	$10,830.33	(520,560.59)

---

[3] Articles 47 and 48 of the license, as amended, provide for the determination of the actual legitimate original cost, estimated where not known, and the accrued depreciation of the Constructed Plants, the actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and the actual legitimate original cost of any addition to or betterment of the project.

[4] We do not undertake as a part of this order to determine the accrued depreciation applicable to the Constructed Plants.

The foregoing adjustments, including certain reclassifications which do not affect the total project cost, are reflected in the attached Schedule I* which also shows the distribution of project indirect and overhead costs to prescribed primary plant accounts as proposed by the staff and concurred in by Licensee's representatives.

The staff recommends and Licensee's representatives have concurred, by letter dated August 9, 1962, that the Commission determine (1) the actual legitimate original cost of the Constructed Plants as of March 1, 1956 be $7,436,649.08, (2) the net change in actual legitimate original cost for the Constructed Plants for the period March 1, 1956 through December 31, 1960 be $310,747.02 consisting of additions of $442,290.94 and retirements of $131,543.92, (3) The resulting actual legitimate original cost of the Constructed Plants as of December 31, 1960 be $7,747,396.10, (4) the actual legitimate original cost of the John C. Boyle plant as of May 31, 1959 be $14,340,392.06, (5) the net change in actual legitimate original cost for the John C. Boyle plant for the period June 1, 1959 through December 31, 1960 be $79,684.92 consisting of additions of $81,048.71 and retirements of $1,363.79, (6) the resulting actual legitimate original cost of the John C. Boyle plant as of December 31, 1960 be $14,420,076.98, and (7) the resulting project cost as of December 31, 1960 be $22,167,473.08; all as more specifically shown by primary plant accounts in the attached Schedule I before and after the distribution of indirect and overhead construction costs.

The accounting disposition of all amounts involved in the proposed adjustments as agreed to by the staff and representatives of the Licensee is shown by the following composite journal entry:

Account No.	Title	Debit (credit)
	Adjustments	
101 [1]	Electric plant in service—Project No. 2082	$(476,628.61)
	Recommended Accounting Disposition	
101	Electric plant in service—Nonproject	444,711.12
108	Accumulated provision for depreciation of electric plant in service:	
	Project No. 2082—East Side	23,176.46
121	Nonutility property	12,371.62
184	Clearing accounts	7,518.19
216	Unappropriated earned surplus	(11,131.42)
401	Operation expense	(17.36)
	Total disposition	476,628.61

[1] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees, effective January 1, 1961, except in the attached schedules, which employ account numbers and titles prescribed in the Comission's Uniform System of Accounts prior to January 1, 1961. This reflects the fact that items of project cost were entered upon Licensee's books of account prior to January 1, 1961.

The difference between the above total adjustments to claimed costs of $(509,730.26) and the total disposition of $476,628.61, is a difference of $33,101.65, resulting from the Licensee's claimed costs exceeding its recorded costs for the Constructed Plants as of March 1, 1956. The difference, a net debit adjustment of $33,101.65, as shown in Schedule II* will adjust the recorded cost to the claimed cost.

The California Public Utilities Commission by letter dated August 21, 1962 and the Oregon Public Utilities Commissioner by letter dated December 25, 1962, responding to Commission staff request for comment on the proposed adjustments, indicated no objection thereto.

---

*Omitted in printing.

The Commission finds:

(1) Licensee by its letter of August 9, 1962, tentatively agreeing to the staff's proposed adjustments herein, the California Public Utilities Commission by letter dated August 21, 1962, and the Oregon Public Utilities Commissioner by letter dated September 25, 1962, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments and accounting dispositions are reasonable and proper for the purposes of the Federal Power Act.

(3) The actual legitimate original cost of the project as of March 1, 1956, is $7,436,649.08, the net change in actual legitimate original project cost from March 1, 1956 through December 31, 1960, is $14,730,824.00 composed of (a) the initial actual legitimate original cost of the John C. Boyle plant as of May 31, 1959, of $14,340,392.06, (b) additions to the John C. Boyle plant from May 31, 1959 through December 31, 1960, of $81,048.71, (c) retirements from the John C. Boyle plant for the same period of $1,363.79, (d) additions to the Constructed Plants for the period March 1, 1956 through December 31, 1960, of $442,290.94, (e) retirements from the Constructed Plants for the same period of $131,543.92, and the resulting actual legitimate original project cost as of December 31, 1960, is $22,167,473.08, classified by primary plant accounts as shown by the attached Schedule I.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 2082 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for purposes of this order.

(B) The foregoing adjustments and the accounting dispositions as proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project accounts for Project No. 2082 showing the debit amount of $7,436,649.08 as the actual legitimate original project cost as of March 1, 1956, the effective date of the license, showing a debit amount of $14,730,824.00 as the net increase or change in actual legitimate original cost for the period from March 1, 1956 through December 31, 1960, and the total debit balance of $22,167,473.08 as the actual legitimate original cost of the project as of December 31, 1960, all as more specifically shown in the attached Schedule I classified by primary plant accounts of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees.

(D) The matter of Commission determination of the accrued depreciation applicable to in-service project properties of Project No. 2082 is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission in quintuplicate, F.P.C. Form No. 7 and certified copies of Licensee's adjusting journal entries showing compliance with this order; three copies of that form and those journal entries to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2351

ORDER ISSUING LICENSE (MAJOR)

(Issued March 23, 1964)

Application was filed on March 7, 1963, and supplemented on July 8 and July 25, 1963, respectively, by Public Service Company of Colorado (Applicant) of Denver, Colorado, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2351, to be known as the "Cabin Creek Pumped Storage Hydroelectric Project", to be located on South Clear Creek and its tributary, Cabin Creek, in Clear Creek County, Colorado, and affecting lands of the United States within the Arapaho National Forest.

The proposed project would consist of Upper and Lower Reservoirs formed by rock-fill dams with an average water surface elevation difference between them of about 1,125 feet; a power tunnel about 3,600 feet long from Upper Reservoir to a powerhouse located at the edge of Lower Reservoir having a total installed generating capacity of 225,000 kilowatts in three reversible pump-turbine units; a switchyard adjacent to the powerhouse: and a 35-mile long double-circuit 230-kv transmission line to Applicant's Golden substation. The project would utilize steam-electric energy from Applicant's system (about 210,000,000 kwh annually) during off-peak hours to pump water from Lower Reservoir to Upper Reservoir. The reverse flow of the water would be used to generate electric energy during the peak-load period of Applicant's system which, at the end of 1962, had generating plants with a total rated capacity of 949,060 kilowatts. Annual generation by Project No. 2351 would be about 150,000,000 kwh.

The total estimated capital cost ($26,091,000) of the proposed project, resulting in $116 per kilowatt, has been reviewed and found to be reasonable. The estimated annual benefit of $4,927,500 would exceed by $597,700 the estimated annual cost of $4,329,800, giving a benefit cost ratio of 1.14. The project is estimated to operate at less annual cost than alternative sources of power.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the provisions of the Federal Power Act (to which any license for the project would be subject) would adequately protect the interests of the Corps.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license for the project, certain conditions in the interests of the Department. In addition, it was reported that the U.S. Geological Survey has relatively little knowledge of the regional geology and that inasmuch as the proposed project tunnel excavation would provide a favorable opportunity to observe the geology of the area, the Survey wishes to examine the tunnel during its construction. We believe the Survey's wishes can be met through timely arrangements by and in cooperation with the Commission's Fort Worth Regional Office and provisions will be made for such arrangements.

The Department of Agriculture, in reporting on the application, has recommended for inclusion in any license for the project, certain conditions in the interests of the Department.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Colorado, and has submitted satisfactory evidence of compliance with the require-

ments of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The proposed project will affect lands of the United States.

(3) Public notice of the application has been given as required by the Act. No protests or petitions to intervene have been filed. The Public Utilities Commission of the State of Colorado filed on April 19, 1963, a notice of intervention and has stated that by such notice it did not intend to seek a hearing. No conflicting application is before the Commission.

(4) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Arapaho National Forest was created or acquired.

(5) The project will not affect a Government dam.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 300,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of lands of the United States by the project should be determined at a later date as hereinafter provided.

(10) The transmission facilities described in paragraph (B) below are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(11) The exhibits designated and described in paragraph (B) below, which were included as part of the application for license, conform to the Commission's rules and regulations and should be approved as part of the license for the project, to the extent therein indicated.

The Commission orders:

(A) This license is hereby issued to the Public Service Company of Colorado (Licensee) of Denver, Colorado, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of March 1, 1964, for the construction, operation and maintenance of Project No. 2351, affecting lands of the United States within the Arapaho National Forest, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2351 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and

described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

Exhibit	FPC No. 2351-	Title, Cabin Creek Pumped Storage Hydroelectric Project
J	4	"General map," and.
K	5	"Project area" insofar as it shows the tentative project boundary.

(ii) All project works consisting principally of:

A rock-fill, concrete-faced dam across Cabin Creek, about 174 feet high, incorporating an ungated open-channel spill-way and creating Upper Reservoir with gross storage capacity of about 1,400 acre-feet between maximum and minimum water surface Elevations 11,169 and 11,050 feet; a rock-fill, impervious core dam across South Clear Creek, about 98 feet high, incorporating an ungated open-channel spillway and creating Lower Reservoir with gross storage capacity of about 1,800 acre-feet at maximum water surface Elevation 9,998 feet; a power tunnel extending approximately 3,600 feet from an ungated intake at the floor of Upper Reservoir to the penstocks of the powerhouse; a semi-outdoor type powerhouse located at the upstream end of Lower Reservoir, housing three generating units each consisting of a generator-motor, rated at 75,000 kw as generator, direct-connected to a reversible pump-turbine rated at 110,000 hp as a turbine; a switchyard adjacent to the powerhouse; a double-circuit, 230-kv transmission line extending from the switchyard to the Licensee's Golden Substation near Golden, Colorado; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works—the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No. 2351-	Title, Cabin Creek Pumped Storage Hydroelectric Project
Sheet 1 of 3	6	"Dams and Waterways,"
Sheet 2 of 3	7	"Powerhouse Structure,"
Supplement Sheet 1	10	"Spillway Details & Rating Curves," and
Supplement Sheet 2	11	"Outlet Works—Lower Dam."

Exhibit M: Entitled "General Description of Equipment" in five sheets filed March 7, 1963, except for the inclusion of the 115-kv transmission line and for the extent of the double-circuit 230-kv transmission line.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-2 (February 1, 1964) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (*supra*, p. 528), which terms and conditions, designated as Articles 1 through 33, are attached hereto and made a part hereof, except for Articles 21 and 22 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 34. The Licensee shall commence construction of the project works not later than July 1, 1964, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works not later than July 1, 1967.

Article 35. The Licensee shall submit in accordance with the Commission's rules and regulations Exhibit L drawings showing the final designs of the project works; and the Licensee shall not begin construction of the project structures until the Commission has approved such exhibits.

Article 36. The Licensee shall, within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to show and describe the entire project, including transmission lines.

Article 37. The Licensee shall prior to impounding water clear all lands in the bottoms and margins of reservoirs up to high-water level, shall clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of reservoirs which may die from operation of the reservoir shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 38. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the licensee and in coordination with his project construction schedules. Such sale or disposal to others will not relieve the licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 39. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 40. The Licensee shall replace to Forest Service standards and specifications, in a location acceptable to Forest Service, the eleven (11) recreational family units of the Lower Clear Creek Campground to be inundated by the lower reservoir. Replacement shall be at the expense of the Licensee, and concurrent with project construction.

Article 41. The Licensee shall take whatever precautions are necessary during construction operations to prevent the entry into project streams of silt, clay, sand, gravel, detritus or other material which is injurious to fish and wildlife or other habitat.

Article 42. The Licensee shall bypass a continuous minimum flow of at least three (3) cubic feet per second or the natural inflow to the Lower Reservoir, whichever is less, to South Clear Creek; this minimum bypass to be made during the period of construction, the initial filling of the reservoir, and during periods of operation and maintenance of the project and its features.

Article 43. The Licensee shall provide gates in the fence of the Lower Reservoir so as to permit adequate access by fish trucks for stocking fish.

Article 44. The Licensee shall participate with the Forest Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Game, Fish, and Parks in a study which the Licensee will use to develop the fishery potential of the project area.

Article 45. The Commission expressly reserves the right to determine at a later date what additional transmission lines and appurtenant facilities, if any, shall be included in the license as part of the project works.

Article 46. The Licensee shall, within one year from the effective date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 47. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations in effect from time to time. The authorized installed capacity for such purpose is 300,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, including those used for transmission-line right-of-way, an amount to be determined hereafter by the Commission.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license to the extent therein indicated.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY

(Issued March 23, 1964)

On July 23, 1963, Sacramento Municipal Utility District, licensee for Project No. 2101, filed for Commission approval revised Exhibits K, L, and M pertaining to the tunnel, penstock, and power plant at the White Rock Division of the project.

Our approval of the revised exhibits would authorize: (1) an increase in the installed capacity of the White Rock Power Plant from 150,000 kilowatts to 200,000 kilowatts; (2) a slight realignment of the White Rock tunnel; (3) an increase in the tunnel diameter from 21 feet to 24 feet; and (4) an increase in the size of the penstock. The penstock formerly authorized tapers from 15 to 14 feet in diameter, bifurcated to 9-foot branches. The penstock which would be authorized by approval of the revised exhibits tapers from 16 to 14 feet, bifurcated to 9.5-foot branches.

The enlarged tunnel and penstock are satisfactorily designed to carry flows required to operate the increased size of the generator units at White Rock Power Plant. The larger plant will allow utilization of the additional 200 cfs of water made available to the White Rock Plant under the January 5, 1962, contract between the licensee and Pacific Gas & Electric Company, mentioned in the Commission's license for Project No. 2155 issued August 28, 1962.

The increase of 50,000 kilowatts in the capacity of White Rock Power Plant will be accompanied by an average annual increase of 11,000,000 kwh in energy output. According to the licensee, the additional capacity can be fully utilized on the licensee's system load by 1969.

The increased capacity of the power plant and tunnel will cost an estimated additional $7,529,000, and the estimated annual value of the additional project output would be $674,930, which exceeds by $275,030 the estimated annual cost of $399,900 for such capacity.

The Department of Agriculture has advised that the proposed changes to the project will not interfere or be inconsistent with the purposes for which Eldorado National Forest was created or acquired, and that the terms and conditions of the present license for the project are adequate for the protection and utilization of the national forest affected.

The Commission finds:

(1) The following described revised project exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent indicated, and the exhibits mentioned herein as being superseded should be eliminated from the license:

Exhibit	FPC No.	Title
K-25 & L-110	2101-178	"White Rock Development—General Arrangement," insofar as it shows the alignment of the power tunnel and penstock;
L-108	2101-179	"White Rock Tunnel—Typical Sections";
L-109	2101-180	"White Rock Penstock—Plan and Profile";
Superseding Exhibit L-101 (FPC No. 2101-164), now part of the license; and—		
M-5		Entitled, "White Rock Power Plant—General Description of Equipment" in one typewritten sheet filed July 23, 1963, superseding Exhibit M (Revised) in one typewritten sheet dated May 4, 1962, and filed May 16, 1962.

(2) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 545,000 horsepower to 612,000 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, is reasonable as hereinafter provided.

The Commission orders:

(A) The revised Exhibits K, L, and M described in finding (1) above are hereby approved as part of the license for Project No. 2101 to the extent therein indicated, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(B) Article 46(a) of the license for the project is hereby amended, effective as of January 1, 1964, to show 612,000 horsepower as the authorized installed horsepower capacity of the project.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7150

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF DEBENTURES

(Issued March 24, 1964)

By order issued March 16, 1964, *supra*, p. 590, in the above-entitled matter, the Commission authorized Iowa Power and Light Company (Applicant) to issue and sell at competitive bidding $10,000,000 principal amount of Debentures, due 1989, subject to the provisions, among others, set forth in Paragraph (B) of that order, as follows:

> (B) The proposed issuance and sale of Debentures at competitive bidding shall not be consummated until:
>
> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those regulations relating to affiliations, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Debentures and the interest rate thereof.

Applicant, on March 24, 1964, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept, as providing the lowest annual cost of money to it, the bid of White, Weld & Co. to purchase the proposed issuance of $10,000,000 principal amount of Debentures for the price of 100.119 of principal amount with an interest rate of 4⅝%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued March 16, 1964, in the above docket, and under the bid it proposes to accept for the Debentures, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Debentures, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Debentures and the interest rate thereof under the bid referred to above are approved as reasonable.

(B) The proposed issuance and sale of Debentures referred to above, upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued March 16, 1964, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MISSISSIPPI GAS CORPORATION, DOCKET NO. CP64-87; STARKS UTILITIES, INC., DOCKET NO. CP64-11

FINDING AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 24, 1964)

On July 3, 1963, Starks Utilities, Inc., Lake Charles, Louisiana, filed an application (Docket No. CP64-11) and on August 19, 1963 and October 28, 1963, supplements thereto, pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Starks Utilities, Inc. and to sell natural gas to Starks Utilities, Inc. for local distribution in the town of Starks, Calcasieu Parish, Louisiana, and in the area adjacent thereto.

The service area proposed to be served, including Starks, an unincorporated community, has a population of approximately 1,200. Its estimated peak day and annual requirements for the first three years of operation are as follows:

	Peak day (Mcf)	*Annual (Mcf)*
1st year	413	15,120
2d year	433	15,840
3d year	443	16,200

Starks Utilities, Inc. owns and operates the water system in Starks.

The only gas service available to the residents of this area at the present time is provided by the sale of bottled gas.

The pipeline of Texas Eastern is located in close proximity to the town of Starks and is shown to be just south of said community.

Stark Utilities, Inc. shows that the total cost of the project will be in excess of $50,000, which will be financed by a loan in the amount of $39,800, which has been authorized by the Small Business Administration, and from its own funds.

Texas Eastern filed an answer in Docket No. CP64-11 on August 26, 1963, stating it was able to supply the small volume of gas requested without impairing Texas Eastern's ability to render adequate service to its customers, but saying that the delivery of the small volume of gas involved by Texas Eastern was not economically feasible. Texas Eastern said, however, it would abide by whatever decision the Commission might make on the merits of the application. Thereafter, on February 27, 1964, Texas Eastern filed an amended answer stating that in the event the Commission finds the service proposed to be in the public interest and directs Texas Eastern to render such service, then Texas Eastern will file with this Commission a rate schedule applicable to its Zone A, providing service to customers such as Starks Utilities, Inc. at a present price of 26.07 cents per Mcf, and in due course execute its regular form service agreement with Starks Utilities, Inc. providing for the service directed.

Mississippi Gas Corporation (Mississippi Gas), 3404 Iroquois Street, Baton Rouge, Louisiana, filed on October 7, 1963, an application (Docket No. CP64-87) and on November 18, 1963, and on February 14, 1964, supplements thereto, pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Texas Eastern to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Mississippi Gas and to sell and deliver natural gas to Mississippi Gas for resale and distribution in the Village of Reeves, Louisiana, and its environs, at a rate not to exceed 26.13 cents per Mcf.

Mississippi Gas originally estimated its peak day third year requirements at only 98 Mcf and its third year annual requirements at 10,512 Mcf. Its supplement two revised said requirements to be as follows:

	Peak day (Mcf)	*Annual (Mcf)*
1st year	200	20, 257
2d year	210	20, 521
3d year	220	20, 785

This change in estimated requirements was shown to be due to requests from rice farmers north of Reeves for service for 14 additional residential customers, 5 rice dryers, and 7 irrigation wells.

Mississippi Gas proposes to construct a two-inch transmission line approximately 2 miles long to connect with Texas Eastern's 30-inch transmission pipeline south of Reeves, where a metering station is proposed to be installed. It shows that the estimated cost of its project, including transmission line and distribution system, will be $37,000, which it will finance from its own funds and by the issuance and sale of six percent, 20 year, revenue bonds in the amount of $30,000.

The only gas supply available to Reeves at the present time is liquefied petroleum gas.

Mississippi Gas also requests that its supply of natural gas be sold to it at a rate not to exceed 26.13 cents per Mcf. On November 13, 1963, Texas Eastern filed an answer in Docket No. CP64-87 stating, among other things, that it did not have any rate on file with the Federal Power Commission as proposed by Mississippi Gas and upon which the application is based. It was also asserted by Texas Eastern that the sale of the requested volume—98 Mcf, as originally proposed—would not recover the cost of serving Mississippi Gas and that the proposed sale was not economically feasible to Texas Eastern. Thereafter, on February 26, 1964, Texas Eastern filed an amended answer stating, that in the event this Commission finds the service proposed by Mississippi Gas Corporation to be in the public interest and directs Texas Eastern to render such service, then Texas Eastern will file with this Commission a rate schedule applicable to its Zone A, providing service to customers such as Mississippi Gas Corporation at a present price of 26.07 cents per Mcf, and in due course execute its regular form service agreement with Mississippi Gas Corporation providing for the service directed.

Starks Utilities, Inc. and Mississippi Gas each show that it has received from the Louisiana Public Service Commission authorization and acceptance of its rates for service in the Villages of Starks and Reeves, respectively. Starks Utilities, Inc. has been granted a franchise for the construction and operation of its system by the Police Jury of Calcasieu Parish, Louisiana. Mississippi Gas has been granted a franchise by the Board of Aldermen of the Village of Reeves.

Mississippi Gas also owns and operates gas systems in Bougechitto, Mississippi and in Ward 5, St. Helena Parish, Louisiana.

Pursuant to due notice, a public hearing was held upon a joint record in Washington, D.C. on February 26, 1964, respecting the matters involved in and the issues presented by the applications herein. No petition to intervene, protest to the granting of the application or other pleading has been received except the answers and amended answers filed by Texas Eastern, as hereinbefore described.

At the close of the evidence, staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation, having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(2) Mississippi Gas Corporation is a private corporation organized and existing under the laws of the State of Mississippi and is authorized to engage in the local distribution of natural gas in the States of Mississippi and Louisiana.

(3) Starks Utilities, Inc. is a private corporation organized and existing under the laws of the State of Louisiana, and is authorized to engage in the local distribution of natural gas in said state.

(4) It is necessary and desirable in the public interest that Texas Eastern Transmission Corporation be directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Mississippi Gas Corporation and to sell and deliver to it volumes of natural gas up to 220 Mcf per day for resale and distribution in the Village of Reeves, Louisiana and its environs.

(5) It is necessary and desirable in the public interest that Texas Eastern Transmission Corporation be directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Starks Utilities, Inc. and to sell and deliver to it volumes of natural gas up to 443 Mcf per day for resale and distribution in the Village of Starks, Louisiana, and in the area adjacent thereto.

(6) The requirement that Texas Eastern Transmission Corporation serve Mississippi Gas Corporation and Starks Utilities, Inc., as above set forth, will not place any undue burden upon it nor require it to enlarge its facilities nor impair its ability to render adequate service to its existing customers.

(7) Texas Eastern should file an initial rate schedule applicable to its Zone A, providing service to customers such as Mississippi Gas Corporation and Starks Utilities, Inc. at a present price of 26.07 cents per Mcf, and also execute and file its regular form service agreements with Mississippi Gas Corporation and Starks Utilities, Inc. providing for said service in accordance with Texas Eastern's amended answers.

(8) Mississippi Gas Corporation and Starks Utilities, Inc. should be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(9) A request having been made by staff counsel for omission of the intermediate decision procedure, and all requirements of the provisions of Section 1.30(c)(1) [18 CFR (c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision herein.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and it is hereby directed to establish physical connection of its transportation facilities with the proposed facilities of Mississippi Gas Corporation and to sell and deliver to it volumes of natural gas up to 220 Mcf per day for resale and distribution in the Village of Reeves, Louisiana, and its environs.

(B) Texas Eastern Transmission Corporation be and it is hereby directed to establish physical connection of its transportation facilities with the proposed facilities of Starks Utilities, Inc. and to sell and deliver to it volumes of natural gas up to 443 Mcf per day for resale and distribution in the Village of Starks, Louisiana, and in the area adjacent thereto.

(C) Texas Eastern Transmission Corporation shall file with this Commission an initial rate schedule applicable to its Zone A, providing service to customers such as Mississippi Gas Corporation and Starks Utilities, Inc. at a present price of 26.07 cents per Mcf, and to execute and file its regular form service agreement with Mississippi Gas Corporation and Starks Utilities, Inc. providing for said service in accordance with Texas Eastern's amended answers.

(D) Mississippi Gas Corporation and Starks Utilities, Inc. shall be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(E) Texas Eastern shall report to the Commission in writing the date of commencement of service to said applicants within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G-18340

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 25, 1964)

On April 22, 1959, Colorado Interstate Gas Company (Applicant) filed in Docket No. G-18340 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, all as more fully set forth in application.

Applicant proposes to construct and operate a 180 horsepower skid-mounted compressor station in the Table Rock field of Wyoming in order to compress and deliver volumes of natural gas purchased in said field into Applicant's Green River-Denver mainline for ultimate delivery to Applicant's Rocky Mountain markets.

The total estimated cost of the proposed facilities is $114,099, which cost will be financed from current working funds on hand.

On May 8, 1959, Applicant was granted a temporary certificate authorizing the construction and operation of the proposed facilities.

On April 29, 1959, Public Service Company of Colorado filed a petition to intervene in this proceeding. Said petition is in support of the subject abbreviated application. Accordingly, inasmuch as the shortened procedure is being used herein, no further action on the said petition to intervene appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the subject facilities as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SABINE PIPE LINE COMPANY, DOCKET NO. CP64-97

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 25, 1964)

On October 25, 1963, Sabine Pipe Line Company (Applicant), filed in Docket No. CP64-97, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity, authorizing the construction and operation of approximately 127 miles of 24-inch pipeline and related facilities for the transportation of natural gas from the Erath Plant of Texaco Inc. (Texaco) in Vermilion Parish, Louisiana, to Texaco's Port Arthur plants in Jefferson County, Texas, all as more fully set forth in the application on file with the Commission.

Applicant, a wholly owned subsidiary of Texaco, proposes to construct and operate the pipeline for the purpose of providing a transportation service for Texaco to transport approximately 155,000 Mcf of natural gas on an average day and approximately 187,000 Mcf on a maximum day during the first full year of operation. The gas to be transported will be supplied from uncommitted reserves in the Erath Field, Vermilion Parish, Louisiana, and will be delivered into Applicant's line at the tailgate of Texaco's Erath Plant for transportation to and use in Texaco's Port Arthur plants in Jefferson County, Texas.

The cost of the facilities to be constructed and operated by Applicant is estimated to be $15,700,000, and will be defrayed from funds provided by the sale of common stock to, and an unsecured loan from Texaco.

Following the issuance of notice on December 23, 1963, United Gas Pipe Line Company (United) filed a petition for leave to intervene alleging that the construction of Applicant's pipeline "would subject United's existing markets in the Beaumont-Port Arthur Area and its markets all along the proposed pipeline to an invasion by Texaco, and would have an adverse effect (sic) on United of a direct and substantial character."

Thereafter by letter dated February 24, 1964, Applicant advised the Commission that it and United had agreed that Applicant would raise no objection to the issuance of a certificate which includes the following condition:

> The certificate issued * * * is subject to the express condition that gas so transported through Sabine's facilities pursuant to this authority shall be restricted solely to use in Texaco's Port Arthur Plants.

Subsequently, United on February 28, 1964, withdrew its petition for leave to intervene.

We are of the opinion that the insertion of such condition in this order issuing the certificate is unnecessary and would be mere surplusage.

Applicant's certificate application seeks authority to construct and operate a pipeline to transport Texaco's own produced gas from point of production to Texaco's plants in the Port Arthur area of Texas. Thus the certificate we are issuing grants only such authority. If Applicant, in the future, desires to operate its pipeline for any other purpose it will have to apply for authority to do so. Applicant cannot engage in operations other than those for which it has sought a certificate unless otherwise authorized or ordered by the Commission.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

(1) the application and exhibits hereto, and upon consideration thereof finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Sabine Pipe Line Company, a Delaware corporation having its principal place of business in Houston, Texas, upon commencement of the proposed transportation of natural gas will be engaged in the business of transporting natural gas in interstate commerce subject to the jurisdiction of the Commission, and will therefore be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The construction and operation of facilities for the transportation of natural gas by Applicant for Texaco Inc., as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction and operation of facilities for the transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Sabine Pipe Line Company, to construct and operate facilities and to transport natural gas in interstate commerce for use in Texaco's Port Arthur plants, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby further conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in (A) above shall be constructed and placed in operation within three years from the date hereof.

(D) United Gas Pipe Line Company is hereby granted permission to withdraw its petition to intervene filed in this proceeding on January 15, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black.

TOWN GAS COMPANY OF ILLINOIS, DOCKET NO. CP64-3

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued March 25, 1964)

Town Gas Company of Illinois (Applicant), filed an application on July 3, 1963, and supplements thereto on December 3 and 17, 1963, in Docket No. CP64-3, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle Eastern) to establish physical connection of its transmission facilities with the proposed facilities of, and to sell natural gas to Applicant, for distribution and resale in the Village of Middletown, Illinois, and environs, all as more fully set forth in the application and supplements thereto on file with the Commission.

Applicant proposes to construct and operate a distribution system in the Village of Middletown, as well as 7,637 feet of 4½-inch lateral transmission line connecting the proposed distribution system with the transmission facilities of Panhandle Eastern.

The application and supplements thereto show Applicant's estimated third year peak day and annual natural gas requirements to be 217 Mcf and 26,124 Mcf, respectively.

The total estimated cost of the transmission and distribution facilities for the project is $114,682, of which $100,000 will be financed by the issuance of First Mortgage Bonds bearing 5⅝ percent interest.

On January 7, 1964, Panhandle Eastern filed a revised answer to its original answer filed July 25, 1963, and stated it was able and willing to render the requested service to the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 28, 1964 (29 F.R. 2802). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Town Gas Company of Illinois, an Illinois corporation having its principal place of business in Virden, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Panhandle Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Panhandle Eastern in accordance with the Commission's Regulations, up to 217 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Panhandle Eastern serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Panhandle Eastern, (b) require Panhandle Eastern to enlarge its transportation facilities, or (c) impair Panhandle Eastern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Panhandle Eastern for distribution in the Village of Middletown, Illinois, and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Town Gas Company of Illinois as herein described, and to sell and deliver up to 217 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Panhandle Eastern in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Panhandle Eastern's presently filed appropriate rate schedule.

(B) Panhandle Eastern shall report to the Commission, in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED NATURAL GAS COMPANY AND THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64-67; THE SYLVANIA CORPORATION, DOCKET NO. CP64-69

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 25, 1964)

On September 18, 1963, as supplemented on November 12, 1963, United Natural Gas Company (United) and The Manufacturers Light & Heat Company (Manufacturers) filed in Docket No. CP64-67 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing United to construct and operate certain facilities and to operate certain existing facilities and authorizing United and Manufacturers to exchange and deliver natural gas pursuant to two separate agreements, all as more fully set forth in the joint application, as supplemented.

The joint application shows that United proposes to purchase natural gas from The Sylvania Corporation (Sylvania) produced by the latter from fields in Brush Valley and Cherryhill Townships, Indiana County, Pennsylvania. United will construct and operate approximately 500 feet of 3-inch pipeline extending from Sylvania's well to an existing tap on Manufacturers' 4-inch line, together with a meter station and appurtenant facilities. Said facilities are estimated to cost $5,385, which cost will be financed out of cash on hand.

Since United has no pipeline in Indiana County, it proposes to exchange gas with Manufacturers whereby gas purchased from Sylvania will be delivered by United, by means of the herein proposed 3-inch line, into Manufacturers' 4-inch line at a point in Brush Valley Township; Manufacturers will in turn deliver equal volumes of gas to United at an existing connection near Medix Run, Benezette Township, Elk County, Pennsylvania. This proposed exchange arrangement is pursuant to an agreement, dated July 3, 1963, between United and Manufacturers.

The joint application shows further that United and Manufacturers have also been exchanging gas in Elk County, pursuant to an agreement, dated March 8, 1960, as supplemented. Under this agreement, as supplemented, gas purchased by United in the Benezette Field is delivered into Manufacturers' 4- and 12-inch production lines and then redelivered by Manufacturers through United's Medix Run Station into United's Line No. F-100.[1] United and Manufacturers state that the facilities utilized for this exchange were considered production facilities; however, United and Manufacturers state further that by the Commission's order issued January 18, 1963, as amended, in Docket No. CP62-275, United's Line No. F-100 was authorized to be utilized for a jurisdictional service. Accordingly, United and Manufacturers request herein authorization to continue the exchange, pursuant to the March 8, 1960, agreement, as supplemented, and, further, United requests herein authorization to operate its Line No. F-100 and its Medix Run Station and the connecting 12-inch line related thereto in order to effect said exchange.

---

[1] Said agreement, as supplemented, also permits Manufacturers to use a portion of the capacity at the Medix Run Station to pump its own gas, with Manufacturers paying its pro-rata share of the cost of operating and maintaining the station.

On September 18, 1963, Sylvania filed in Docket No. CP64-69 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to United produced from fields in Brush Valley and Cherryhill Townships, Indiana County, Pennsylvania, all as more fully set forth in the application.

The initial price is 27 cents per Mcf at 15.025 psia.[3]

On December 5, 1963, United, Manufacturers and Sylvania were granted temporary certificates authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, supplement and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G-328 (3 FPC 959).

(2) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.*, (4 FPC 821).

(3) Applicant, The Sylvania Corporation, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 17, 1943, in Docket No. G-237 (3 FPC 1066).

(4) The facilities to be constructed and operated and the existing facilities to be operated by United, as hereinbefore described and as more fully described in the joint application, as supplemented, in Docket No. CP64-67, are proposed to be used in the exchange and delivery of natural gas in interstate commerce between United and Manufacturers, subject to the jurisdiction of the Commission, and the construction and operation of such facilities and the operation of existing facilities by United and the exchange and delivery of natural gas between United and Manufacturers are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sale of natural gas by Sylvania hereinbefore described, as more fully described in the application in Docket No. CP64-69, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Sylvania, together with the construction and operation of any facilities subject to

---

[3] Sylvania agreed to accept a permanent certificate at an initial price of 27.0 cents per Mcf at 15.025 psia by letter received October 1, 1963.

the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The sale of natural gas by Sylvania, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) The construction and operation of the proposed facilities and the operation of the existing facilities by United and the proposed exchange and delivery of natural gas between United and Manufacturers are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(8) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) Public convenience and necessity require that the certificate issued hereinafter to United and Manufacturers in Docket No. CP64–67 and the rights granted thereunder be conditioned upon said Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(10) The certificate issued hereinafter to Sylvania in Docket No. CP64–69 should be subject to the express condition that the initial price for gas sold by Sylvania to United shall not exceed 27.0 cents per Mcf at 15.025 psia.

(11) The certificate issued hereinafter to Sylvania in Docket No. CP64–69 should determine only the payments which may legally be made by the buyer to the seller and do not and cannot estop the Commission from considering the appropriate cost to be attributed to these sales should United's purchased costs be in issue in a further rate proceeding under either Sections 4(e) or 5(a) of the Natural Gas Act.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued jointly to Applicants, United Natural Gas Company and The Manufacturers Light & Heat Company, authorizing United to construct and operate the described facilities and to operate the described existing facilities and authorizing United and Manufacturers to exchange and deliver natural gas as hereinbefore described, all as more fully described in the joint application, as supplemented, in Docket No. CP64–67, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Sylvania of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application in Docket No. CP64–69.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon United's and Manufacturers' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(D) The certificate issued to Sylvania in paragraph (B) above is not transferable and shall be effective only so long as Sylvania continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificate issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Sylvania. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(F) The certificate issued to Sylvania in paragraph (B) above is hereby made subject to the express condition that the initial price for gas sold by Sylvania to United shall not exceed 27.0 cents per Mcf at 15.025 psia.

(G) The certificate issued to Sylvania in paragraph (B) above determines only the payments which may legally be made by the buyer to the seller and do not and cannot estop the Commission from considering the appropriate cost to be attributed to these sales should United's purchased costs be in issue in a further rate proceeding under either Sections 4(e) or 5(a) of the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. RP64-21

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued March 27, 1964)

Algonquin Gas Transmission Company (Algonquin) on February 27, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volumes Nos. 1 and 2.[1] The proposed change in rates would make effective as of March 1, 1964, a reduction in Algonquin's jurisdictional rates of 0.73 cents per Mcf, or approximately $538,000 annually, based upon its operations for the twelve months ended December 31, 1962, adjusted, subject to certain conditions. The proposed rate filing, which we have docketed as shown above, also includes a proposal to make refunds of charges for deliveries of gas during January and February 1964, and to make further rate reductions on July 1, 1965, such reductions being subject to additional terms and contingencies summarized in part below.

The proposed change in rates reflects a reduction in Algonquin's cost of service which includes a reduction of approximately $184,000 in Algonquin's Federal income tax resulting from the recent reduction in the tax rate for corporations from 52 percent to 50 percent. According to Algonquin's proposal, it will make refunds to its customers, by crediting current bills, so as to reflect the reduction in Federal income tax as of January 1, 1964. The proposed reduction in charges for January and February deliveries is 0.25 cent per Mcf.

---

[1] Original Volume No. 1: Fourth Revised Sheet No. 5; Fourth Revised Sheet No. 10; Fifth Revised Sheet No. 11-A; Fifth Revised Sheet No. 12; Fourth Revised Sheet No. 14; Original Volume No. 2: Fifth Revised Sheet No. 4; Second Revised Sheet No. 57.

Algonquin's rate reduction proposal has resulted from conferences with the Commission staff. These conferences were initiated by letter of the Executive Director to Algonquin on September 6, 1963, as a consequence of the staff's continuing supervision and periodic review of the reports filed by natural gas companies with the Commission.

The proposal is summarized in part as follows:

(1) Effective as of March 1, 1964, Algonquin's jurisdictional rates will be reduced to the levels set forth in Appendix A hereto.

(2) Algonquin will credit current bills with an amount so as to reduce the bills previously rendered for January and February 1964, deliveries, to reflect a reduction of 0.25 cents per Mcf in the rates charged effective January 1, 1964.

(3) On July 1, 1965 if Algonquin is utilizing liberalized depreciation in determining its Federal income tax, it will file reduced rates to reflect a reduction in Rate Schedule F-1 by $0.10 demand and 0.15 cent commodity and make corresponding reductions in Rate Schedules E-1, ERS-1 and I-1. If it is not thus utilizing liberalized depreciation, it will, nevertheless file a 0.10 cent per Mcf reduction in its rates at that time to give effect to the deduction of the accumulated deferred tax balances in Account No. 282 from its rate base. In the event any party seeks court review of the Commission's determinations with respect to liberalized depreciation in its Opinion No. 417, issued February 3, 1964, in *Alabama Tennessee Natural Gas Company*, Docket No. G-5471, *et al.*, 31 FPC 208, Algonquin's proposal also affords the company the option of deferring the aforementioned rate reductions until 20 days after the date of final court affirmance of the Commission's "rate flow-through" principle relating to the utilization of liberalized depreciation, as well as of the deduction of Account No. 282 accumulated deferred tax balances from rate base. However, upon such affirmance, Algonquin's obligation, as provided above, to reduce its rates (including the making of refunds as applicable) shall be effective as of July 1, 1965. The proposed agreement also provides that Algonquin shall not be under such obligations in the event of the enactment of any future legislation intended to deny the use of liberalized depreciation as a basis for prescribing reduced rates.

(4) Algonquin's existing obligation to pass on gas supplier refunds and to reflect in its rates the reductions in rates of its supplier, Texas Eastern Transmission Corporation, as set forth in its settlement agreement approved by Commission order issued November 16, 1961, in Docket No. G-19133, shall remain in effect during the term of this agreement.

(5) Algonquin will not make effective any increase in its jurisdictional rates before July 1, 1965, unless prior to that date Texas Eastern files for an increase in rates.

(6) This rate reduction agreement shall terminate on the date that either Algonquin makes effective an increase in rates, or the Commission makes effective a reduction in rates as a result of any future investigation of its rates. Algonquin reserves the right to make filings not specifically restricted by its proposed agreement and reserves legal rights not specifically provided for therein.

(7) The Commission is requested to waive compliance by Algonquin with the requirements of the Commission's general rules and regulations, particularly Part 154 thereof, to the extent necessary to effectuate all of provisions of the proposal.

No protests or objections to Algonquin's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the 30-day notice and other requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Algonquin's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day notice requirement and other provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and of the rate reduction proposal.

(B) The revised tariff sheets specifically described hereinabove are accepted for filing to become effective on March 1, 1964, the proposed refunds of charges collected for January and February deliveries, and Algonquin's proposal to further reduce its rates, are approved and made effective as proposed in Algonquin's agreement filed on February 27, 1964, subject to the terms and conditions of this order.

(C) Algonquin shall comply with each of the provisions of Algonquin's rate reduction agreement relating to future refunds and rate reductions.

(D) Within twenty (20) days of making refunds in accordance with paragraph (C) herein, Algonquin shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Algonquin Gas Transmission Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Algonquin Gas Transmission Company or any other persons or parties affected by this order.

Commissioner Ross *dissenting.*

APPENDIX A

ALGONQUIN GAS TRANSMISSION COMPANY

FPC GAS TARIFF, EFFECTIVE MARCH 1, 1964

Original Volume No. 1	*Demand*	*Commodity*
Rate Schedule F-1	$5.65	32.65¢ per Mcf
Rate Schedule ERS-1	--------	57.75¢ per Mcf
Rate Schedule I-1	--------	33.15¢ per Mcf
Rate Schedule E-1	--------	57.75¢ per Mcf
Original Volume No. 2		
Rate Schedule X-1	--------	57.75¢ per Mcf
Rate Schedule X-5	--------	57.75¢ per Mcf

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER DENYING MOTION OF SUPERIOR OIL COMPANY FOR AMENDMENT OF COMMISSION ORDER REGARDING INDIVIDUAL COMPANY COST PRESENTATIONS

(Issued March 30, 1964)

On February 24, 1964, The Superior Oil Company filed a motion for modification and/or clarification of the Commission's order of May 16, 1963 herein (29 FPC 981, reconsideration denied July 24, 1963, 30 FPC 400) which declared individual company cost presentations to be inadmissible in the present hearing. Staff filed its answer on March 4, 1964. We are of the opinion that Superior's motion should be denied.

The only new contention made here is that it might be appropriate to present by way of rebuttal material we have excluded from the direct cases of the parties. We see no basis for this distinction and note that the examiner who was familiar with the evidence presented in the direct cases of the parties rejected the proffered evidence as not proper rebuttal. He has not certified the issue to us and we have been presented with no reason which would justify our intervention at this interlocutory stage of the complex proceeding.

The Commission orders:

For the foregoing reasons the motion of The Superior Oil Company filed February 24, 1964 is denied.

OPINION NO. 423

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, RESPONDENT, DOCKET NO. RP63-4

OPINION AND ORDER

(Issued March 30, 1964)*

Syllabus

1. Different treatment in curtailment of overrun gas for different classes of customers is justified. P. 707.
2. It is reasonable for pipeline to protect itself and customers against possible detriment by allocating its limited supply of overrun gas. P. 707.
3. Commission *concludes* that differentiation by Southern between CDL-AOL and CD customers is not unreasonable - - noting that not all difference in treatment is illegal, only unjust, unreasonable or undue discrimination. P. 707.
4. Under instant circumstances Carolina is receiving favorable service and fair treatment; it has not sustained request for even more favorable service. P. 707, 708.
5. Fact that Buyer applied for, supported and contracted for the CDL-AOL service does not estop it from challenging such service. P. 709.
6. Instant record affords no basis for any finding of any anti-trust violation by Southern. P. 709.

---

*Initial decision appears on p. 714. Rehearing denied on May 22, 1964, 31 FPC 1279.

[Ed. Note: Dismissal of Complaint was appealed by Carolina to CADC; thereafter case was remanded per Commission request—See settlement order 34 FPC 547]

7. Commission *dismisses* complaint against Southern Natural in proceeding arising under Sections 4(b) and 5(a) of the Natural Gas Act. PP 710; 725.

Commissioner Ross *dissenting.*

Stanley M. Morley and *John T. Ketcham* for Carolina Pipeline Company.

William S. Tarver and *Hugh J. Morgan, Jr.* for Southern Natural Gas Company.

Allen Post, Albert G. Norman, Jr. and *Jacob Goldberg* for Atlanta Gas Light Company.

Richard Young Bradley for Gas Light Company of Columbus.

Horace E. Richter and *Jimmie McFerrin* for Georgia Municipal Authority.

Harry A. Poth, Jr., Richard M. Merriman, Peyton G. Bowman, III and *John M. Kuykendall, Jr.* for Mississippi Valley Gas Company.

H. H. Hillyer, Jr., Andrew McCollam, Jr. and *John M. McCollam* for South Atlantic Gas Company.

Harry A. Poth, Jr., Richard M. Merriman, Peyton G. Bowman, III and *Arthur M. Williams, Jr.* for South Carolina Natural Gas Company.

Samuel B. Ross for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

The question presented by this case is whether Southern Natural Gas Company (Southern) illegally discriminates against its customer Carolina Pipeline Company (Carolina) in its allocations of "overrun" gas (interruptible gas in excess of firm requirements) between Carolina, and its other customers. The case arose on a formal complaint filed by Carolina on September 6, 1962, against Southern, alleging discriminatory violations of sections 4(b) and 5(a) of the Natural Gas Act. After a formal hearing, the Examiner issued an initial decision on October 3, 1963, finding no illegal discrimination, and ordering Carolina's complaint dismissed. Exceptions were filed by staff and Carolina on October 23, 1963, and by Southern and Atlanta Gas Light Company (Atlanta) on November 12, 1963. Replies to exceptions were also filed by certain parties.

Southern has separate rate schedules for different classes of customers. Its CDL–AOL service is expressly designed for companies with "one or more other sources" of supply additional to the supply from Southern. Its CD service is designed for customers wholly or primarily dependent on Southern for their gas supply.

Carolina complains that it is eligible to purchase gas only under Southern's CDL and AOL Rate Schedules, which are "subject to curtailment or interruption at any time" by Southern. Under Southern's CD Rate Schedule, Southern's deliveries of overrun gas to the CD customers are not subject to curtailment except on at least four hours' notice. Southern renders overrun service to its CDL-AOL customers only at such times as Southern's service to its other customers would not be adversely affected, and such CDL–AOL overrun service is subject to curtailment without notice to meet the needs of Southern's other customers. Southern's CD customers thus have first call on overrun gas. Carolina avers that such difference in treatment unduly discriminates against it, contending that during a 13-month period embracing the year 1962, its takes of overrun gas from Southern were totally curtailed on 35 days, while CD customers continued to receive gas, even though Carolina paid the same rate that the CD customers paid. By way of relief, Carolina requests that it be permitted to receive service under Southern's CD Rate Schedule rather than under the CDL and AOL Rate Schedules.

Basically, the Examiner held that Southern's curtailing Carolina's overrun gas while continuing to serve other customers does not illegally discriminate against Carolina, because of the material differences between the CDL-AOL customers (including Carolina) and the CD customers. As the Examiner pointed out different treatment for these different classes of customers is justified.

Carolina is basically a customer of Transcontinental Gas Pipe Line Corp. purchasing over 80 percent of its firm gas from Transco. It would seem equitable that overrun gas be allocated in proportion to firm gas purchases. By such a standard, Carolina is now receiving generous treatment from Southern. A customer with more than one source of gas supply and a large market for overrun gas may well take excessive volumes of overrun gas from one supplier to meet its interruptible demands, to the detriment of that supplier and its customers, unless the supplier can control by curtailments the purchaser's takes of overrun gas. It is reasonable for a pipeline supplier to protect itself against such a possibility in the allocation of its limited supply of overrun gas.

We conclude, with the Examiner, that the differentiation by Southern between the CDL-AOL customers (including Carolina), and its CD customers, is not unreasonable. Not all difference in treatment is illegal under the Act, but only unjust, unreasonable, or undue discrimination, see section 5(a); *Michigan Consolidated* v. *F.P.C.*, 203 F. 2d 895, 901.

The difference between the services is justified by the facts of Carolina's operations. Carolina has a disproportionately large market for interruptible gas by virtue of its large industrial customers.[1] Thus, some 90 percent of Carolina's total purchases from Southern are of overrun gas, compared to some 10 percent of firm gas, a much higher proportion of overrun gas than is purchased by any other resale customer.[2] To meet its large industrial demands, Carolina utilizes its flexibility of supply to purchase a much greater proportion of its overrun gas from Southern, while continuing to purchase from Transco, its initially certificated supplier, greater volumes of firm gas. As the Examiner indicated, in 1962 Carolina took about eight times as much overrun gas from Southern as it did from Transco, while taking about five times as much firm gas from Transco as it did from Southern. Its purchases from Southern have been running very nearly 1000% load factor.[3] Indeed, Carolina's stated policy is to purchase overrun gas from Southern in preference to Transco, because the cost of overrun gas from Southern is only 24.9 cents per Mcf (on an equivalent basis) compared to 28 cents per Mcf for Transco interruptible gas. Also, as the result of Carolina's high load factor purchases from Southern, the average cost to Carolina of both firm and interruptible gas purchased from Southern in 1962 was some four cents less than the next lowest cost of any of Southern's other major resale customers in any zone. Considering all the circumstances, we think that Carolina is receiving favorable service and fair treatment and that its request for even more favorable service has not been sustained on this record.

---

[1] Carolina's sales in 1962 totaled some 15,176,000 Mcf. of which some 12,412,000 Mcf were main-line direct sales to industries (of which 11,996,000 Mcf were interruptible), while only 2,231,000 Mcf were wholesales to resale customers, with the remainder of some 534,000 Mcf being sold on Carolina's local distribution system.

[2] Comparing certain CD customers of Southern, South Carolina Natural Gas Company purchases from Southern some 65 percent overrun gas and some 35 percent firm gas, South Georgia Natural Gas Company purchases some 10 percent overrun gas and some 90 percent firm gas, and Atlanta Gas Light Company, Southern's largest customer, purchases some 3.4 percent overrun gas and some 96.6 percent firm gas.

[3] Thus, in 1962 Carolina purchased from Southern some 8,534,000 Mcf of interruptible overrun gas and 890,000 Mcf of firm gas, compared to purchases from Transco of some 1,029,000 Mcf of interruptible gas and some 4,894,000 Mcf (or more) of firm gas.

Carolina in its exceptions contends, however, that the distinction on which the difference between the CDL–AOL service and the CD service is based is arbitrary and unreasonable, as shown by the fact that other customers of Southern, notably the Atlanta Gas Light Company (Atlanta), are permitted to take the CD service. Also, Carolina says that the only other customers classified for CDL–AOL service are Florida Gas Transmission Company (Florida Gas) and Texas Eastern Transmission Corporation (Texas Eastern), that they are much larger than Carolina and are otherwise unlike it. Carolina adds that Southern makes overrun gas available to its other customers on the basis of their needs, and that Carolina's needs are equally entitled to consideration with the needs of such other customers, especially Southern's direct interruptible industrial customers. It claims that overrun gas is of vital importance to Carolina's economic health because of the peculiar character of its markets, while its requirements are so small that giving it equal treatment in volumes of overrun gas would have little or no adverse impact on Southern or its other customers. In this connection, Carolina points out that its volumes of overrun gas declined from some 500,000 Mcf between January 20 and February 15, 1962, to some 20,000 Mcf in a similar period in 1963.

The above contentions of Carolina do not, in our judgment, support the relief it seeks. Atlanta purchases the great bulk of its firm gas supply from Southern and not from another pipeline, as does Carolina.

The distinction between Atlanta and Carolina is the same as between a firm and interruptible customer. Different treatment is not only proper but is expected. Atlanta is basically a firm customer of Southern and receives from Transco only small volumes of firm gas in relation to its total firm requirement. Carolina in contrast as we have stated is basically a firm customer of Transco. Although Florida Gas and Texas Eastern are larger than Carolina, they have the same relationship to Southern that Carolina does, purchasing only a small portion of their firm gas supply from Southern. It is true that Carolina aids Southern's operations by purchases of surplus gas. All sales should benefit both buyer and seller. This fact has no bearing on Southern's responsibility to accord fair treatment to all of its customers in accordance with their relationship to Southern and its right to limit purchases by Carolina of overrun gas on the winter peak days when the total demand for such gas from all of Southern's customers exceeds the supply.

We have found that at present Southern does not unduly discriminate against Carolina by its curtailment of overrun gas. We are concerned, however, by the fact that the availability of overrun gas to Carolina declined from 500,000 Mcf in a portion of January and February of 1962, to only 20,000 Mcf in a similar period in 1963. Carolina fears that the volumes of overrun gas Southern makes available to it will continue to decline and may result in serious financial injury to it in the light of its present heavy dependence on industrial sales. Southern replies, however, that the reduction resulted from an exceptionally cold winter in 1962 and not from any calculated curtailing of Carolina's takes. Accordingly, while we do not exclude the possibility that Southern's curtailments of Carolina's deliveries may be found unduly discriminatory in a future proceeding, the present record does not support such a finding for the reasons given in the Examiner's decision and in this Opinion.

Certain other considerations discussed by the Examiner also support our conclusion in this case, including the fact that Southern's CDL–AOL service has been found in the public interest in three separate proceedings before the Commission, namely, when we authorized the new CDL–AOL service by Southern to Carolina in 25 FPC 518 (1961), to Coastal Transmission Corporation (now Florida Gas) in 26 FPC 318 (1961) and to Texas Eastern in 28 FPC 1035 (1962).

The exceptions raise certain other matters that can be disposd of briefly. Staff agrees that Carolina is properly classified for CDL–AOL service, but raises a question whether Atlanta is properly classified for CD service, arguing that such an improper classification exists and results in undue discrimination against Carolina and others. Accordingly, staff recommended that a show cause order be issued requiring Southern to show cause why Atlanta should not be reclassified for CDL–AOL service.

The Examiner rejected this recommendation on the ground, *inter alia*, that Atlanta's service classification was not an issue in this case under our hearing order, and that the facts do not disclose that Atlanta is incorrectly classified for CD service. We agree with the result reached by the Examiner. Even if Atlanta's service classification is properly an issue in this case, a careful consideration of all the evidence of record, some of which is discusssed briefly above, sufficiently indicates that Atlanta is not improperly classified for CD service.

Carolina also complains that the tariff provision requiring four hours' notice of curtailments of CD overrun gas is not applicable to CDL–AOL customers. Southern states it would have no objection to an amendment to its tariff accomplishing this result, but points out that this would necessarily result in more frequent curtailments by Southern and reduced deliveries of gas. Such being the case, it would seem that Carolina would not desire such an amendment to the tariff, but it is free to renew its request if it sees fit.

We agree with the Examiner that the fact that Carolina applied for, supported, and contracted for the CDL–AOL service does not estop it from challenging the service. In our view, Carolina's actions in this regard have little if any bearing on the question whether the service is unduly discriminatory.

Concerning another point, as the Examiner held, this record affords no basis for any finding of any anti-trust violation by Southern. The 90 percent ratchet complained of by Carolina and staff has not been shown to operate in a manner that unduly discriminates against Carolina.

We have considered the other matters urged in the exceptions, and find that they are not of sufficient substance to change the result we reach. Because of the completeness of the briefs and exceptions, the oral argument requested by Carolina is unnecessary.

A word appears to be in order with regard to the dissenting statement, which in citing *Lynchburg Gas Company*, Docket No. RP63–5 has misconstrued that decision. There, Lynchburg and all other customers received overrun service under the same tariff and the pipeline was attempting to apply the tariff in a discriminatory manner. In this case, Carolina is served under a different tariff than the one under which it would like to be served, and claims no discrimination under the tariff which covers its present service. The standards by which Carolina and other pipeline purchasers from Southern were classified are clearly stated in the Availability Clause of the CDL–3 Tariff quoted in the dissent. What Carolina is seeking is either a change in the CDL–3 tariff which would give it the same benefits as are received by customers under the CD–3 tariff, or that it be permitted to take service under the CD–3 tariff, ignoring the differences in Carolina's operations as compared with Southern's customers now receiving service under that tariff. We hold here only that Southern's classification was not unreasonable.

The Commission orders:

The initial decision of the Presiding Examiner, issued October 3, 1963, in the above-entitled proceeding is, consistent with this Opinion, adopted by the Commission, to comprise with this Opinion its decision in this case, and the exceptions thereto and request by Carolina for oral argument are denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

Southern discriminates against Carolina regarding deliveries of interruptible or overrun gas. That much is clear and uncontested. Southern's unique CDL-AOL tariffs applicable to Carolina give Southern the right to curtail deliveries "at any time". Carolina has the lowest priority of *any* customer of Southern, either jurisdictional or nonjurisdictional, for overrun gas. During periods of curtailment, Carolina is first off the line and the last to get back on (Tr. 396-7). The majority points out: (1) that deliveries of such gas to Carolina were totally curtailed on 35 days during a period when other jurisdictional customers continued to receive gas and (2) that Carolina's volumes of overrun gas declined from 500,000 Mcf between January 20 and February 15, 1962, to some 20,000 Mcf in a similar period in 1963. The majority finds that the discrimination practiced against Carolina is not undue or unjust principally because Carolina has an alternate source of supply. As will be shown herein, this basis is irrelevant.

In order to properly understand this proceeding, it is necessary to review its background as well as certain characteristics of Southern's rate structure.

Southern's CD-3 rate schedule (its contract demand rate schedule for Zone 3) in essentially the same form it has today was initially effective as a result of the settlement of a *Southern* rate case decided on May 19, 1955 (14 FPC 742). The applicability of this rate schedule constitutes one of its terms, as required by § 4(c) of the Natural Gas Act:

RATE SCHEDULE CD-3

Contract Demand Service, Rate Zone 3

1. Availability:

This rate schedule is available to a purchaser (hereinafter called PURCHASER) for the purchase from Southern Natural Gas Company (hereinafter called COMPANY) of natural gas, for resale, at such delivery points, located in the above named rate zone, as may be agreed to from time to time and set out in the contract between COMPANY and PURCHASER.

2. Applicability and Character of Service:

This rate schedule is applicable to all gas delivered by COMPANY to PURCHASER hereunder. Delivery of gas up to the CONTRACT DEMAND for any delivery point, or up to the sum of the CONTRACT DEMAND for delivery points which have been grouped as specified in Exhibit A to the contract, shall not be subject to curtailment or interruption by COMPANY, except as provided in Sections 8.3 and 16.2 of the GENERAL TERMS AND CONDITIONS.

This is the only rate schedule under which Southern made jurisdictional sales in Zone 3. At least, it was until Carolina became a customer of Southern.

Carolina initially requested service under this CD-3 rate schedule in a conference with certain of Southern's officers on April 16, 1959 (Tr. 130). Southern refused this request and indicated that it would agree to sell gas to Carolina only under a new set of rate schedules which Southern would devise (Tr. 130-1, 421). The President of Southern, C. P. Rather, explained in detail why Southern did not see fit to offer service to Carolina on a par with that available to southern's other jurisdictional purchasers. The grounds for Southern's different attitude toward Carolina are as follows:

(1) Southern's other jurisdictional purchasers are solely dependent on it for their gas supply or receive trivial amounts from other sources;

(2) An unsuccessful effort to get a greater contract demand from Carolina;

(3) Southern's belief that the sale to Carolina would not carry "its fair share of the system load";

(4) Southern's desire to avoid complaints by its other customers;

(5) Southern's direct sale customers are more lucrative;

(6) Southern's wish to give assurance of delivery of interruptible gas to its nonjurisdictional customers for 300 days every year;

(7) The "physical characteristics" of Carolina differ from its other CD customers.

(Tr. 426-7, 431-3, 663, ex. 2)

In the actual drafting of the new tariffs proposed by Southern for sales to Carolina, Southern specifically had Carolina in mind, designed it deliberately to cover Carolina and attempted to distinguish Carolina from all its other customers (Tr. 638). In the attempt to artificially segregate Carolina, the resulting tariff comes out most perplexingly. The new CDL tariff provides:

RATE SCHEDULE CDL-3

Contract Demand—Limited Service, Rate Zone 3

1. Availability:

This rate schedule is available to a natural gas pipeline company (whether or not it is also a distributor) (hereinafter called PURCHASER) obtaining natural gas from one or more other sources, for the purchase for resale, from Southern Natural Gas Company (hereinafter called COMPANY) of natural gas at a single delivery point, located in the above named rate zone, and set out in the contract between COMPANY and PURCHASER.

Carolina had no choice. It either took gas on Southern's terms or it took no gas from Southern. Carolina chose the lesser of two evils and reluctantly capitulated to Southern's stiff terms, and the Commission approved the sale in routine fashion.[1] The decision authorizing the sale did, however, reflect the reasons why the sale was considered to be consistent with the public interest:

> It is obvious that the attachment of a new source of supply from a second interstate pipeline company will advantage Carolina Pipeline in respect of flexibility and safety of its service, *e.g.*, in the event of an emergency affecting supply from Transco. * * * Additionally, the attachment of the new source may in the future give Carolina Pipeline a bargaining position vis-a-vis its two independent suppliers for additional volumes of gas as needed to meet expanding markets. It is concluded that the public interest is advantaged in the case of both Southern and Carolina Pipeline in respect of the supply and deliverability features of the proposal.[2]

Carolina had no criticism of Southern's overrun policy during the first year of service. However, as described by the majority, Southern drastically reduced overrun deliveries to Carolina during the 1962-1963 winter season; and on days when other of Southern's jurisdictional customers received their full contract demand plus substantial volumes of overrun gas, Carolina received none. Carolina renewed its request for service under the CD-3 tariff which was again refused, and this proceeding resulted.

---

[1] In the absence of any party's complaint, the examiner found that the differences between CD and CDL-AOL tariffs were minor. *Southern Natural Gas Company*, 25 FPC 518, 520.

[2] *Southern Natural Gas Company, supra*, p. 520.

At the hearing, C. P. Rather, President of Southern, identified the standards supporting Southern's different classification of Carolina. He conceded that these standards were not a part of the tariff:

> Q. With respect to the points you have mentioned, the standards by which you distinguished between Carolina and Atlanta Gas Light, one is many points of delivery, is that to be found in the tariff as a distinguishing feature for the rendering of service?
>
> A. No.
>
> Q. A long history, is that to be found in the tariff?
>
> A. No, sir.
>
> Q. Southern's concept of fair and equitable treatment, is that to be found in the tariff?
>
> A. Not spelled out as I have here, no.
>
> Q. Are the words "fair and equitable treatment" to be found in the tariff?
>
> A. I don't think they are, no.
>
> Q. Is there a provision in the tariff that when a CD customer wants more gas and Southern can not supply it, that that will be a standard by which a differentiation in service is judged?
>
> A. No, sir.
>
> [Tr. 448-9.]

This concludes most of the relevant background and squarely raises one obvious issue: does Southern's CDL-AOL tariff conform to the requirements of Section 4(c) of the Natural Gas Act. This Section provides:

> . . . every natural-gas company shall file with the Commission. . . . schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the *classifications*, *practices*, and *regulations* affecting such rates and charges, together with all contracts which in any manner effect or relate to such rates, charges, classifications, and services. [Emphasis added.]

By its own testimony, Southern has admitted that its classifications and practices are not described in its tariffs. Accordingly, it should be ordered to desist its discriminatory practice against Carolina. Only six months ago, the Commission in a summary order directed Atlantic-Seaboard to desist from using a practice in overrun deliveries which was not identified in the tariff.[3] The Commission took this action carefully noting that it was not passing upon the propriety of Seaboard's policy. The Commission not only should, but is legally obligated to, take a similar position here.

There is a second objection. Southern's CD-3 tariff explicitly prohibits Southern from discriminating among its customers in its deliveries of overrun or interruptible gas. Section 9 of CD-3 states:

> COMPANY [Southern Natural] shall not discriminate as among its direct sale customers and its resale customers in the delivery of interruptible or excess gas

A similar provision is found in Section 16.1.

While the CDL-AOL tariff incorporates by reference several of the Sections included in the CD-3 tariff, Sections 9 and 16.1 are specifically excluded. Thus, it might be fairly said that Southern can render undue, unjust, and illegal discriminatory service to customers under its CDL-AOL tariffs. This is, at least,

---

[3] *Lynchburg Gas Company*, Docket No. RP63-5, order issued October 1, 1963, 30 FPC 934.

Southern's position, for Mr. Baum testified that Southern can curtail deliveries under its CDL and AOL rate schedules "at the sole discretion of Southern Natural Gas Company" (Tr. 655). And Mr. Rather testified: "It is our decision whether we grant Carolina gas or not during times of curtailment (Tr. 447).

Even the majority states its concern that Southern can, under the CDL and AOL tariffs, unjustly discriminate against Carolina:

> We are concerned, however, by the fact that the availability of overrun gas to Carolina declined from 500,000 Mcf in a portion of January and February of 1962, to only 20,000 Mcf in a similar period in 1963. * * * Accordingly, while we do not exclude the possibility that Southern's curtailments of Carolina's deliveries may be found unduly discriminatory in a future proceeding, the present record does not support such a finding for the reasons given in the Examiner's decision and in this Opinion. [Opinion, p. 708.]

Any tariff which allows a natural gas company to illegally discriminate in the service it provides is improper and inconsistent with Sections 4(b) and 5(a) of the Natural Gas Act. At the very least, the majority should modify these tariffs now so as to prevent Southern from discriminating in the future.

Southern's CDL and AOL tariffs are fatally defective for the additional reason that the standards described in the tariffs afford no basis for discrimination. It is initially important to recognize that the CDL (and AOL) tariff is *not* applicable to purchasers with an alternate source of supply, as the majority incorrectly assumes. Such a classification would have included certain of Southern's existing customers, namely Atlanta and Mississippi Valley. To the contrary, the CDL tariff was made applicable to "a natural gas pipeline company" which purchases gas from Southern at a single delivery point when it has an alternate source of supply.

The tariff does not define "a natural gas pipeline company", and what it means is anybody's guess. Carolina, just like all of Southern's CD-3 customers purchases gas for resale from Southern and transports the gas by means of a pipeline system to its various customers. Of course, we could speculate. The term could mean sales of a certain magnitude, sales through pipeline of a specified diameter, or sales for resale, or a pipeline system embracing a certain land or population area. But the Gas Act obviates the need of such speculation. As pointed out above, it requires natural gas companies to describe the classifications of their customers. Southern's tariff is deficient under this standard.

The significance of a single delivery point is not described in the record of this proceeding, and I for one am at a loss to justify discrimination on such a feeble ground. Certainly, a distinction in service based on the fact that purchases are taken at but a single delivery point makes no economic sense. The best that can be said is that it constitutes an artificial basis for distinguishing between Atlanta Gas and Mississippi Valley, who also have alternate sources of supply, from Carolina. The former take gas from Southern at numerous delivery points; Carolina purchases at only one.

This brings us to the majority's rationale. The majority fails to consider whether the CDL and AOL rate schedules meet the basic requirements of Sections 4(b) and 4(c) of the Natural Gas Act. It also fails to consider whether the standards—in the tariff—are such as to justify the limitless discriminatory treatment Southern can practice against Carolina. The majority views this case as raising the general question as to what standard should govern Southern's deliveries of overrun gas to a customer having multiple sources of supply, in contrast to those customers which purchase only from Southern. After stating a general principle applicable to all purchasers, the majority considers a number of factors it feels justifies at least the amount of discrimination practical against Carolina shown herein. It is a most interesting analysis, but hardly relevant to this case.

Despite the irrelevance of this approach, there are certain statements in the opinion upon which I feel compelled to comment. The general rule the majority enunciates is: "It would seem equitable that overrun gas be allocated in proportion to firm gas purchases." *This is the alternate relief requested by Carolina* (Tr. 207) and it is exactly the position adopted by those of Southern's customers who addressed themselves to this point, *i.e.*, Atlanta and South Atlantic Gas Co.[4] Why doesn't the majority utilize this standard in this case?

Next, the majority feels that it is necessary to let Southern curtail Carolina as it desires because otherwise Carolina could take "excessive" volumes of gas to the detriment of Southern. The price Southern receives for overrun gas from *jurisdictional* customers is, without exception, whether on the CD-3 or CDL-AOL tariffs, precisely the same. Thus, Southern could not be adversely affected by selling more overrun gas to Carolina than to any other jurisdictional customer.

However, the record seems to indicate that Southern makes more money from nonjurisdictional direct sales than from jurisdictional sales. For this reason, Southern prefers the freedom to discriminate against Carolina (Tr. 431-3). This is a repeat of a situation long ago considered by the Commission. Almost 14 years ago, the Commission recognized that Southern would have the tendency to prefer its nonjurisdictional customers over its jurisdictional customers regarding deliveries of interruptible gas. Recognizing that the Natural Gas Act was designed to protect jurisdictional customers, the Commission in that case specifically forbade Southern from this type of discrimination.[5] Today, the majority suggests that it is all right for Southern to discriminate against certain of its jurisdictional customers because otherwise Southern would not make as much nonjurisdictional profit. I cannot subscribe to this position.

The majority also places tremendous stress on the proportion of overrun gas purchased by Carolina *vis-a-vis* its firm purchases. The only time Carolina purchases much overrun gas from Southern is during the summer when not a single other customer of Southern is interested. Such purchases by Carolina improve Southern's low system load factor and its take or pay situation to the advantage of Southern and all its customers (Tr. 642). Southern recognized the advantages of its summer sales to Carolina and actually has encouraged Carolina in its effort to develop an interruptible market (Tr. 632, 642, 657, 660). Just how the majority views these beneficial summer sales as a basis for discrimination is another mystery I cannot unravel.

These appear to be the principal basis of the majority opinion which, in my opinion, are irrelevant and incorrect. A proper evaluation of this proceeding unmistakably leads to the conclusion that Southern is unduly discriminating against Carolina respecting deliveries of overrun gas.

INITIAL DECISION

OF THE PRESIDING EXAMINER UNON COMPLAINT OF DISCRIMINATION UNDER SECTIONS 4(b) AND 5(a) OF THE NATURAL GAS ACT

(Issued October 3, 1963)

KANE, *Presiding Examiner:* This proceeding arises out of a formal complaint, filed on September 6, 1962, by Carolina Pipeline Company (Carolina) against

---

[4] Tr. 534, Brief of South Atlantic, p. 12.

[5] *Southern Natural Gas Co.*, 9 FPC 756, 760-1. This explains Sections 9 and 16.1 of Southern's CD-3 tariff. See p. 712, *supra*.

Southern Natural Gas Company (Southern) pursuant to Sections 4(b) and 5(a) of the Natural Gas Act (Act), seeking an order (1) directing Southern to cease and desist its discrimination against Carolina; (2) directing Southern to furnish contract-demand (CD) service to Carolina; and (3) for such other and further relief as the situation warrants.

Carolina's complaint alleged *inter alia* (1) that Southern's CDL–AOL Rate Schedules[1] under which Carolina purchases gas permit discrimination and that in consequence thereof Southern is enabled to effect undue discrimination against Carolina in deliveries of overrun gas; (2) that the language of the CDL–AOL Rate Schedules is unduly discriminatory in several respects; (3) that the preference and discrimination in favor of Southern's customers having only one source of supply prevents them from accepting gas from potential alternate sources of supply and consequently restricts competition; (4) that because of the discriminatory disposition of overrun gas Carolina is forced to curtail its service to small industrial customers, schools, and hospitals; (5) that Carolina can obtain overrun gas from Southern under its CDL–AOL schedules only after Southern notifies it that overruns are available while Southern's CD customers are permitted to take unlimited overruns until notified by Southern to limit the takes to their contract; (6) that Carolina is subject to undue discrimination in numerous ways by reason of the CDL–AOL Rate Schedules and the manner in which Southern operates, while Southern's CD customers are protected against undue discrimination.

On October 8, 1962, Southern filed its answer to Carolina's complaint in substance denying any undue discrimination. On October 23, 1962, Carolina filed its reply to Southern's answer. The Commission, by order issued January 25, 1963, *inter alia* directed that a public hearing be held to resolve the substantial questions of law and fact raised by the pleadings. At such hearing the complainant, Carolina, was to be required to sustain the burden of proof and to go forward with the presentation of its direct case-in-chief. At a prehearing conference held on Monday, March 25, 1963, in compliance with the Commission's direction, it was agreed that the unresolved issues and substantial questions of law and fact were (1) whether the Rate Schedules complained of were in fact discriminatory; (2) whether the operations under such Rate Schedules were discriminatory; and (3) whether, if discrimination in fact exists, does such discrimination constitute "undue discrimination" in violation of Sections 4(b) and 5(a) of the Act. Also included in the issues requiring resolution is the possible existence of evidence of violation of the anti-trust laws and need for transmission of such evidence to the Attorney General of the United States pursuant to Section 20(a) of the Act.

Eleven petitions to intervene in the proceedings were filed and all such petitions were approved by order of the Commission issued March 7, 1963.[2] The hearing, commenced on May 7, 1963, was concluded on May 10, 1963. The case was fully submitted on August 6, 1963, after applications by various parties to the proceeding for extensions of time within which to file briefs.

---

[1] Southern's CDL Rate Schedule is a contract-demand rate schedule limited to purchasers receiving gas from Southern at a single delivery point, and who also obtain gas from one or more other suppliers. The AOL schedule is the companion schedule for authorized overrun service in excess of contract demand.

[2] Alabama Gas Corporation; Gas Section of the Georgia Municipal Gas Association; Gas Light Company of Columbus, Georgia; Town of Winsboro, South Carolina; South Atlantic Gas Company, Georgia; York County Natural Gas Authority, South Carolina; Mississippi Valley Gas Company, Mississippi; Lancaster County Natural Gas Authority, South Carolina; Chester County Natural Gas Authority, South Carolina; South Carolina Natural Gas Company; and Atlanta Gas Light Company, Georgia.

There is no substantial disagreement as to the facts. Southern is a natural gas pipeline company subject to the jurisdiction of the Commission. Its transmission lines extend from Louisiana as far as the Atlantic Seaboard, terminating at Savannah, Georgia.

Carolina is a natural gas pipeline company with facilities located entirely within the State of South Carolina. By order of July 17, 1958 (20 FPC 54) the Commission, in accordance with Section 1(c) of the Act, exempted Carolina from the provisions of the Act and the orders, rules and regulations of the Commission issued thereunder. Carolina's natural gas pipeline system, which as of December 31, 1962, comprised approximately 492 miles of intrastate pipelines and 135 miles of distribution mains, traverses the entire state of South Carolina. It consists principally of two supply lines and laterals extending from such lines. One supply line extends some 85 miles in a southeasterly direction from a point of connection with main line system facilities of Transcontinental Gas Pipe Line, Corporation (Transco)[3] near the North Carolina border to a point near Bethune. This supply line is connected at that point with another line extending in a northeasterly direction to Bethune from a point of connection with Southern's facilities at Aiken, South Carolina, where Southern is currently authorized to deliver 5,000 Mcf per day to Carolina which contract demand volume, by agreement of the parties, will become 7,500 Mcf per day on November 1, 1963. Service is provided by laterals extending from these supply lines to 22 communities in 10 of which Carolina owns and operates the distribution facilities. In addition, Carolina provides service directly to several industries on both a firm and interruptible basis.[4]

On May 14, 1959, Southern and Carolina entered into a precedent agreement under which Southern contracted to serve Carolina under a CDL Rate Schedule, significant portions of which provided that overrun gas service, while available to Carolina pursuant to advance operating arrangements, would be subject to curtailment or interruption at any time by Southern.

The May 14, 1959 agreement was superseded by a precedent agreement dated September 11, 1959, which was amended under date of February 16, 1960. The September 11 agreement retained the provision for service under the CDL Rate Schedule and no change in that provision was made by the subsequent February 16 amendment. After Southern obtained its certificate to commence service to Carolina, a service agreement in the form appended to both precedent agreements was executed under date of April 20, 1961. This service agreement specified that the sale and purchase of the gas indicated was to be under Southern's CDL-3 Rate Schedule.

During the negotiations between Carolina and Southern the important items considered were (1) the effective date of the contract; (2) the extent to which Southern was prepared to make further commitments; (3) Carolina's desire to minimize the contract quantities and Southern's wish to maximize them; (4) Carolina's desire to purchase overrun gas at the commodity charge and to minimize the contracted for quantity so as to hold the unit of cost to the minimum.

---

[3] Transco is authorized to deliver approximately 25,000 Mcf per day to Carolina. Authorization to reduce this amount to 12,500 Mcf per day was sought in Docket No. G-10000. The Presiding Examiner's initial decision issued on June 18, 1963, subject to review by the Commission, while denying the full reduction, found that a reduction to 17,219 Mcf per day was permitted and required by the present and future public convenience and necessity.

[4] Carolina also operates a natural gas pipeline system in Abbeville County located in the western part of South Carolina which serves the communities of Calhoun Falls, Abbeville, and Due West. The entire requirements of this system are obtained from Transco and are not involved in this proceeding.

The negotiating parties clearly understood that Carolina's situation was different from the other customers of Southern in that (1) Carolina was a pipeline company already being supplied by Transco, another pipeline company, as a major supplier; Carolina had greater flexibility of operations than did Southern's CD customers and would not be dependent on Southern to the extent that such CD customers were; (2) Carolina's needs were for large quantities of overrun gas and low contract quantities; and (3) Carolina had a very large direct sale interruptible load compared to its firm deliveries.[5] They further recognized that other customers of Southern were in a position to oppose the proposed transaction on the ground that the addition of Carolina as a customer could result in diminution of the volume of gas available to them. The adoption of the provisions reflected in the CDL Rate Schedule was designed in some measure to meet this potential objection.

Southern applied for and obtained from the Commission the necessary certificate of public convenience and necessity authorizing it to render service to Carolina in accordance with the Presiding Examiner's decision issued February 8, 1961, and adopted by the Commission by notice issued March 14, 1961, in Docket No. G–19632, *re Southern Natural Gas Company*, 25 FPC 518. There can be no question but that the service applied for, contemplated, and undertaken pursuant to the terms of the precedent agreement, was to be under a new rate schedule to be filed by Southern and designated as Rate Schedule CDL–3,[6] a type of service obviously and concededly different from CD service. The most significant difference was the fact that overrun gas would not be made available to Carolina except at times when service to Southern's CD, G, and direct customers would not be adversely affected. The difference between the two types of service including the limitations with respect to overrun gas were recognized and accepted by both parties to the agreement and at no time during the negotiations or during the certificate proceedings did Carolina express any dissatisfaction with the arrangements for CDL service. On the contrary, Mr. Warren, Carolina's President, acknowledged in the instant proceeding that at the time he testified in the certificate proceeding in Docket No. G–19632, he understood the operating procedures provided by the CDL schedule. Mr. Goodwin, Chairman of the Board of Carolina, in his letter transmitting the executed May 14, 1959 precedent agreement, likewise acknowledged that Southern had no contract obligation to supply Carolina with any excess gas and expressed his appreciation for Southern's fine cooperation in the negotiations.

In connection with the certificated service the Presiding Examiner in his initial decision in Docket No. G–19632 was explicit in summing up the transaction as follows: (25 FPC 520)

> Southern will serve under provisions similar to those in effect for service to its other zone 3 customers except for minor provisions slightly more beneficial to Southern in respect of permission to take "overrun" gas and in respect of minimum billing. These exceptions have the purpose and effect of making Carolina Pipeline's general obligations to Southern equate with its obligations to Transco (Transcontinental Gas Pipeline Corporation).[4] [*Sic*] There is nothing to indicate that the general terms of the tariff and service agreement are not consistent with the public interest.
>
> [4] With respect to "overrun" gas, since it has another major source of supply, Carolina Pipeline must await Southern's indication of availability, rather than taking subject to Southern's indication of nonavailability. With respect to minimum bill, the Carolina Pipeline expects to actually take a 95-percent load factor.

---

[5] The direct sale interruptibles took 81.8 percent of Carolina's total delivery in 1962.

[6] It was to meet the Commission's filing requirements that the overrun service was incorporated into a separate AOL Rate Schedule.

Carolina concedes that Southern has complied with the provisions of the rate schedules. The basic objection is stated by counsel for Carolina at page 157 of the transcript, "We understood the language of it. Now it hasn't worked out as we anticipated, and we don't like it." Despite his testimony as set out above, on October 26, 1961, even prior to the commencement of service to Carolina under the certificate authorization, Mr. Goodwin, Chairman of the Board of Carolina, complained about its contract obligations for CDL service stating then that in his opinion the CDL-3-AOL-3 Rate Schedules were discriminatory. Thus, the Commission is, in effect, being called upon to determine in these proceedings whether the CDL-3-AOL-3 Rate Schedules as applied to Carolina were initially, and since, unduly discriminatory despite the Presiding Examiner's conclusion in Docket No. G-19632, "that the public interest is advantaged in the case of both Southern and Carolina Pipeline in respect of the supply and deliverability features of the proposal * * *. There is nothing to indicate that the general terms of the tariff and service agreement are not consistent with the public interest." (25 FPC 520.)

The basic questions involved are adequately summarized by Carolina as follows: "There is no substantial disagreement over the facts. The controversy stems from the applicability of Southern's rate schedule to Carolina and whether the service currently rendered violates the prohibitions of Sections 4(b) and 5(a) of the Act against undue discrimination." (Br. p. 6.)

The relief sought by Carolina in these proceedings is clear. It now seeks service under a different rate schedule from the one sought and approved in the certificate proceedings in Docket No. G-19632 with the resultant allocation of a larger part of Southern's pipeline capacity to serve Carolina than the Commission allowed in the order granting the certificate of public convenience and necessity. Thus, discussing Staff's suggestion that the discrimination might be eliminated by imposing CDL-AOL service on Atlanta Gas Light Company (Atlanta), Carolina contends that such proposal "fails to recognize that the cure lies not in imposing CDL-AOL service on Atlanta but in elevating the quality of service rendered Carolina at least to the level of that rendered other direct resale customers. * * * But it is obvious that rather than tinker with the tariff provisions a more simple solution is to require that Southern provide Carolina service under the CD-3 rate schedule." (Reply Br. p. 5.) In the concluding paragraph of its reply brief Carolina reaffirms the relief sought as follows: "Carolina urges that the Examiner and the Commission issue an order in these proceedings directing that Southern forthwith provide service to Carolina under the CD-3 rate schedule."

Before examining the merits of Carolina's complaint, it is necessary to determine the validity of the contention advanced by Southern and some of the interveners to the effect that Carolina is estopped from collaterally attacking, in this proceeding, the service it is obtaining from Southern because of its active participation in, and support of, the certificate application for that very service.

In considering the merits of this contention it must be kept in mind that the Natural Gas Act, and the reason the Commission is authorized to impose conditions on the authorization sought is to protect the present and future public convenience and necessity. In the final analysis, in this connection, the protection of the ultimate consumer of the natural gas is of prime importance. Furthermore, there is no gainsaying the power of the Commission to adjudge alleged discriminations or preferences and practices in contracts and in classifications of service as well as its authority to affect or change the terms or conditions of Southern's rate schedules or its contracts with customers where such schedules or contracts provide for, or result in, discriminatory practices either as to rates or allocations of available gas and facilities. *Cf. Panhandle Eastern Pipe Line Co.*, 9 FPC 443, 444–445. Section 1(a) of the Act states, in part, "The business of transporting and selling natural gas for ultimate distribution to the public is affected with the public interest and * * * Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

The Congress has committed to the Commission the task of determining the existence of proscribed preferences, advantages and discriminations by the application of an informed judgment to existing acts. *Michigan Consolidated Gas Co.* v. *Federal Power Commission*, 203 F. 2d 895, 901. Sections 4(b) and 5(a) of the Act, while not attempting to define an unlawful discrimination with mathematical precision, do provide the guidelines for the conduct of natural gas companies with respect to the granting of any undue prejudice or disadvantage or the maintaining of any unreasonable differences in rates, charges, service, facilities or in any other respect either as between locality or as between classes of service.

Notwithstanding the possible applicability of the estoppel doctrine as between private parties if no public interest were involved, there can be no question that the conduct of any such parties cannot be deemed to estop the Commission from examining and determining whether any undue discrimination has been practiced within the purview of sections 4(b) and 5(a) of the Act. It is one of the Commission's duties in the protection of the public interest to prevent an interstate pipeline company from discriminating among its customers either as to rates or allocations of available gas and facilities. See *El Paso Natural Gas Company*, 22 FPC 900, 903, Fn. 3. This duty transcends the narrow interest of the parties involved in this particular case. Such duty, furthermore, is administrative and regulative and must be discharged within broad limits, discretion and judgment. Whether a discrimination in the rates or services of a natural gas company, within the purview of the Natural Gas Act, is undue or unreasonable is thus a question peculiarly within the expertise, and committed to the judgment, of the administrative body based upon an application of all the facts and circumstances affecting the traffic. *Cf. Swayne and Hoyt* v. *United States*, 300 U.S. 297, 304; *Michigan Consolidated Gas Company* v. *F.P.C.*, 203 F. 2d 895.

Notwithstanding the fact that the certificate proceedings may have been the more appropriate vehicle for performance of the Commission's duty with respect to prevention of unjust discrimination; and that at no time during the certificate proceedings did Carolina object to, complain of, or contend that, the service sought was discriminatory, or unduly unreasonable; and that upon consideration of the application the Commission granted the certificate and the very service applied for; yet Carolina, if its complaint be justified, cannot be held to be wholly without remedy because of the interposition of an estoppel. However, evidence of Southern's and Carolina's prior practice as well as consideration of the application made for the type of service in question, supported by Carolina at the time of the application, may be entitled to some weight in determining whether Carolina has sustained the burden of proof in establishing that the CDL–3–AOL–3 Rate Schedules as applied to it are in fact unduly discriminatory or unreasonable within the purview of Sections 4(b) and 5(a) of the Act.

The CDL–3–AOL–3 Rate Schedules established a special service not previously offered by Southern and while modeled on Southern's existing CD Rate Schedule were "designed to provide service to customers whose gas requirements differ considerably from those which rate schedule CD–1 was designed to meet." *Re Coastal Transmission Corp. et al.*, 26 FPC 318, 333. Rate Schedule CDL-3 is intended to be available for contract demand service to customers in Zone 3 who have another source of supply. The AOL-3 Rate Schedule is available to purchasers under Rate Schedule CDL-3 and covers the purchase of gas delivered in excess of contract demand pursuant to advance operating arrangements (see Commission's order accepting Rate Schedules, etc., Docket No. G-20509, issued October 5, 1961). It was designed as merely an adjunct to the CDL Rate Schedule and was not, and cannot be, regarded as a planned source of supply, deliveries thereunder being available providing that Southern has adequate facilities and gas supply. However, Carolina now takes the position that "overrun gas is the life blood of this company since its financial stability is dependent upon such gas." (Car. Br. p. 5.) In this context, however, it must be remembered that Carolina while actively participating in the certificate proceedings advanced no such contention in such proceedings waiting until after the certificate had been issued to do so.

In 1962, Carolina sold 2,230,687 Mcf of natural gas at wholesale to customers for resale, and 533,644 Mcf directly from its local distribution system. The remaining 12,411,562 Mcf of the company's total sales of 15,175,893 Mcf consisted of direct main line sales to industrial customers.

Carolina obtains a major part of its firm gas supply from Transco, and the gas obtained from both Southern and Transco as suppliers is commingled in its pipeline for transportation and transmission to its markets throughout the State. It was not disputed at any time during the hearing that Carolina controlled the means by which gas was transported from one place to another for resale; was principally a pipeline company under the commonly understood meaning of the term; and had two main sources of supply. A rate schedule specifically designed for, and deemed applicable to, a natural gas pipeline company obtaining natural gas from two or more other sources, therefore, indisputably would be available to that company.

The CDL-AOL Rate Schedules involved in this proceeding are not at all unique although it appears that Carolina was the first Southern customer to adopt their provisions. Subsequently, Southern sought and obtained certificate authorization for the sale of gas under substantially similar CDL Rate Schedules to Coastal Transmission Corporation (Coastal),[7] and Texas Eastern Transmission Corporation (Texas Eastern),[8] both pipeline companies. The type of service contemplated under such Rate Schedule is best described in the proceedings involving Coastal, wherein the Commission in adopting, for the most part, the decision of the presiding Examiner[9] noted the previous authorization of similar service to Carolina in Docket No. G-19632 and approved the difference in classification saying:

> This new rate schedule is an initial rate schedule which, while modeled on Southern's existing rate schedule CD-1, is applicable to a service not heretofore offered by Southern in its Rate Zone 1.[38] [*Sic*] While the proposed schedule will provide for the same rates as contained in Rate
>
> [38] Southern, save for some insignificant differences, has an identical rate schedule for its rate zone 3 entitled Southern's Rate Schedule CDL-3 which has been held to be a new rate schedule. See *Southern Natural Gas Company*, Docket No. G-19632, Examiner's Decision of February 8, 1961, which became final on March 10, 1961, 25 FPC 518, wherein we authorized the commencement of service to Carolina Pipeline Co., to begin September 1, 1961, under Southern's Rate Schedule CDL-3.

---

[7] 26 FPC 318, 333. (Coastal now known as Florida Gas Transmission Co.)

[8] 28 FPC 1035 adopting Presiding Examiner's decision 28 FPC 1039, with minor exceptions.

[9] 26 FPC 330.

> Schedule CD-1 the character of the service to be offered thereunder will differ from that which Southern renders to customers under rate schedule CD-1 in three significant aspects. First, service under Rate Schedule CDL-1 is available to a pipeline company having other sources of supply while service under rate schedule CD-1 is available to other purchasers generally. Second, service under Rate Schedule CDL-1 restricts takes to the contract demand 'except pursuant to advance arrangement between Southern and purchaser for the sale of overrun gas' whereas service under rate schedule CD-1 permits purchasers to exceed their contract demand except when specifically restricted to it by Southern. And, finally, Rate Schedule CDL-1 provides a 65 percent annual minimum bill provision whereas Rate Schedule CD-1 provides for a 40 percent annual minimum.
>
> It is clear that the proposed rate schedule CDL-1 is designed to provide service to customers whose gas requirements differ considerably from those which Rate Schedule CD-1 was designed to meet. [26 FPC 333.]

In his initial decision in that proceeding, too, the Presiding Examiner similarly had found and concluded that the differences in service to be obtained under Rate Schedule CDL-1 as compared to Rate Schedule CD-1 were "due and reasonable." P. 344. In adopting the Staff's position taken in that proceeding, the Presiding Examiner concisely stated that the justification for differences in the two schedules which are equally applicable to the instant proceedings, as follows: "The evidence shows that control of overrun gas service to a pipeline company customer is important to Southern, since a pipeline company has virtually an unlimited market. The evidence shows, on the other hand, that since a pipeline company has alternative sources of supply, it is proper for Southern to protect itself from having the pipeline use Southern merely for swings." 26 FPC 344.[10]

It is contended that if Southern were unable to limit the takes of overrun gas by Carolina except by advance arrangements, Carolina could take away from Southern's CD and direct customers portions of the excess gas which they are now receiving. Carolina would understandably do so since Transco's E-2 rate currently is 28 cents per Mcf while Southern's comparable AOL rate is approximately 24.9 cents per Mcf and Carolina could sell more of Southern's lower priced overrun gas to its main line interruptible industrial customers at a greater profit.

It is highly significant that the decisions in the Texas Eastern, Coastal, and Carolina proceedings in G-19632, were in complete accord in finding that the service contemplated under the CDL Rate Schedules was required by the public convenience and necessity. It is also evident that in the certificate application proceedings, where the type of service applied for is carefully scrutinized in terms of the public convenience and necessity, the Commission has concluded that pipeline companies such as Texas Eastern, Coastal and Carolina, satisfying certain prescribed requirements, may rightfully be served under rate schedules different from those of Southern's regular distribution customers. In the same context, however, it must be borne in mind that the unanimity of action in the certificate proceedings referred to cannot be construed as a carte blanche directive to Southern permitting it to pick and choose from the same category of customers those with whom it wishes to deal and to determine arbitrarily the type of service to be rendered such customers. Illusory, inconsequential differences without distinctions will not support a difference in rate schedules and cogent reasons for such differences in treatment of customers must be shown. *Cf. Panhandle Eastern Pipe Line Co., et al.*, 10 FPC 328, 331.

---

[10] See also the Presiding Examiner's decision in *Texas Eastern Transmission Corporation, supra*, reaffirming and adopting the rationale upon which the differences between the proposed CDL rate schedule and Southern's CD-1 rate schedule are based.

The evidence adduced at the hearing sustains Carolina's complaint to the limited extent that CD-3 customers are obtaining full complements of overrun gas at times when it, a CDL-3-AOL-3 Rate Schedule customer, is cut off entirely from participation in such overrun gas. Such total curtailments occurred on approximately 50 days during the year during the cold weather. There is no evidence, however, to establish that such curtailments were based upon any arbitrary or capricious action by Southern, and no contention is made that Southern refused to deliver any overrun gas on the days it had the necessary pipeline capacity available. On the contrary, it appears that the decisions to curtail were based upon necessity in pipeline operations caused by limitation of pipeline capacity. Significantly, under current operating arrangements, Carolina has obtained more than nine times the amount of overrun gas from Southern than it has obtained from Transco. while at the same time purchasing more than five times the amount of firm gas from Transco.

Furthermore, Southern's discretion with respect to curtailment of gas when necessary to fulfill the firm usage and overrun privileges of its CD customers is limited by the proper, necessary and implied condition that it shall be nondiscriminatory. Thus, curtailments when made may not be made in any arbitrary manner to the disadvantage of any of Southern's customers and the advantage of others similarly situated. *Cf. Panhandle Eastern Pipe Line Co., et al.*, 13 FPC 301, 309, affirmed 232 F. 2d 467, cert. denied, 352 U.S. 891. This proposition would apply whether the proscription against discrimination were contained in the Rate Schedule or not since discrimination against some of the customers and in favor of others in the same group results in an unjust discrimination. See *Ayshire Corp.* v. *United States*, 335 U.S. 573.

The question remains, however, whether the admittedly different treatment accorded Carolina as a member of the group relegated to CDL-AOL service constitutes an unjust discrimination within the meaning of Sections 4(b) and 5(a) of the Act since the statutory prohibition against discrimination is not unqualified. Not all preferences, advantages and discriminations are forbidden. Only those which are "undue", "unjust", "unfair" and "unreasonable". Thus, a preference in order to be unlawful must be undue and a difference to be unlawful must be unreasonable. Differences in rates, practices and services which are reasonably predicated upon substantial factual differences are not unduly discriminatory. See *Michigan Consolidated Gas Company* v. *F.P.C.*, 203 F. 2d 895, 901. This distinction between differences in service and undue discrimination in service has been recognized by both courts and regulatory agencies. As concisely stated in *Michigan Consolidated Gas Company* v. *F.P.C.*, *supra*, "There is clearly a difference in the situation of those customers which are wholly dependent upon Panhandle for their natural gas and those which have another source of supply as well. To distinguish in treatment between the two classes cannot of itself alone result in an undue preference or advantage or in an unreasonable difference in service." P. 901. *Cf. Atlantic Seaboard Corporation, et al.*, 28 FPC 860.

The generally applicable rule of law has been appropriately stated in *U.S.* v. *Oregon Railroad and Navigation Co.*, 159 Fed 975, 978-979, wherein the court said, "The inhibition against making or giving any undue or unreasonable preference or advantage, or subjecting any person or firm to any prejudice or disadvantage, is suggestive that there may be preferences or advantages given or suffered that may be perfectly lawful and proper. Indeed, such is the case in business and commercial experience and practices. * * * If there be elements existing which afford proper grounds for distinguishing one shipper from another then, as between them, there can be no undue or unreasonable preference or advantage, because each will stand in his own class, and each will be entitled to be accorded a different standard or treatment, and the fact that a different standard is accorded each, under dissimilar conditions can afford no grounds of complaint." *Cf. U.S.* v. *Chicago Heights Trucking Co., et al.*, 310 U.S. 344.

Likewise, the Supreme Court has repeated time and time again that "it is not all discrimination or preference that fall within the statute; only such as are unjust and unreasonable", *Interstate Commerce Commission* v. *B&O Railroad*, 145 U.S. 276. To the same effect are *Swayne and Hoyt, Ltd.* v. *United States*, 300 U.S. 297, 303–304, *U.S.* v. *Wabash Railroad Company*, 321 U.S. 403, 411.

Differences in competitive conditions may justify a discrimination in types of service offered and rendered and the giving of some advantage to a particular classification of service does not in and of itself constitute an unjust discrimination. The prohibition in the statute is designed to prevent attempts by a pipeline to discourage any particular class of service by discriminatory rates or inadequate service. Its purpose is clearly to enforce the requirement that a pipeline accept all reasonable business which might be rendered ineffective by placing an undue disadvantage upon a class of service although nominally standing willing to accept it. The tariff provisions recognizing the difference in service between a pipeline company having alternate sources of supply and the other resale customers of Southern are not proscribed by either the scope or purpose of such statute and are not unduly discriminatory. See *Michigan Consolidated Gas Co.*, 203 F. 2d 895.

The Staff adopts a somewhat ambivalent position in these proceedings. Thus, at the hearing in response to the Presiding Examiner's request, Staff counsel stated "The Staff takes the position that Southern has not unduly discriminated against Carolina Pipeline Company." Tr. 120. Staff counsel went on to state that it was its position that terms in Southern's tariff lacked preciseness and definition and should be amended in order to correct such indefiniteness. It was also Staff's position that certain sections of Southern's tariff, to it, Section 9 and Section 16.1 which were specifically excepted from the CLD–AOL schedule constituted protection against discrimination and that such omission constituted an implied license to discriminate. In its brief, however, Staff while not wholly repudiating its stated position concludes that Atlanta Gas Light Company, an intervener in these proceedings, has, in effect, obtained preferential treatment vis a vis Carolina and that its recommended remedy was an order "calling upon Southern to show cause why the granting of CD–3 service to Atlanta is not in violation of the Act under Southern's tariff and why Southern should not be required to serve Atlanta under its CDL-AOL rate schedules." (Staff Br. p. 12.)

Finally, the Staff restates its position as follows: "Southern's service to Atlanta under CD rate schedule in contrast with its service to Carolina under CDL–AOL rate schedule creates an unreasonable difference in service and an unjustifiable preference to Atlanta contrary to public interest." However, in suggesting the remedy in the instant proceedings based upon the conclusion that Atlanta's service under the CD–3 classification was improper because Atlanta's operations allegedly satisfied the requirements which Southern's tariff prescribes for CDL–AOL service, Staff readily admits that "Two wrongs would not make matters right," and that, therefore, it would violate "the cardinal principle and purpose of utility regulation by means of published tariffs to transfer Carolina to the CD–3 classification simply because a mistake has been made by Southern in providing Atlanta with the type of service to which it is not entitled." (Staff Br. p. 42.) Thus, the Staff apparently concedes that Carolina's service under the CDL–3–AOL–3 Rate Schedules does not constitute undue discrimination. Where it parts company with Southern is the inclusion of Atlanta in a CD Rate Schedule rather than in the CDL-3-AOL-3 Rate Schedules. Suffice it to say, the evidence does not support any conclusion that any mistake had been made by Southern in connection with the type of service provided to Atlanta. Furthermore, the suggested change or modification of the Rate Schedule applicable to Atlanta is not an issue before the Presiding Examiner for adjudication in this proceeding. It is neither a matter described in the Commission's order of hearing delineating the issues, by implication or otherwise, nor in the issues as agreed upon at the prehearing conference. In substance the Staff is seeking a major modification of a Rate Schedule applicable to Atlanta without appropriate notice for so drastic a remedy. Any change or modification of such Rate Schedule would certainly involve the rights of other Southern customers as well as those appearing in this proceeding. The giving of appropriate notice to all parties concerned, would it appears, be an absolute *sine qua non* for any such contemplated action. Furthermore, Carolina, the complainant in this proceeding, could not obtain its sought after relief from Staff's recommended remedy, and its adoption would accord it little or no comfort.

It is pertinent to note Staff's admission to the effect that if circumstances justify, Southern has the right not only to establish different classes of service but to place one customer against another in different classifications provided the placement is justifiable under the tariff. (Staff Br. p. 23.) The evidence adduced at the hearing bearing on the basis for differences in classification was at best meager and was not calculated to establish any justifiable placement of customers in different categories, and the resultant preferential treatment of any such customers. Such evidence certainly cannot be deemed to have the probative value required to sustain the burden of proof properly imposed upon Carolina.

The Staff also contends that Southern's tariff specifically forbids discrimination among customers within the CD classification, and that the exception of such specific prohibition from the CDL-AOL Rate Schedules is an invitation to discrimination. The short answer to such argument is that not only did the Commission find that "Good cause has been shown for accepting Southern's tariff sheets and service agreement" (with Carolina)[11] but the Act, itself, protects against any undue discrimination. The omission from the Rate Schedules of specific provisions providing against such discrimination for what ever purpose such omission was designed, does not and cannot confer the right upon Southern to discriminate unjustly. In any event, certainly no evidence was adduced to support any charge of discrimination among the customers included under the CDL-AOL Rate Schedules. The omission, therefore, of these provisions from the Rate Schedules has not resulted in undue discrimination. In the absence of any indication that any such discrimination is anticipated no purpose would be served by requiring, in this proceeding, that they be inserted therein.

In accordance with the Commission's Order Providing For Hearing indicating the possibility of evidence of violation of the Antitrust Laws and need for transmission of such evidence to the Attorney General pursuant to Section 20(a) of the Natural Gas Act, we must consider the anti-competitive effects of Southern's tariff which differentiates between customers taking all their requirements from one supplier from those taking only a portion of such requirements. It is apparent that the CDL-3-AOL-3 Rate Schedules were not designed to destroy competition or competitors but rather to insure adequate service at reasonable prices to all Southern's customers including those lacking access to competing sources of gas. *Cf. Atlantic Seaboard Corporations, et al.*, 28 FPC 860, 867.

---

[11] "Order accepting Rate Schedules and Service Agreement, etc.," issued October 5, 1961, in Docket No. G-20509.

Southern's adoption of different rate schedules to satisfy the requirements of customers with materially different requirements apparently is designed to strike a balance between the need of the Southern system and its customers. No reason was advanced and no evidence was submitted to indicate that such procedure was not appropriate within the regulatory scheme. The advantages created for the customer purchasing gas under the CD schedule are not so substantial as to insure for all practical purposes that Southern would remain the sole supplier of gas to its existing markets. Nor would such advantages tend to discourage purchasers from other sources when in the customer's interest to do so. In any event, none of the parties, including the Staff, introduced evidence to support the charge of violation of the policies of the antitrust laws requiring reference to the Attorney General pursuant to Section 20(a) of the Natural Gas Act. Their briefs, furthermore, completely avoid any reference thereto.

CONCLUSION AND ORDER

Southern's failure and refusal to offer and afford Carolina service under a CD-3 Rate Schedule while at the same time providing such service to others of its customers under what has been held to be substantially different conditions constitutes neither an unlawful discrimination in service among customers nor an undue preference and advantage to such other customers and undue prejudice and disadvantage to Carolina in violation of the Natural Gas Act.

The conditions and circumstances adopted by Southern as a basis for differentiation in Rate Schedules CD-3 and CDL-3 have apparently been accepted by the Commission as valid exceptions to the doctrine of equality of treatment. Necessarily implicit in the Commission's conclusion is its judgment that the difference in service contemplated by and obtained under these different rate schedules is not unreasonable and is not based upon, and does not result in, undue discrimination. Carolina has not, in this proceeding, sustained its burden of proof of establishing any factual basis for a contrary conclusion.

WHEREFORE, *it is ordered*, subject to review by the Commission, that the relief sought by Carolina in these proceedings is denied and its complaint dismissed.

MAX L. KANE,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

H. L. HAWKINS & H. L. HAWKINS, JR., OPERATOR, ET AL., DOCKET NO. G-18077, ET AL.;* H. L. HUNT, OPERATOR, ET AL., CI61-1221; H. L. HUNT, CI61-1282; HASSIE HUNT TRUST, OPERATOR, ET AL., CI61-1283; CAROLINE HUNT SANDS, CI61-1343; CAROLINE HUNT TRUST ESTATE, CI61-1344; LAMAR HUNT TRUST ESTATE, CI61-1345; NELSON BUNKER HUNT, CI61-1346; PLACID OIL COMPANY, OPERATOR, ET AL., CI61-1682

ORDER SEVERING PROCEEDINGS, CONSOLIDATING PROCEEDINGS, AND FIXING DATE FOR PREHEARING CONFERENCE

(Issued March 30, 1964)

Each of the above-captioned proceedings concerns an application for a certificate of public convenience and necessity (or an application to amend a certifi-

---

*Additional applicants printed *infra.*, pp. 728, 729.

cate by adding acreage) filed under Section 7 of the Natural Gas Act to sell natural gas produced in the State of Texas (Railroad District #3) for resale in interstate commerce, all as more fully described in the appendix attached hereto and in the respective applications (and supplements or amendments thereto) which are on file with the Commission and open to public inspection.

The Commission finds:

(1) It is appropriate and in the public interest to sever the matters in Docket Nos. G–18077, G–18175, G–18481, G–18805, G–18857, G–19308, G–19964, G–20155, G–20359, G–20385, and G–18384 from the proceedings in Florida Gas Transmission Company, *et al.*, Docket No. G–18338, *et al.*[1]

(2) By its opinion and order issued December 9, 1963, Docket Nos. CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345, and CI61–1346 were severed from the proceedings in *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115 *et al.*, 30 FPC 1438.

(3) It is appropriate and in the public interest that the above-captioned matters be consolidated for hearing and decision as hereinafter ordered.

(4) The expeditious disposition of these proceedings may be effectuated by holding a prehearing conference and to that end a prehearing conference should be held on April 23, 1964, as hereinafter ordered.

The Commission orders:

(A) The matters in Docket Nos. G–18077, G–18175, G–18481, G–18805, G–18857, G–19308, G–19964, G–19971, G–20155, G–20359, G20385, and G18384 are hereby severed from the proceedings in Florida Gas Transmission Company, *et al.*, Docket No. G–18338, *et al.*

(B) The matters in Docket Nos. CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345, and CI61–1346 previously severed from the proceedings in *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, and the captioned matters set forth in paragraph (A) above are hereby consolidated for the purposes of hearing and decision.

(C) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10:00 a.m. (EST) on April 23, 1964, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the expeditious disposition of these consolidated proceedings.

(D) The purpose of such conference shall be to consider all matters at issue in the above dockets, the manner in which evidence shall be presented, to fix dates for the distribution of such evidence, to fix the date on which the consolidated hearing shall commence, and to consider any and all matters which might contribute to an expeditious disposition of these consolidated proceedings.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held on a date to be fixed by the presiding examiner in accordance with paragraph (D) above, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., concerning the matters involved in and the issues presented by such applications.

---

[1] Formerly Coastal Transmission Corporation.

(F) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before April 17, 1964. Protestants and Petitioners shall state with particularity the dockets in which they claim to have an interest.

Commissioners Ross and Black *concurring* stated that had the majority decided Docket Nos. CI61-1221, CI61-1282, CI61-1283, CI61-1343, CI61-1344, CI61-1345, and CI61-1346 in the *Hassie Hunt* proceeding (Opinion Nos. 412 and 412-A) at the time they were originally heard, it would be unnecessary to retry these applications anew in this case. Since it did not, despite the dissents in that case, there is no other alternative than to proceed as set forth herein.

APPENDIX

Docket Nos.	Applicant	Field and location	Purchaser	Proposed initial price cents/Mcf 14.65 psia	Rate schedule and contract date	Comments
G-18077	H. L. Hawkins & H. L. Hawkins, Jr. (operator), *et al.*	Lockridge Field, Brazoria County	Florida Gas Transmission Co	17.5	9, 1-30-59	(2)
G-18175	W. S. Kilroy (operator), *et al.*	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	1, 1-22-59	(2)
G-18481	John A. Newman (operator), *et al.*	Lockridge Field, Brazoria County	Florida Gas Transmission Co	17.5	1, 12-10-58	(2)
G-18805	Shell Oil Co	East Bay Field, Galveston County	Florida Gas Transmission Co	18.0	209, 4-15-59	(2)
G-18857	Callery Properties, Inc	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	1, 1-14-59	(2)
G-19308	Gregory J. Gallagher	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	1, 2- 2-59	(2)
G-19964	The Sparta Oil Co	League City West Field, Galveston County.	Florida Gas Transmission Co	18.0	3, 9-10-59	(2)
G-20155	Skelly Oil Co	Pheasant Field, Matagorda County	Florida Gas Transmission Co	17.5	158, 8- 1-59	(2)
G-20395	The Superior Oil Co	Pheasant Field, Matagorda County	Florida Gas Transmission Co	17.5	99, 8- 1-59	(2)
G-20385	Gregory J. Gallagher	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	2, 9-15-59	(2)
G-18384	Socony Mobil Oil Co., Inc	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	263, 2-18-59	(2)
CI63-1445	Pan American Petroleum Corp	Palacios Field, Matagorda County	Florida Gas Transmission Co	17.5	358, 2-12-63	(1)
CI62-1220	H. B. Lively	Columbus Field, Colorado County	Tennessee Gas Transmission Co	15.95016	3, 1-31-51	Ratification 4/10/62 [2]
CI60-459	The Atlantic Refining Co	Englehart Field, Colorado County	Tennessee Gas Transmission Co	16.16947	215, 3-16-60	(2)
CI60-343	Robert Mosbacher	Englehart Field, Colorado County	Tennessee Gas Transmission Co	16.16947	17, 1-30-60	(2)
CI60-434	North Central Oil Corp	North Blessing Area, Matagorda County.	Tennessee Gas Transmission Co	16.16947	3, 3-15-60	(2)
CI60-495	Woods Exploration & Producing Co	East Bernard Field, Wharton County	Tennessee Gas Transmission Co	16.16947	2, 4-18-60	(2)
CI60-496	C.W. Coffey and North Central Oil Corp.	Blessing Area, Matagorda County	Tennessee Gas Transmission Co	16.16947	4, 3-28-60	(2)
CI60-642	Ben H. Schnapp	Petkas Field, Chambers County	Tennessee Gas Transmission Co	16.16947	1, 4- 6-60	(2)
CI63-584	The Superior Oil Co	Oliver Field, Brazoria County	Florida Gas Transmission Co	17.5	109, 9-20-62	(1)
CI63-1057	Humble Oil & Refining Co	Quicksand Creek Field, Newton County.	Trunkline Gas Co	17.0	325, 6-21-60	Ratification 1-21-63. [1]
CI63-1134	Tidewater Oil Co	Quicksand Creek Field, Newton County.	Trunkline Gas Co	17.0	125, 6-21-60	Ratification 1-30-63. [1]

CI60-497	Marathon Oil Co	Palacios Field, Matagorda	Florida Gas Transmission Co	18.0	80, 1-25-60	(2)
CI60-497	Marathon Oil Co	Palacios Field, Matagorda	Florida Gas Transmission Co	18.0	81, 2-18-59	(2)
CI60-541	Stewart & Gouger Drilling Co	Northern Ranch Field, Matagorda County.	Florida Gas Transmission Co	17.5	3, 1-13-60	(2)
CI60-610	Kirby Petroleum Co	South Hamman Field, Matagorda County.	Florida Gas Transmission Co	17.5	12, 3-22-60	(2)
CI61-468	Oil Reserves Corp	Quicksand Creek Field, Newton County.	Trunkline Gas Co	17.0	2, 6-21-60	(2)
CI61-1688	George R. Brown	Pheasant Field, Matagorda County	Florida Gas Transmission Co	17.5	10, 1-12-61	(2)
CI62-1152	A. F. Childers, Jr	Jones Creek Field, Wharton County	Florida Gas Transmission Co	17.5	1, 1-17-62	(2)
CI63-672	Skelly Oil Co	East Bay City Field, Matagorda County.	Natural Gas Pipeline Co. of America	18.0	181, 10-16-62	(3)
CI60-348	Sun Oil Co	Sarah White Field, Galveston County	Trunkline Gas Co	20.0	120, 3- 3-60	(2)
CI60-478	Kilroy Properties, Inc	Arcadia Field, Galveston County	Trunkline Gas Co	20.0	4, 9-16-58	Ratification 3-15-60.
CI61-1682	Placid Oil Co. (operator), *et al*	Alta Loma Area, Galveston County	Natural Gas Pipeline Co. of America	10.0	33, 12-15-60	(4)
CI64-677	Humble Oil & Refining Co	Pledger Miocene, Brazoria County	Natural Gas Pipeline Co. of America	17.0	342, 10-1-63	(2)
CI61-1221	H. L. Hunt (operator), *et al.*	Alvin City, Brazoria County	Natural Gas Pipeline Co. of America	20.0	34, 12-15-60	(4)
CI61-1282	H. L. Hunt	Alta Loma, Galveston County	Natural Gas Pipeline Co. of America	20.0	35, 12-15-60	(4)
CI61-1283	Hassie Hunt Trust (operator), *et al*	Alta Loma, Galveston County	Natural Gas Pipeline Co. of America	20.0	28, 12-15-60	(4)
CI61-1343	Caroline Hunt Sands	Chenango, Brazoria County	Natural Gas Pipeline Co. of America	20.0	9, 5-15-59	Ratification 2-15-61.[5]
CI61-1344	Caroline Hunt Trust Estate	Chenango, Brazoria County	Natural Gas Pipeline Co. of America	20.0	4, 5-15-59	Ratification 2-15-61.[5]
CI61-1345	Lamar Hunt Trust Estate	Chenango, Brazoria County	Natural Gas Pipeline Co. of America	20.0	11, 5-15-59	Ratification 2-15-61.[5]
CI61-1346	N. B. Hunt	Chenango, Brazoria County	Natural Gas Pipeline Co. of America	20.00	12, 5-15-59	Ratification 2-15-61.[5]

---

[1] Initial price is subject to the condition that the seller will refund any amounts collected in excess of 16.0¢/Mcf (plus interest), which may be determined to be in excess of the price requiredby the public convenience and necessity.

[2] Temporary certificate issued without condition.

[3] The price is subject to the condition that H. B. Lively will refund any amounts (plus interest) in excess of the amount computed at the rate determined to be required by the public convenience and necessity in Docket No. CI62-1220.

[4] The price is subject to the condition that the total initial price shall not exceed 18¢ per Mcf at 14.65 psia, with such rate to be effective for the duration of the temporary authorization and until a different prospective rate is established.

[5] The price is subject to the condition that the total initial price shall not exceed 18¢ per Mcf at 14.65 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEW LONDON GAS COMPANY, DOCKET NO. CP63-20

ORDER AMENDING OPINION NO. 386 AND ORDER ISSUED APRIL 17, 1963

(Issued March 30, 1964)

On November 29, 1963, New London Gas Company, joined by Morning Sun Gas Company (Movants) filed a motion to amend the Commission's order issued on April 17, 1963, in Docket Nos. CP62-303, CP63-20 and CP63-21 (Opinion No. 386, 29 FPC 754) by substituting the Morning Sun Gas Company for New London Gas Company as the party recipient of the gas service from Michigan Wisconsin Pipe Line Company in Docket No. CP63-20.

Movants state in their motion that on May 15, 1963, New London Gas Company sold and assigned its franchise to serve gas and its property and distribution system within the Town of Morning Sun, Iowa, to Morning Sun Gas Company.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the motion to amend has been filed.

At a hearing held on March 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion to amend filed on November 29, 1963, and exhibits, submitted in support of the substitution of parties sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 17, 1963, in Docket No. CP63-20 (Opinion No. 386, 29 FPC 754) be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 17, 1963 (Opinion No. 386, 29 FPC 754) be and the same is hereby amended by substituting the name of Morning Sun Gas Company for that of New London Gas Company as purchaser in Docket No. CP63-20, all as more fully set forth in the motion to amend.

(B) In all other respects said Opinion and Order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, ET AL., DOCKET NO. G-19417, ET AL.; PAN AMERICAN PETROLEUM CORP., G-19417, CI61-516; SHELL OIL COMPANY (OPERATOR), ET AL., CI61-524; THE ATLANTIC REFINING COMPANY, CI61-752; UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION, ET AL., CI61-1275; PAN AMERICAN PETROLEUM CORPORATION, CI61-1772; CONTINENTAL OIL COMPANY, CI62-1100; THE ATLANTIC REFINING COMPANY, CI62-1511; THE PURE OIL COMPANY, CI63-148; PAN AMERICAN PETROLEUM CORP., CI63-286, CI63-328, CI63-336, CI63-337; MARATHON OIL COMPANY, CI63-356; GULF OIL CORPORATION, CI63-459; PHILLIPS PETROLEUM COMPANY (OPERATOR), ET AL., CI63-462; HUMBLE OIL &

REFINING COMPANY, CI63–575; PHILLIPS PETROLEUM COMPANY (OPERATOR), ET AL., CI63–583; CITIES SERVICE OIL COMPANY, CI63–647; TIDEWATER OIL COMPANY, CI63–1009; SINCLAIR OIL & GAS COMPANY, CI63–1025, CI63–1026; AMERADA PETROLEUM CORPORATION, CI63–1042; MARATHON OIL COMPANY, CI63–1086; GULF OIL CORPORATION, CI63–1125, CI63–1129, CI63–1152; UNION OIL COMPANY OF CALIFORNIA (OPERATOR), ET AL., CI63–1241; SUN OIL COMPANY, CI63–1427; CLEARY PETROLEUM, INC. (OPERATOR), ET AL., CI63–1461; THE ATLANTIC REFINING COMPANY, CI63–1491; MARATHON OIL COMPANY, CI63–1585; PAN AMERICAN PETROLEUM CORP., CI64–23, CI64–67; ASHLAND OIL & REFINING COMPANY, CI64–159; GULF OIL CORPORATION, CI64–208

ORDER SEVERING PROCEEDINGS, APPROVING PROPOSED SETTLEMENTS, AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 30, 1964)

On the dates set forth below the following companies filed motions for severance of the above-captioned dockets from the proceedings in Pan American Petroleum Corporation, *et al.*, Docket No. G–19417, *et al.*, for approval of their respective settlement proposals and for the prompt issuance of certificates of public convenience and necessity without intermediate decision procedure:

Shell Oil Company (Operator), *et al.*	December 19, 1963
Ashland Oil & Refining Company	January 10, 1964
Humble Oil & Refining Company	January 13, 1964
Union Oil Company of California (Operator), *et al.*	January 22, 1964
Phillips Petroleum Company (Operator), *et al.*	January 23, 1964
The Pure Oil Company	January 27, 1964
Sinclair Oil & Gas Company	January 29, 1964
Union Texas Petroleum	February 7, 1964
Union Texas Petroleum	February 11, 1964
The Atlantic Refining Company	February 20, 1964
Gulf Oil Corporation	February 25, 1964
Pan American Petroleum Corporation, *et al.*	February 26, 1964
Continental Oil Company	February 27, 1964
Marathon Oil Company	March 4, 1964
Pan American Petroleum Corporation, *et al.*	March 6, 1964
	March 9, 1964
Cities Service Oil Company	March 9, 1964
Amerada Petroleum Corporation	March 11, 1964
Tidewater Oil Company	March 12, 1964
Sun Oil Company	March 23, 1964
Cleary Petroleum Inc. (Operator), *et al.*	March 23, 1964

All of the above applicants have indicated in their motions for severance their willingness to accept permanent certificates on the same terms and conditions as contained in their temporary certificates.[1] More particularly, all of the above moving parties have indicated their desire to accept permanent certificates providing *inter alia*, for an initial price of 15¢ per Mcf, the present ceiling price contained in the Statement of General Policy No. 61-1 for the "Other Oklahoma" area.[2] No answers have been filed by any parties or interveners to these motions.

---

[1] It may be noted that temporary certificates have been issued in all dockets consolidated in these proceedings except CI63–417 and CI63–876. The temporary certificates in all dockets but five were conditioned to the initial rate of 15¢ per Mcf. At the time of issuance of each temporary certificate, the Commission asked to be advised whether the applicant would be willing to accept permanent authorization on the same terms. In some cases the applicant indicated that it would take the Commission's offer under consideration but, in most cases, refused the offer of a permanent certificate on the same conditions as contained in the temporary certificate.

In a number of dockets in which offers of settlement have been made, the contract with the purchasing pipeline follows the same pattern as outlined in Opinion No. 353 (27 FPC 449, 459). In these dockets it is appropriate and in the public interest that certificates issued herein to the producer-applicants be granted upon the conditions contained in paragraphs (C), (D), and (E) of the order in that Opinion.[3]

It further appears that in all of the motions for severance wherein the contract with the purchasing pipeline contains a Btu adjustment clause, the offer of settlement proposes that such provision shall be subject prospectively to disposition in accordance with the rule-making proceeding in Docket No. R-200. Accordingly, this will be so provided in the instant order.

A number of dockets herein contain no Btu adjustment provisions and the moving parties request permanent certificates on the same conditions as already provided in our order issued March 6, 1964, which severed the proceedings in CI61-1620 and CI61-1796.

There are several conditions which we feel must be imposed uniformly in every case where a motion for severance and settlement proposal is made to the Commission in these proceedings. In all cases wherein motions for severance are filed in these consolidated proceedings we shall establish a uniform pattern of conditions with respect to (1) take-or-pay-for liabilities and (2) boundary changes resulting from amendment to Policy Statement No. 61-1. Furthermore, as indicated above, all Btu adjustment clauses shall be subject prospectively to the proceedings in Docket No. R-200.

There remain, finally, two dockets wherein the issuance of permanent certificates will require the refund of any amounts previously collected over 15¢ per Mcf up to the date of the issuance of the permanent certificate herein (Pan American Petroleum Corporation, Docket No. G-19417[4] and Union Texas Petroleum, Docket No. CI61-1275).[5] Pan American has indicated that it is willing to accept a permanent certificate in Docket No. G–19417 upon the condition that Pan American shall within ninety days refund to Cimarron the difference between 15.5¢ and 15¢ per Mcf at 14.65 psia for deliveries occurring under this docket from initial delivery to the effective date of price reduction to 15¢ per Mcf, plus interest at the rate of 7% per annum through March 31, 1964.

---

[2] The original contracts contain proposed initial prices ranging from 15.5¢ per Mcf to 19.5¢ per Mcf.

[3] Including a requirement that the producer-applicant file within 30 days of date hereof a supplement to the related rate schedule providing for a full downward Btu adjustment in price for gas containing less than 1,000 Btu per cubic foot.

[4] In accordance with the mandate of the United States Court of Appeals for the Tenth Circuit (Case Nos. 6670 and 6724), the Commission modified, effective as of January 24, 1962 (the date upon which the Court issued its mandate in the two cases), the temporary authorizations issued November 3, 1960, March 2, 1961, and April 28, 1961, so as to permit Pan American Petroleum Corporation to collect the full contract price as provided in Rate Schedule No. 277 including the Btu price adjustment subject to Pan American Petroleum Corporation refunding to Cimarron Transmission Company any amounts plus interest at 7 percent per annum collected in excess of 15 cents per Mcf which may be determined to be in excess of the price required by the public convenience and necessity in Docket No. G-19417. By letter order of June 28, 1962, the effective date of refund was modified to be effective from and after the date of initial delivery in lieu of January 24, 1962.

[5] The temporary certificate issued to Union Texas Petroleum is subject to a refund of any amounts collected over 15¢ per Mcf.

By its letter of March 27, 1962, granting a temporary certificate to Union Texas Petroleum, the Commission provided the following condition:

> The initial price for this service shall be 15 cents per Mcf at 14.65 psia, inclusive of tax reimbursement and subject to a Btu price adjustment for Btu content above or below 1,000 Btu per cubic foot. Such initial price shall be further subject to Union Texas refunding to Natural Gas Pipeline Company of America any amounts collected (plus interest at 7 percent per year) in excess of the amount computed at the rate determined to be in accordance with the requirements of the public convenience and necessity in Docket No. CI61-1275, as to the service hereby authorized.

Union Texas Petroleum has indicated that it is willing to refund any amounts collected by virtue of the operation of its Btu adjustment clause from the date of issuance of its temporary certificate until the date of issuance of a permanent certificate herein, down to a floor of 15¢ per Mcf.

We find the settlement proposals herein to be in the public interest. Accordingly, we shall sever the above-captioned dockets from the consolidated proceedings in Pan American Petroleum Corporation, *et al.*, Docket No. G–19417, *et al.*, omit the intermediate decisions in regard to these dockets, and conditionally issue certificates of public convenience and necessity.

In a hearing held on March 26, 1964, the Commission, on its own motion, received and made part of the record in these proceedings all evidence, including the applications and exhibits attached thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant is a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, Rules, and Regulations of the Commission thereunder.

(4) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(5) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The matters in the above-captioned dockets are severed from the consolidated proceeding Pan American Petroleum Corporation, *et al.*, Docket No. G–19417, *et al.*

(B) The certificates of public convenience and necessity are hereby issued to the above-named Applicants, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications and settlement proposals herein.

(C) The certificates granted in paragraph (B) above are not transferable and shall be effective only so long as Applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable Rules, Regulations, and Orders of the Commission.

(D) The grant of the certificates issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customer involved imply approval of all the terms of the contract, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(E) The authorizations issued herein are subject to the following conditions:

(a) The initial price, including tax reimbursement, shall not exceed 15¢ per Mcf at 14.65 psia.

(b) In the event that the Commission amends its Policy Statement No. 61–1 by adjusting the boundary between the Panhandle area and the "Other Oklahoma" area so as to increase the initial wellhead price for new gas in the areas involved herein, Applicants thereupon may substitute the new rates consistent with their contracts reflecting the amount of such increase, and thereafter collect these new rates prospectively in lieu of the initial rates herein required.

(c) The allowances for take-or-pay provisions in the related rate schedules are subject to the ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199; however, Applicants will not be required to file take-or-pay provisions for less than 80 percent of the annual quantity.

(d) The allowance for any Btu adjustment provision in the related rate schedule is subject to the ultimate disposition with respect to such provision in the rule-making proceeding in Docket No. R–200; provided, however, as a further condition of the issuance of the certificates herein, that the rate schedules to be filed by the producer-applicants in Docket Nos. CI63–286, CI63–328, CI63–336, CI63–337, CI63–647, CI63–1086, CI63–1585, CI63–148, CI63–459, CI61–752, CI63–462, CI63–575, CI63–1241, and CI61–1275 shall also make provision for a full percentage downward adjustment in price for gas containing less than 1000 Btu's per cubic foot. The precedent processing agreements, where applicable, shall be similarly modified to provide reimbursement to Michigan Wisconsin on the same basis for Btu's below 1000 removed by the producers in processing the gas.

In Docket No. CI61–1275 (Union Texas Petroleum Corp.) the Btu adjustment provision shall operate above or below 1,000 Btu per cubic foot as specified in the temporary certificate issued March 27, 1962.

(F) The order issuing certificates of public convenience and necessity in Docket Nos. CI61–516, CI61–524, CI61–752, and CI61–1620 be and the same are hereby amended by authorizing the sale and delivery of natural gas from additional acreage and in all other respects except as herein provided said orders shall remain in full force and effect.

(G) The order herein issuing a certificate of public convenience and necessity to Gulf Oil Corporation in Docket No. CI63–459 relates to Gulf acreage in North Oakdale Field and Lenora Field, including acreage added to the basic contract by amendment dated November 16, 1962, but does not cover acreage added to Gulf's contract with Michigan Wisconsin relating to proposed sales of gas from the Northwest Quinlan Field and the Northeast Cedardale Pool, which are in the Panhandle area rather than the "Other Oklahoma" area. The authorizations granted herein to Pan American in Docket Nos. CI61–516, CI63–336, and CI63–337 cover acreage only in the "Other Oklahoma" area.

(H) As a further condition to the issuance of permanent certificates in Docket Nos. G–19417 and CI61–1275, Pan American Petroleum Corporation and Union Texas Petroleum, A Division of Allied Chemical Corporation, *et al.*, shall refund respectively to Cimarron Transmission Company and Natural Gas Pipeline of America any amounts collected (plus interest at 7% per annum) in excess of 15¢ per Mcf from the date of issuance of their temporary certificates[6] up to the date of issuance of the order herein.

(I) The motions for waiver of hearing and intermediate decision pursuant to Section 1.32 of the Commission's Rules of Practice and Procedure are hereby granted.

Commissioner BLACK *dissenting in part.*

BLACK, *Commissioner, dissenting in part:*

The certificates here issued should contain the same refund condition with respect to amounts collected by the producers under Btu adjustment clauses as have been required in the temporary certificates approved by this Commission during the past two years.[1] I object to the Commission's decision making the Btu adjustment clauses subject only prospectively to our conclusions in the pending rulemaking proceeding in Docket No. R–200.

The Commission's decision in Opinions 350 and 353 (27 FPC 35 and 449, respectively) permitted collection of upward Btu adjustments subject only to a prospective change dictated by the R–200 proceedings. I think the Commission's decisions in those cases were wrong; but in any event they are not necessary precedents for the action taken here. Since the issuance of Opinions 350 and 353 in early 1962, we have strictly limited their applicability to certificates issued producers who were in the same unique factual circumstances as were there involved. As recently as March 20, 1964, this Commission in Docket No. CP60–116 issued a temporary certificate for sale of gas in the Oklahoma Panhandle area to Michigan Wisconsin Pipe Line Company at the guideline ceiling price plus Btu adjustment—but subject to refund. In fact in all other gas-producing areas, contract provisions such as the Btu clause here involved have been recognized in general rate settlements as a basis for reaching the ceiling but never for breaching it.[2]

If we permit the producers to keep all amounts collected under Btu clauses no matter what we decide is proper in R–200, we are either pre-judging the outcome of that proceeding or failing to provide the gas purchaser the protection he is entitled to expect from the Federal Power Commission.

---

[6] As of date of initial delivery in the case of Pan American Petroleum Corporation in accordance with the letter order of June 28, 1962.

[1] See, for example, Pan American Petroleum Corporation, *et al.*, Docket No. G–19417, involved in this order, wherein the refund obligations were imposed by order of the Court of Appeals, 10th Circuit (298 F. 2d 478), in conformity with its decision in *Sohio Petroleum Company* v. *FPC*, 298 F. 2d 465. The Sohio case concluded that the Commission lacked authority to summarily reject the Btu adjustment clause and that the acceptance of that clause, subject to refund in conformity with the outcome of any future proceedings initiated to establish the validity of such price adjustment clause was the proper administrative tool for the protection of both consumer and producer interests, citing *Pure Oil Co.* v. *FPC*, 292 F. 2d 350, and *J. M. Huber Corp.* v. *FPC*, 294 F. 2d 568. See also, the temporary certificate issued to *Union Texas Petroleum Co.*, Docket No. CI61–1275, also involved in this order; for other dockets not involved here, see *Pan American*, Docket No. CI63–269, order of January 24, 1963; Docket No. G–18435, order of June 6, 1962; and Docket No. CI61–228 of September 21, 1961.

[2] *Gulf Oil Corporation*, Docket No. G–9520, *et al.*; *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.*; *Sohio Petroleum Company*, Docket No. G–8488, *et al.*; *Texaco Inc.*, Docket No. G–8969, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. RP64-18

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued March 30, 1964)

Panhandle Eastern Pipe Line Company (Panhandle), on February 26, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1.[1] The proposed change in rates would make effective on April 1, 1964, a reduction in Panhandle's jurisdictional rates in the sum of approximately $7,400,000 annually, based upon its operations for the twelve months ended October 31, 1963, subject to certain conditions. The filing of the proposed rates, which we have docketed as shown above, also includes a proposal to make further rate reductions subject to certain terms and contingencies summarized in part below.

The proposed rate reduction reflects Panhandle's deliveries of gas to National Helium Corporation.[2] The reduction also reflects lower cost of service allowances included among which is an approximately $3.8 million reduction in purchased gas cost which would result from a concurrently proposed rate reduction of Panhandle's affiliated supplier, Trunkline Gas Company.[3] Also included is an approximately $600,000 reduction in the Federal income tax allowance to reflect the recent reduction in the tax rate for corporations from 52 percent to 50 percent.

Panhandle's rate reduction proposal has resulted from conferences with the Commission staff. The conferences were initiated by letter of the Executive Director on September 6, 1963, as a consequence of the staff's continuing supervision of natural gas companies and the periodic review of the reports filed with the Commission by such companies.

The proposal is summarized in part as follows:

(1) Effective April 1, 1964, Panhandle's jurisdictional rates will be reduced to the levels set forth in Appendix A hereto.

(2) Panhandle will reflect the principles specified in the Commission's Opinion No. 417 issued on February 3, 1964, in *Alabama-Tennessee Natural Gas Company*, Docket No. G-5471, *et al.*, 31 FPC 208, by filing revised tariff sheets, to take effect on October 1, 1965, reducing the level of the rates specified in its proposal. If, however, Panhandle does not claim liberalized depreciation tax deductions in its 1964 Federal income tax return, its obligation hereunder to reduce rates as of October 1, 1965 shall not encompass liberalized depreciation tax savings for the twelve-months period ending October 1, 1965. However, the filing of reduced rates to give effect to the deduction of the accumulated balances in Account No. 282, as also prescribed by Opinion No. 417. shall not be contingent upon Panhandle's current utilization of liberalized depreciation. Panhandle's proposal also affords the company the option of deferring the aforementioned rate reductions until twenty days after the date of final court affirmance of Opinion No. 417,

---

[1] First Revised Sheets Nos. 26-E, 26-F, and 26-G; Second Revised Sheets Nos. 26-A and 26-B; Seventh Revised Sheets Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, 24, 29, and 31; Eighth Revised Sheet No. 27; and Eleventh Revised Sheet No. 25.

[2] Panhandle's deliveries of gas to National Helium Corporation are subject to our further order in Docket No. CP63-159 in which our Opinion No. 410 and order were issued November 12, 1963, 30 FPC 1260. On December 27, 1963, Panhandle filed a petition for review of that opinion and order, which is now pending in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, CA10, No. 7587.

[3] Trunkline's reduction proposal has been accepted for filing on this date by order issued in Docket No. RP64-19.

with respect to both the flow-through of the tax savings and the reduction of the rate base elements of the decision in Opinion No. 417. However, upon such affirmance, Panhandle's obligation, as provided above, to reduce its rates (including the making of refunds as applicable) shall be effective as of October 1, 1965. The proposed agreement also contains specific provisions directed toward the contingency that after electing not to use liberalized depreciation in 1964, Panhandle resumes its use in 1965.

(3) Panhandle's existing obligation to pass on gas supplier refunds applicable to gas purchased on and after September 1, 1958, relating to specific gas supplier proceedings, (Appendix B hereto), as provided in the Stipulation and Agreement dated June 22, 1962, approved by Commission order issued July 20, 1962, 28 FPC 200, in Docket No. G–14755, *et al.*, is continued during the term of the new agreement. Additionally, with respect to gas purchased on and after April 1, 1964, Panhandle assumes the obligation to pass on the jurisdictional portion of any gas supplier refunds ordered by the Commission in the gas supplier proceedings specifically listed in Appendix C hereto, which have been initiated subsequent to the date of the Stipulation and Agreement in Docket No. G–14755, *et al.*, proceedings. In addition to increased rate proceedings, such as additional proceedings include temporary certificate proceedings and certificate proceedings subject to remand on judicial review.[4]

(4) During the period in which the rates provided for in the subject agreement remain in effect Panhandle is obligated to reduce its rates to reflect the reduction in the rates of its gas suppliers subject to proceedings specifically listed, (Appendix D hereto) including both those subject to the Stipulation and Agreement in Docket No. G–14755, *et al.*, and those additional proceedings subject to refund flow-through obligations as stated in the next preceding paragraph. The amount of the reductions shall equal the reductions in Panhandle's cost of purchased gas computed on a weighted average basis for the 12-months' periods preceding such supplier rate reductions and which result in cost reductions below the level of 13.9 cents per Mcf, all as more specifically prescribed in the subject proposal.[4]

(5) The proposed reduced rates shall not become effective unless:

(a) the Commission shall have entered a final, nonappealable order, containing the Commission's agreement expressed in paragraph (4), above, as of April 1, 1964;

(b) Trunkline's proposed reduced rate, (*supra*, footnote 3) $2.00 Demand, 25.9 cents per Mcf Commodity, in its Rate Schedule P–1, shall have been permitted to become effective without suspension; and

(c) Panhandle's proposed revised tariff sheets set forth in Appendix A of the proposed filing (listed in footnote[1] herein), containing the rate levels set forth in Appendix A hereto, shall have been made effective without suspension as of a date not earlier than the effective date of Trunkline's proposed P–1 rate specified in subparagraph (5) (b) above.

(6) The Commission is requested to waive compliance by Panhandle with the requirements of the Commission's general rules and regulations, particularly Part 154 thereof, to the extent necessary to effectuate all of the provisions of the proposal.

---

[4] At the time of Panhandle's filing of its rate reduction proposal, no docket number had been assigned to Trunkline's contemporaneously filed rate reduction proposal accepted for filing this date. Appendices B, C and D of Panhandle's proposal and of this order hereby are corrected to include Docket No. RP64–19 assigned to the Trunkline proposal. The rates of both Michigan Gas Storage Company and the Ohio Fuel Gas Company, Panhandle's only pipeline resale customers, are currently subject to the obligation to flow-through and reflect Panhandle's refunds and rate reductions.

(7) Neither Panhandle, the staff, nor any other person shall be bound or prejudiced by any ratemaking principle, or any method of cost of service determination, or any allocation underlying or supposed to underlie any of the rates or any of the refunds provided for herein.

As Panhandle's proposal indicates, the proposed reduced rates reflect Panhandle's deliveries to National Helium Corporation. In our Opinion No. 410, 30 FPC 1260, Docket No. CP63–159, involving Panhandle's transportation and sale of natural gas to National Helium at Liberal, Kansas, we held that Panhandle should submit an application for a certificate for transporting natural gas for the purpose of extracting therefrom hydrocarbons at the Helium Plant. We observed that our determination with respect to the transportation and sale of gas to that company for fuel, etc., ". . . will not affect the question of crediting possible revenues of National Helium against Panhandle's costs in any future rate case involving the latter". Without resolving or affecting any other issue presented in Docket No. CP63–159 proceedings, the Commission agrees that in making effective the proposed reduced rates as provided herein, and for so long as the rates provided for in this order shall remain in effect, no further adjustment will be made in Panhandle's rates or tariff on the basis of the effects of Panhandle's deliveries to National Helium, as a result of the certificate proceedings.

No protests or objections to Panhandle's proposed reduced rates have been received. Comments upon Panhandle's reduced rate proposal have been received from Michigan Gas Storage Company, the Illinois Commerce Commission, the Public Service Commission of Indiana, and the Public Service Commission of Michigan. In general, all of these comments support our acceptance of Panhandle's reduced rates for filing effective on April 1, 1964, as proposed, although Michigan Gas Storage and the Michigan Commission expressed doubt as to the propriety of utilizing a uniform reduction, in cents per Mcf, to all zones.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective on April 1, 1964, as hereinafter ordered.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Panhandle's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and of the rate reduction proposal.

(B) The revised tariff sheets specifically described hereinabove are accepted for filing to become effective on April 1, 1964, and Panhandle's agreement filed on February 26, 1964, is approved and made effective as proposed therein, subject to the terms and conditions of this order.

(C) Panhandle shall comply with each of the provisions of the rate reduction proposal relating to future refunds and rate reductions.

(D) Within twenty (20) days of making refunds in accordance with paragraph (C) herein, Panhandle shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund.

(E) Except as hereinabove stated with respect to Opinion No. 410, this order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Panhandle Eastern Pipe Line Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Panhandle Eastern Pipe Line Company or any other persons or parties affected by this order.

Commissioner Ross *dissenting.*

APPENDIX A

PANHANDLE EASTERN PIPE LINE COMPANY

STATEMENT OF RATES TO BECOME EFFECTIVE APRIL 1, 1964

Rate schedules and zones	Charges per Mcf		
	Demand	Commodity	Straight line
General service:		*Cents*	*Cents*
G–1 Eastern Zone	$2.19	24.1	
G–2 Central Zone	1.99	22.1	
G–3 Western Zone	1.89	21.6	
Small general service:			
SG–1 Eastern Zone			37.7
SG–2 Central Zone			34.6
SG–3 Western Zone			33.3
Limited service:			
LS–1 Eastern Zone	2.06	24.1	
Storage service:			
S–1 Eastern Zone			31.3
Seasonal service:			
SS–1 Eastern Zone	2.19	24.1	
Combined service, CS–1 Eastern Zone:			
Contract demand volumes	2.19	24.1	
Annual contracted volumes:			
November–March			31.3
April–October			29.7
Interruptible service:			
I–1 Eastern Zone			31.3
I–2 Central Zone			28.6
I–3 Western Zone			27.8

APPENDIX B

PANHANDLE EASTERN PIPE LINE COMPANY

REFUND OBLIGATIONS—GAS SUPPLIER PROCEEDINGS

[Referred to in paragraph (3), page 737]

Supplier	FPC rate schedule	Docket Nos.
Westhoma Oil Co.	2	G–14073, G–16711, G–20279.
Edwin L. Cox	15	G–14497, G–18103, RI 60–203, RI 61–396.
Humble Oil & Refining Co.	202	G–14666, G–17990, RI 60–186, RI 61–392.
Phillips Petroleum Co.	5	G–16112, G–19845.
Sunray Mid-Continent Oil Co.	165	G–17881, RI 60–131, RI 61–300.
M. B. Armer	3	G–17926.
Graham Michaelis Drilling Co.	26–A	G–18571.
Graham Michaelis Drilling Co.	26–B	G–18571.
Pan American Petroleum Co.	221	G–18949, RI 61–6, RI 62–2.
Cabot Corp.	47	CI 60–105.
Ozark Mahoning Co.	3	CI 60–711.

APPENDIX B—continued

Supplier	FPC rate schedule	Docket Nos.
Hamilton Brothers, Ltd	14	CI 61-1775.
Columbian Fuel Corp	1	RI 60-67.
Columbian Fuel Corp	2	RI 60-67.
Coltexo Corp	2	RI 60-68.
Sunray Mid-Continent Cil Co	119	RI 60-125.
Sunray Mid-Continent Oil Co	182	RI 60-125.
Gulf Oil Corp	171	RI 60-184.
Shamrock Oil & Gas Co	4	RI 60-217, RI 60-425, G-12307.
United Producing Co	16	RI 60-229.
United Producing Co	17	RI 60-229.
United Carbon Co	4	RI 60-230.
United Carbon Co	5	RI 60-230.
Pan American Petroleum Co	196	RI 60-254.
Pan American Petroleum Co	212	RI 60-254.
Pan American Petroleum Co	134	RI 60-271.
Cabot Corp	28	RI 60-318.
Helmrich & Payne, Inc	13	RI 60-342.
Edwin L. Cox	5	RI 60-471.
Edwin L. Cox	6	RI 60-471.
Paul J. Otis,et al	1	RI 61-35.
Edwin L. Co x	11	RI 61-250.
Socony Mobil Oil Co	54	RI 61-274.
Sinclair Oil & Gas Co	178	RI 61-353.
Cities Service Oil Co. and Edwin L. Cox	94	RI 61-398.
J. M. Huber Corp	4	RI 61-483.
Sunray Mid-Continent Oil Co	117	RI 61-498.
Anadarko Production Co	19	RI 61-502.
Gulf Oil Corp	51	RI 62-4.
Cabot Corp	35	RI 62-11.
J. M. Huber Corp	28	RI 62-15.
Phillips Petroleum Co	290	RI 62-16.
Monsanto Chemical Corp	13	RI 62-35.
Trunkline Gas Co	P-1	G-19479, RP 60-6.

APPENDIX C

PANHANDLE EASTERN PIPE LINE COMPANY

REFUND OBLIGATIONS—GAS SUPPLIER PROCEEDINGS

[Referred to in paragraph (3), page 737]

Supplier	FPC rate schedule	Docket Nos.
Colorado Oil & Gas	39	G-13086.
Oklahoma Natural Gas	11	CI 61-260.
	12, 13	CI 61-698.
Socony Mobil Oil Co	325	CI 61-1244.
	11	RI 62-189.
Kerr-McGee Oil Industries, Inc	1	CI 62-1228.
Amax Petroleum Co	4	CI 62-1294.
	12	CI 63-1458.
Graham-Michaelis Drilling Co	52	CI 62-1297.
K. H. Owens	6	CI 62-1301.
Anadarko Production Co	61	CI 62-1307.
	62	CI 62-1535.
	63	CI 62-1546.
	67	CI 63-86.
	65	CI 63-94.
	69	CI 63-288.
	70	CI 63-264.
Carl Todd Drilling Co	3	CI 62-1308.
R. W. Rine Drilling	3	CI 62-1308.
The Atlantic Refining Co	264	CI 62-1511.
	273	CI 63-1490.
	274	CI 63-1491.
Shell Oil Co	276	CI 63-111.
Sinclair Oil & Gas	260	CI 63-121.
	178. 218	RI 62-345.
Phillips Petroleum Co	390	CI 63-583.
	296	RI 62-16.
	313	RI 63-348.

APPENDIX C—continued

Supplier	FPC rate schedule	Docket Nos.
Humble Oil & Refining Co.	322	CI 63-731.
	198, 199	RI 62-223, RI 63-194.
	205, 206	RI 62-224, RI 63-195.
	202	RI 62-354, RI 63-338.
	204	RI 62-354.
	211	RI 63-216.
Pratt County Gas Co.	1	CI 63-750.
Ashland Oil & Refining	120, 121, 125, 135, 141, 142, 145, 148	CI 63-806.
	153	CI 64-159.
Chester Oil Co.	2	CI 63-969.
Hall Jones	1	CI 63-985.
Kenneth Rupp, et al	1	CI 63-1033.
Sunray DX Oil Co.	230	CI 63-1154.
Apache Corp.	28	CI 63-1394.
Forest Oil Corp.	30	CI 63-1398.
Edwin L. Cox	52	CI 63-1430.
	54	CI 63-1574.
	15	RI 62-365, RI 63-374.
	14	RI 63-277.
W. C. Pickens	2	CI 63-1476.
Joe A. Humphrey	1	CI 63-1519.
Sohio Petroleum	87	CI 63-1567.
	38	RI 62-428.
W. Ray Wallace	1	CI 63-1584.
Marathon Oil Co.	85	CI 63-1585.
Texaco Inc.	315	CI 64-71.
	173	RI 62-364.
	172	RI 62-374.
	164	RI 62-486.
	171	RI 63-220.
A. L. Abercrombie, et al.	1	CI 64-87.
Gungoll & Gungoll	3	CI 64-181.
Gulf Oil Corp.	257	CI 64-208.
	264	CI 64-526.
Yucca Petroleum Co.	10	CI 64-215.
Petroleum, Inc.	30	CI 64-361.
General American Oil Co. of Texas	9	RI 62-167.
Falcon Seaboard Drilling, et al.	5	RI 62-183.
Sun Oil Co.	78	RI 62-185.
Cabot Corp.	33	RI 62-208.
	60	RI 63-123.
Shamrock Oil & Gas Corp.	32	RI 62-302.
Monsanto Chemical Co., et al.	21	RI 62-316.
Northern Pump Co.	23	RI 62-317.
Sunray Mid-Continent Oil Co.	165	RI 62-325, RI 63-341.
J. M. Huber Corp.	27	RI 62-375.
Union Oil of California	14	RI 62-376.
Pan American Petroleum Corp.	194	RI 62-377.
	221	RI 62-500, RI 63-457.
	223	RI 63-469.
Champlin Oil & Refining Co.	60	RI 62-396.
Horizon Oil & Gas Co.	17	RI 62-408.
Westhoma Oil Co.	26-B	RI 62-423.
Gas, Inc.	3	RI 63-242.
NAFCO Oil & Gas, Inc., et al.	14	RI 63-451.
Sinclair Oil & Gas	141	RI 62-492.

APPENDIX D

PANHANDLE EASTERN PIPE LINE COMPANY

RATE REDUCTION OBLIGATIONS—GAS SUPPLIER PROCEEDINGS

[Referred to in Paragraph (4), page 737]

Supplier	FPC rate schedule	Docket Nos.
Shamrock Oil & Gas Co.	4	G-12307, RI 60-217, RI 60-425.
	32	RI 62-302.
Colorado Oil & Gas	30	G-13086.
Westhoma Oil Co.	2	G-14073, G-16711, G-20279.
	26-B	RI 62-423.

APPENDIX D—continued

Supplier	FPC rate schedule	Docket Nos.
Edwin L. Cox	15	G-14497, G-18103, RI 60-203, RI 61-396, RI 62-365, RI 63-374.
	52	CI 63-1430.
	54	CI 63-1574.
	5, 6	RI 60-471.
	11	RI 61-250.
	14	RI 63-277.
Humble Oil & Refining Co.	202	G-14666, G-17990, RI 60-186, RI 61-392, RI 62-354, RI 63-338.
	322	CI 63-731.
	198, 199	RI 62-223, RI 63-194.
	205, 206	RI 62-224, RI 63-195.
	204	RI 62-354.
	211	RI 63-216.
Pratt County Gas Co.	1	CI 63-750.
Phillips Petroleum Co.	5	G-16112, G-19845.
	390	CI 63-583.
	290, 296	RI 62-16.
	313	RI 63-348.
Sunray Mid-Continent Oil Co.	165	G-17881, RI 60-131, RI 61-360, RI 63-341.
	119, 182	RI 60-125.
	117	RI 61-498.
M. B. Armer	3	G-17926.
Graham-Michaelis Drilling Co.	26-A	G-18571.
	26-B	G-18571.
	52	CI 62-1297.
Pan American Petroleum Co.	221	G-18949, RI 61-6, RI 62-2, RI 62-500, RI 63-457.
	196, 212	RI 60-254.
	134	RI 60-271.
	194	RI 62-377.
	223	RI 63-469.
Trunkline Gas Co.	P-1	G-19479, RP 60-6.
Cabot Corp.	47	CI 60-105.
	28	RI 60-318.
	35	RI 62-11.
	33	RI 62-208.
	69	RI 63-123.
Ozark Mahoning Co.	3	CI 60-711.
Oklahoma Natural Gas	11	CI 61-260.
	12, 13	CI 61-698.
Socony Mobil Oil Co.	325	CI 61-1244.
	54	RI 61-274.
	11	RI 62-189.
Hamilton Bros., Ltd.	14	CI 61-1775.
Kerr-McGee Oil Industries, Inc.	1	CI 62-1228.
Amax Petroleum Co.	4	CI 62-1294.
	12	CI 63-1458.
K. H. Owens	6	CI 62-1301.
Anadarko Production Co.	61	CI 62-1307.
	62	CI 62-1535.
	63	CI 62-1546.
	67	CI 63-86.
	65	CI 63-94.
	69	CI 63-288.
	70	CI 63-264.
	19	RI 61-502.
Carl Todd Drilling Co.	3	CI 62-1308.
R. W. Rine Drilling	3	CI 62-1308.
The Atlantic Refining Co.	264	CI 62-1511.
	273	CI 63-1490.
	274	CI 63-1491.
Shell Oil Co.	276	CI 63-111
Sinclair Oil & Gas	260	CI 63-121.
	178	RI 61-353, RI 62-345.
	218	RI 62-345.
	141	RI 62-492.
Ashland Oil & Refining	120, 121, 125, 135, 121, 142, 145, 148	CI 63-866.
	153	CI 64-159.

APPENDIX D—continued

Supplier	FPC rate schedule	Docket No.
Chester Oil Co.	2	CI 63-969.
Hall Jones	1	CI 63-985.
Kenneth Rupp, et al	1	CI 63-1033.
Sunray DX Oil Co.	280	CI 63-1154.
Apache Corp	28	CI 63-1394.
Forest Oil Corp	30	CI 63-1398.
W. C. Pickens	2	CI 63-1476.
Joe A. Humphrey	1	CI 63-1519.
Sohio Petroleum	87	CI 63-1567.
	38	RI 62-428.
W. Ray Wallace	1	CI 63-1584.
Marathon Oil Co	85	CI 63-1585.
Texaco Inc	315	CI 64-71.
	173	RI 62-364.
	172	RI 62-374.
	164	RI 62-486.
	171	RI 63-220.
A. I. Abercrombie, et al	1	CI 64-87.
Gungoll & Gungoll	3	CI 64-181.
Gulf Oil Corp	257	CI 64-208.
	264	CI 64-526.
	171	RI 60-184.
	51	RI 62-4.
Yucca Petroleum Co.	10	CI 64-215.
Petroleum, Inc	30	CI 64-361.
Columbian Fuel Corp	1, 2	RI 60-67.
Coltexo Corp	2	RI 60-68.
United Producing Co	16	RI 60-229.
	17	RI 60-229.
United Carbon Co	4, 5	RI 60-230.
Helmrich & Payne, Inc	13	RI 60-342.
Paul J. Otis, et al	1	RI 61-35.
Cities Service Oil Co. and Edwin L. Cox	94	RI 61-398.
J. M. Huber Corp	4	RI 61-483.
	28	RI 62-15.
	27	RI 62-375.
Monsanto Chemical Corp	13	RI 62-35.
	21	RI 62-316.
General American Oil Co. of Texas	9	RI 62-167.
Falcon Seaboard Drilling, et al	5	RI 62-183.
Sun Oil Co	78	RI 62-185.
Northern Pump Co	28	RI 62-317.
Union Oil of California	14	RI 62-376.
Champlin Oil & Refining Co	69	RI 62-396.
Horizon Oil & Gas Co	17	RI 62-406.
Gas, Inc	3	RI 63-242.
NAFCO Oil & Gas Inc., et al	14	RI 63-451.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. RP64-19

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued March 30, 1964)

Trunkline Gas Company (Trunkline) on February 26, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No.1.[1] The proposed change in rates would make effective on April 1, 1964, a reduction in Trunkline's jurisdictional rates in the sum of approximately $8,600,000 annually, based upon its operations for the twelve months ended September 30, 1963, subject to certain conditions. The filing of the proposed rates, which we have docketed as shown above, also includes a proposal to make further rate reductions subject to additional terms and contingencies summarized in part below.

---

[1] Original Sheets Nos. 9–AE, 9–AF, 9–AG; Second Revised Sheets Nos. 5–A, 9–P, 9–R; Third Revised Sheet Nos. 6–C, 9–D, 9–F, 22; Fourth Revised Sheets Nos. 6–B, 9–G; Fifth Revised Sheets Nos. 6–A, 7; and Sixth Revised Sheets Nos. 1, 4, and 9.

The proposed change in rates reflects a reduction of approximately $6 million in Trunkline's cost of service arising primarily from its expansion project under Docket No. CP64–114.[2] Also included are an approximately $2 million reduction in the cost of gas purchased from two independent producers,[3] and approximately $600,000 reduction in federal income tax allowance to reflect the recent reduction in the tax rate for corporations from 52 percent to 50 percent.

Trunkline's rate reduction proposal has resulted from conferences with the Commission staff. These conferences were initiated by letter of the Executive Director to Trunkline on September 6, 1963, as a consequence of the staff's continuing supervision of natural gas companies and the periodic review of the reports filed with the Commission by such companies.

The proposal is summarized in part as follows:

(1) Effective April 1, 1964, Trunkline's jurisdictional rates will be reduced to the levels set forth in Appendix A hereto.

(2) Trunkline will reflect the principles specified in the Commission's Opinion No. 417 issued on February 3, 1964, in *Alabama-Tennessee Natural Gas Company*, Docket No. G–5471, *et al.*, 31 FPC 208, by filing revised tariff sheets, to take effect on October 1, 1965, reducing the level of the rates specified in its proposal. If, however, Trunkline does not claim liberalized depreciation tax deductions in its 1964 Federal income tax return, its obligation hereunder to reduce rates as of October 1, 1965, shall not encompass liberalized depreciation tax savings for the twelve-months period ending October 1, 1965. However, the filing of reduced rates to give effect to the deduction of the accumulated balances in Account No. 282, as also prescribed by Opinion No. 417, shall not be contingent upon Trunkline's current utilization of liberalized depreciation. Trunkline's proposal also affords the company the option of deferring the aforementioned rate reductions until twenty days after the date of final court affirmance of Opinion No. 417, with respect to both the flow-through of the tax savings and the reduction of the rate base elements of the decision in Opinion No. 417. However, upon such affirmance, Trunkline's obligation, as provided above, to reduce its rates (including the making of refunds as applicable) shall be effective as of October 1, 1965. The proposed agreement also contains specific provisions directed toward the contingency that after electing not to use liberalized depreciation in 1964, Panhandle resumes its use in 1965.

(3) Trunkline's existing obligation to pass on gas supplier refunds applicable to gas purchased on and after March 1, 1960, relating to specific gas supplier proceedings (Appendix B hereto), as provided in the Stipulation and Agreement dated April 19, 1962, approved by Commission order issued May 10, 1962, in Docket No. G–12884 *et al.*, 27 FPC 930, is continued during the term of the new agreement. Additionally, with respect to gas purchased on and after April 1, 1964, Trunkline assumes the obligation to pass on the jurisdictional portion of any gas supplier refunds ordered by the Commission in the gas

---

[2] Trunkline's expansion proposal has been approved and authorized by order issued March 20, 1964, in Docket No. CP64–114.

[3] Trunkline's amended agreements with Union Oil Company of California and Pan American Petroleum Corporation, respectively, providing for reduced rates for gas produced from Block 14 Field, in southern Louisiana, and proposed to become effective April 1, 1964, subject to conditions specified therein, have been accepted for filing by our order issued March 20, 1964 in *Pan American Petroleum Corporation, et al.*, Docket No. G–15438, *et al.*

supplier proceedings specifically listed in Appendix C hereto, which have been initiated subsequent to the date of the Stipulation and Agreement in Docket No. G–12884, *et al.* proceedings. In addition to increased rate proceedings, such additional proceedings include temporary certificate proceedings and certificate proceedings subject to remand on judicial review.[4]

(4) During the period in which the rates provided for in the subject agreement remain in effect, Trunkline is obligated to reduce its rates to reflect the reduction in the rates of its gas suppliers subject to proceedings specifically listed (Appendix D hereto), including both those subject to the Stipulation and Agreement in Docket No. G–12884, *et al.*, and those additional proceedings subject to refund flow-through obligations as stated in the next preceding paragraph. The amount of the reductions shall equal the reductions in Trunkline's cost of purchased gas computed on a weighted average basis for the 12-months' periods preceding such supplier rate reductions and which result in cost reductions below the level of 18.3 cents per Mcf, all as more specifically prescribed in the subject proposal.[4]

(5) The proposed reduced rates shall not become effective unless:

(a) The Commission shall have entered a final, nonappealable order, approving and making the proposal effective April 1, 1964;

(b) The Commission shall have granted certificates, by final, nonappealable orders, to Union Oil in Docket Nos. CI64–688 and CI64–669, respectively, and shall have accepted for filing the respective rate reduction tariff revisions proposed by the two producers in said docketed proceedings, effective as of April 1, 1964; and

(c) The Commission, on or before April 1, 1964, shall have granted a certificate to Trunkline in Docket No. CP64–114 without conditions or modifications other than those to which Trunkline shall have agreed upon such date.

(6) The Commission is requested to waive compliance by Trunkline with the requirements of the Commission's general rules and regulations, particularly Part 154 thereof, to the extent necessary to effectuate all of the provisions of the proposal.

(7) Neither Trunkline, the Staff, nor any other person shall be bound or prejudiced by any ratemaking principle, or any method of cost of service determination, or any allocation underlying or supposed to underlie any of the rates or any of the refunds provided for herein.

No protests or objections to Trunkline's proposed reduced rates have been received. Comments upon Trunkline's reduced rate proposal have been received from the Illinois Commerce Commission, the Public Service Commission of Indiana, and the Public Service Commission of Michigan. In general, all of these comments support our acceptance of Trunkline's reduced rates for filing effective on April 1, 1964, as proposed.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective on April 1, 1964, as hereinafter ordered.

---

[4] The rates of both Panhandle Eastern Pipe Line Company and Mississippi River Transmission Corporation, Trunkline's only pipeline resale customers, are currently subject to the obligation to flow-through and reflect Trunkline's refunds and rate reductions.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Trunkline's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and of the rate reduction proposal.

(B) The revised tariff sheets specifically described hereinabove are accepted for filing to become effective on April 1, 1964, and Trunkline's agreement filed on February 26, 1964, is approved and made effective as proposed therein, subject to the terms and conditions of this order.

(C) Trunkline shall comply with each of the provisions of the rate reduction proposal relating to future refunds and rate reductions.

(D) Within twenty (20) days of making refunds in accordance with paragraph (C) herein, Trunkline shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Trunkline Gas Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Trunkline Gas Company or any other persons or parties affected by this order.

Commissioner Ross *dissenting*.

APPENDIX A

TRUNKLINE GAS COMPANY

RATES TO BECOME EFFECTIVE APR. 1, 1964

Rate schedule	*Proposed rate*
P-1	Demand $2.00
	Commodity .259
G-1	Demand $2.00
	Commodity .259
SG-1	36.5 cents
R-1	32.5 cents (winter)
	29.2 cents (summer)
P-2	Demand $2.29
	Commodity .283
G-2	Demand $2.29
	Commodity .283
SG-2	42.6 cents
R-2	35.8 cents (winter)
	32.1 cents (summer)

APPENDIX B

TRUNKLINE GAS COMPANY

REFUND OBLIGATIONS—SUPPLIER PROCEEDINGS

[Referred to in paragraph (3), page 744]

Producer	FPC rate schedule	Docket No.
Amerada Petroleum Corp	14	RI60-18.
Austral Oil Exploration Co., *et al*	13	G-20289.[1]
Bel Oil Corp	4	G-14259.
Cities Service Petroleum Co	1	G-15210, RI60-143.
Delhi Taylor Oil Corp	1	G-20429, G-20430.
Paul J. Fly, *et al*	1	G-20207.
J. R. Goff, Trustee	1	G-14053, G-17527, G-20441, RI60-472.
H. L. Hunt	13	G-13837, G-17163, G-20340, RI60-427.
L. B. Hunt Estate	2	G-13840, G-17162, G-20445, RI60-432.
Claude M. Langton, Trustee	1	G-14054, G-17164, G-20456, RI60-428.
W. C. McBride	1	G-16890.
Mobil Oil Co	41	G-14068, G-17622, G-20343, RI60-422.
	52, 162	G-20844.
Robert Mosbacher, *et al*	2	G-20290.[1]
Pan American Petroleum Corp	258, 259, 260	G-20288.[1]
D. N. Penton, *et al*	1	G-17800.
Petroleum Inc	13	G-20276, RI61-295.
Rouse Well Service	1	G-18846.
Secure Trusts	2	G-13839, G-17161, G-20455. RI60-429.
Sun Oil Co	89	G-13937, G-17346, G-20447, RI60-410.
Superior Oil Co	1	G-18168, G-20435.
	3	G-20577.
The Texas Co	190	G-20433.
Texas Gulf Producing Co	2	G-16177, RI60-204.
	4	G-16240, RI60-204.
	22	G-14069, G-17373, RI60-402.
	23	G-14112, G-17372, RI60-403.
Union Oil Co. of California	40	G-20287.[1]
C. B. Webster	2	G-14187.

[1] Proceedings limited to tax reimbursement by FPC order of Dec. 23, 1959.

APPENDIX C

TRUNKLINE GAS COMPANY

REFUND OBLIGATIONS—SUPPLIER PROCEEDINGS

[Referred to in paragraph (3), page 745]

Producer	FPC rate schedule	Docket No.
William T. Burton Industries, Inc	3	G-20379.
Christie, Mitchell & Mitchell	25	CI62-997.
General American Oil Co. of Texas	62	CI63-886.
Humble Oil & Refining Co	28	RI63-84.
	325	CI63-1057.
Kilroy Properties, Inc	4	CI60-478.
Mobil Oil Co	37	RI62-153.
Oil Reserves Corp	2	CI61-468.
Sun Oil Co	120	CI60-348.
Tidewater Oil Co	125	CI63-1134.
Trice Production Co	19	CI62-1026.
Valley Gas Transmission, Inc	3	RI62-387.

APPENDIX D

TRUNKLINE GAS COMPANY

RATE REDUCTION OBLIGATIONS—SUPPLIER PROCEEDINGS

[Referred to in paragraph (4), page 745]

Producer	FPC rate schedule	Docket No.
Amerada Petroleum Corp	14	RI60-18.
Austral Oil Exploration Co., *et al*	13	G-20289.[1]
Bel Oil Corp	4	G-14259.
William T. Burton Industries, Inc	3	G-20379.
Christie, Mitchell & Mitchell	25	CI62-997.
Cities Service Petroleum Co	1	G-15210, RI60-143.
Delhi Taylor Oil Corp	1	G-20429, G-20430.
Paul J. Fly, *et al*	1	G-20207.
General American Oil Co. of Texas	62	CI63-888.
J. R. Goff, Trustee	1	G-14053, G-17527, G-20441, RI60-472.
Humble Oil & Refining Co	28	RI63-84.
	325	CI63-1057.
H. L. Hunt	13	G-13837, G-17163, G-20340, RI60-427.
L. B. Hunt Estate	2	G-13840, G-17162, G-20445, RI60-432.
Kilroy Properties, Inc	4	CI60-478.
Claude M. Langton, Trustee	1	G-14054, G-17164, G-20456, RI60-428.
W. C. McBride	1	G-16890.
Mobil Oil Co	37	RI62-153.
	41	G-14068, G-17622, G-20343, RI60-422.
	52, 162	G-20344.
Robert Mosbacher, *et al*	2	G-20290.[1]
Oil Reserves Corp	2	CI61-468.
Pan American Petroleum Corp	258, 259, 260	G-20288.[1]
D. N. Penton, *et al*	1	G-17800.
Petroleum Inc	13	G-20276, RI61-295.
Rouse Well Service	1	G-18846.
Secure Trusts	2	G-13839, G-17161, G-20455, RI60-429.
Sun Oil Co	89	G-13937, G-17346, G-20447, RI60-410.
	120	CI60-348.
Superior Oil Co	1	G-18168, G-20435.
	3	G-20577.
The Texas Co	190	G-20433.
Texas Gulf Producing Co	2	G-16177, RI60-204.
	4	G-16240, RI60-204.
	22	G-14069, G-17373, RI60-402.
	23	G-14112, G-17372, RI60-403.
Tidewater Oil Co	125	CI63-1134.
Trice Production Co	19	CI62-1026.
Union Oil Co. of California	40	G-20287.[1]
Valley Gas Transmission, Inc	3	RI62-387.
C. B. Webster	2	G-14187.

[1] Proceedings limited to tax reimbursement by FPC order of Dec. 23, 1959.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

HUMBLE OIL & REFINING COMPANY (OPERATOR), ET AL., DOCKET NO. G-19191; CHICAGO MILL AND LUMBER COMPANY, ET AL., DOCKET NO. G-19192; SUNRAY DX OIL COMPANY, DOCKET NO. CI60-85; WHELESS DRILLING COMPANY (OPERATOR), ET AL., DOCKET NO. CI61-587

ORDER CANCELLING FORMAL HEARING AND AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 31, 1964)

Each of the above dockets concerns an application for a certificate of public convenience and necessity seeking authorization to sell natural gas produced in North Louisiana for resale in interstate commerce. The initial rates proposed in the applications are in excess of the Statement of General Policy 61-1 guideline level of 17¢ per Mcf (plus tax reimbursement). Each applicant is presently making its sale under temporary authorization conditioned to the guideline price of 17¢ per Mcf plus contractual tax reimbursement.

By order issued in these proceedings on January 28, 1964, these matters were set for formal hearing to commence on March 30, 1964.[1] Several petitions to intervene were filed[2] and a notice of intervention was timely filed by the Public Service Commission of New York on February 10, 1964. Subsequent to the filing of the petitions and notice of intervention each of the applicants filed a motion for severance and for issuance of certificate under the abridged procedure.[3]

Each applicant, by its motion, agrees to accept a certificate conditioned to the Commission's Statement of General Policy No. 61-1 guideline price. Subsequent to the filing of these motions, all persons who previously had filed petitions to intervene in opposition, filed statements in answer to the motions stating that they have no objection to the issuance of certificates conditioned to an initial price of 17¢ plus tax reimbursement under the abridged procedure. The Public Service Commission of New York filed a like answer.

Pursuant to the above motions and answers thereto and in view of the withdrawals of the petitions to intervene and notice of intervention, a hearing was held on March 26, 1964. The Commission on its own motion received and made a part of the record in the proceeding all evidence, including the applications and exhibits attached thereto and the motions to sever, which amend the applications, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants are natural-gas companies within the meaning of the Natural Gas Act and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Applicants upon the conditions set forth herein, authorizing the sales of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications as amended by the motions for severance herein.

---

[1] By Notice of the Secretary issued March 3, 1964, the commencement of the hearing was postponed to April 29, 1964.

[2] Petitions to intervene were filed by Long Island Lighting Company on February 12, 1964, United Gas Pipe Line Company on February 12, 1964, Public Service Electric and Gas Company on February 13, 1964, Philadelphia Gas Works Division of the United Gas Improvement Company on February 17, 1964, and United Fuel Gas Company on February 19, 1964.

[3] The filing dates are as follows: Humble Oil & Refining Co., Docket No. G-19191, February 18, 1964; Sunray DX Oil Company, Docket No. CI60-85, February 24, 1964; Chicago Mill and Lumber Co., Docket No. G-19192, March 4, amended March 19, 1964; Wheless Drilling Company, Docket No. CI61-587, March 6, 1964.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The certificates granted in paragraph (A) are granted upon the express condition that the initial price under these certificates is 17¢ per Mcf plus contractual tax reimbursement.

(D) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customers involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(E) The formal hearing in this proceeding scheduled to commence on April 29, 1964, and all procedures in connection therewith, are hereby cancelled.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TOTAL GAS SUPPLY OF PIPELINE COMPANIES—ANNUAL REPORT FORM, DOCKET NO. R-239

ORDER NO. 279

PRESCRIBING ANNUAL REPORT FORM NO. 15 AND STATEMENT OF POLICY WITH RESPECT THERETO

(Issued March 31, 1964)*

We are here promulgating an annual report form to be used by certain natural gas pipeline companies in furnishing information with respect to their total gas supply and deliverability. Our need for this information and the purposes we are seeking to achieve are fully set out in the notice of proposed rulemaking initiating this proceeding, issued April 25, 1963, and published in the Federal Register on May 2, 1963 (28 F.R. 4365).

In general the information will enable the Commission to make a continuing review of gas reserves and deliverability of pipeline companies now made only at such times as a company seeks a certificate of public convenience and necessity. Of course, the question of reserves can be raised as an issue in future proceedings but such proceedings should be expedited by the filing of the annual reports since we are by our order in Docket No. R–240, issued this day [*infra.*, 754] and our statement of policy issued herein, providing for their incorporation by reference in such proceedings to satisfy the burden, in most instances, of proving reserves and deliverability. The notice also indicated that information from the reports will make it possible to relax the Commission's 12-year deliverability life requirement where the information supplied by the pipeline company indicates it has an active procurement program, its system extends into production areas with continuous exploration and the results thereof indicate continuing ability to meet gas requirements.

---

*Published in the Federal Register on April 7, 1964 (29 F.R. 4873).

As noted, this proceeding was commenced by notice published in the Federal Register and served upon interested parties, including State and Federal regulatory agencies. Twelve weeks were given within which protests, views, data, and comments could be filed. Comments were received from 18 interested parties (producers, pipeline companies, distributing companies and one State commission) and from the Independent Natural Gas Association of America, representing 23 pipeline companies.

Although there was some opposition to the promulgation of any new report form, the comments generally supported the Commission's objective of expediting the disposition of certificate cases and, with one exception, all comments were in favor of the relaxation of the 12-year deliverability requirement, as outlined in the proposed policy statement set out in the notice. Numerous comments were directed at various changes and modifications in content and language, many of which were helpful and have been adopted.

Specifically, we are adopting the following suggestions and changes: that companies purchasing their entire gas supply from other jurisdictional pipeline companies be exempted from filing annual report form 15; that the fiscal year report be changed to a calendar year report; that there be special provisions for reporting Appalachian area gas supplies, in view of the special difficulties for that area; that the use of a pressure base of 14.73 psia for reserve estimates be used as a reporting base for summary levels only; that we eliminate the requirement for a detailed listing of the names, business addresses and phone numbers of certain company employees, as required in Part I, item 4; that Part I, item 6, the requirement that the reporting company submit a statement of assets and revenues be eliminated; and that, after initial submittal, maps need be filed only where significant changes have occurred.

On the other hand, we have not adopted suggestions that would have eliminated Schedule No. 2 of Part III of the proposed Report, Deliverability Summary, completely or required it only every third year; or that we should use a 12 to 15-year study rather than the 20-year study proposed in the notice. In such instances, we concluded that the advantages of receiving the material as originally proposed outweighed the burdens which would be imposed on the respondents thereby.

Objection was made to the proposed use of automatic data processing (ADP) as a reporting medium, as well as to filing on ADP forms. The use of ADP may be effective to correlate and analyze the data which will be submitted by the companies. We recognize, however, that the specific questions raised by the comments concerning the use of ADP (relating to Parts IV, V and VI of the proposed annual report) cannot be resolved until after the information required by the first three Parts of the Report has been submitted, and that further time, accordingly, is required prior to the determination of the reports on ADP form.

The notice herein proposed a report in six parts, to be filed annually. However, in the light of the comments received, our recognition of the need for further resolution of questions concerning the ADP forms and the absence of a suitable nationwide field and reservoir coding system needed in the development of the proper use of ADP, we now find that the annual report should be promulgated in two phases. The First Phase, which we are adopting here, will require submission of a Report consisting only of Parts I, II and III of the Report substantially in the form as originally proposed and will be filed with respect to information covering the calendar year 1963. This initial Report will furnish us with summary information on the reporting company's total gas supply, deliverability life and reserves for each source of supply from which it obtains its gas. This information is a prerequisite to the preparation of the remaining parts (IV, V and VI in the notice) of the complete Report. It will also make possible a proper standardization of those parts as to both form and content. Finally, it will supply the information upon which a future decision could be made with respect to the possible exemption of smaller companies from filing the Report thereafter. We contemplate that we will adopt for reporting for subsequent years an annual No. 15 Report Form consisting not only of Parts I, II and III, as here prescribed or hereafter revised, but also such other Parts as may then be determined to be appropriate to obtain such of the information set out in Parts IV, V and VI of the notice as then appears desirable. We recognize, however, that the promulgation of any substantial changes in the report form, including the use of ADP, will be subject to the approval of the Bureau of the Budget.

Accordingly, we are, at this time prescribing the new report, FPC Form No. 15, which for the first reporting years will consist of Parts I, II and III as described below and, for succeeding years, those Parts together with such other Parts as may hereafter be prescribed. We are, also at this time, adopting the statement of general policy as proposed in the notice.

The Commission further finds:

(1) In view of the foregoing and upon consideration of all relevant matters presented, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that FPC Report Form No. 15, consisting of Parts I, II, and III, be adopted and promulgated in two phases, as hereinafter ordered.

(2) Good cause exists to postpone consideration and promulgation of Parts IV, V and VI (included in the Form annexed to the notice of proposed rulemaking herein) until subsequent to the receipt of the information required to be furnished, with respect to the calendar year 1963, in the First Phase of the Report on or before July 1, 1964.

(3) Good cause exists to promulgate and authorize the use of the Report Form, herein adopted, effective immediately upon the issuance of this order, as hereinafter provided.

The Commission, acting pursuant to the Natural Gas Act, as amended, particularly sections 7, 10(a), 14(a) and 16 thereof (52 Stat. 825, 826, 828, 830; 56 Stat. 83; 15 U.S.C. 717f, 717i(a), 717m(a), 717o), *orders:*

(A) Part 2, General Policy and Interpretations, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new § 2.61 to read as follows:

§ 2.61 Pipeline companies—natural gas reserves—deliverability life.

Simultaneously with its promulgation of the annual report, FPC Form No. 15, to be filed by certain pipeline companies with respect to total gas supply and deliverability (§ 260.7 of this chapter), the Commission issued the following statement of policy:

(a) When a pipeline company has demonstrated through the Annual Reports filed pursuant to § 260.7 of this chapter that it has an active gas procurement organization and its pipeline system extends into production areas in which exploration is continuing, the twelve-year deliverability life heretofore found to be a primary requisite by the Commission will not necessarily be applied and the Commission's deliverability requirement will be flexible.[1]

(b) Unless otherwise ordered by the Commission, existing pipeline companies will not be required to file information with regard to gas supply and deliverability in support of pipeline system expansions, other than with respect to applications to serve major new markets or to serve existing markets from new sources of gas supply by new routes involving extensive expansion of existing facilities, but may rely on the information set forth in filed annual reports, by reference thereto (§ 157.13(b) of this chapter).

(c) The deliverability life showing of a new pipeline company seeking to initiate service, or of an existing pipeline company seeking to serve major new markets or to serve major existing markets from new sources of supply over new routes will be dependent upon the future availability of gas in its proposed new supply areas, but in no event shall the minimum deliverability life of the incremental supply needed to serve the new or expanded market be less than twelve years.

(B) Part 260, Statements and Reports, Subchapter G, Chapter I of the Code of Federal Regulations, is amended by adding a new § 260.7 to read as follows:

§ 260.7 Form No. 15, Annual report of gas supply and deliverability for certain natural gas companies.*

(a) An Annual Report of Total Gas Supply and Deliverability for natural gas companies, designated as FPC Form No. 15, is being prescribed in two phases. The First Phase report, consisting of Parts I, II and III is prescribed for requesting information relative to the calendar year 1963. The Second Phase report, consisting of Parts I, II, III, and such other Parts as are hereafter promulgated by order of the Commission, after approval by the Bureau of the Budget, will be prescribed for annual use commencing with information for the calendar year 1964.

(b) Each natural gas company, as defined by the Natural Gas Act, as amended (52 Stat. 821), other than a company purchasing its entire supply of natural gas from other companies subject to the provisions of this section, shall prepare and file with the Commission for the calendar year ending December 31, 1963, on or before July 1, 1964, and for subsequent years on or before each May 1, thereafter, an original and four conformed copies of FPC Form No. 15. A company exempt from this paragraph by virtue of the fact that it purchases its entire supply of natural gas from another company or companies subject to this section shall file, in lieu of the Report, a statement giving the name(s) and address(es) of the company or companies from which it purchases its supply. One copy of the Report should be retained in its files. The conformed copies may be carbon or reproduced by any means that provide clearly and accurately aligned impressions.

---

[1] "Deliverability" as used herein represents the number of future years during which a pipeline company can meet its annual requirements for its presently certificated delivery capacity from presently committed sources of supply. The availability of gas from these sources of supply shall be governed by the physical capabilities of these sources to deliver gas, by the terms of existing gas-purchase contracts and limitations imposed by state or federal regulatory agencies.

*As used herein, "natural gas company" does not include "independent producers," as defined in § 154.91(a) of this chapter.

(c) This annual report is designed to furnish the Commission with information concerning the gas supply organization of the company, the company's total gas supply, the company's gas procurement program, each reservoir from which the company obtains gas, contracts under which the company purchases gas and deliverability data.

[Secs. 7, 10(a), 14(a), 16, 52 Stat. 825, 826, 828, 830, 56 Stat. 83; 15 U.S.C. 717f, 717i(a), 717m(a), 717o]

(C) The First Phase of the report, FPC Form No. 15, approved and prescribed in paragraph (B), above, and consisting of General Instructions and Parts I, II and III, attached hereto, is approved and prescribed for reporting with respect to the calendar year 1963.

(D) Further consideration of Parts IV, V and VI of the form proposed in the notice in this proceeding will be deferred to a time subsequent to July 1, 1964.

(E) The amendments to the Commission's Regulations, the form and the statements of policy approved herein shall be effective upon the issuance of this order.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

APPLICATIONS BY PIPELINE COMPANIES PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT—MISCELLANEOUS AMENDMENTS, DOCKET NO. R-240

ORDER NO. 280

AMENDING MISCELLANEOUS SECTIONS OF THE COMMISSION'S POLICY STATEMENTS AND REGULATIONS UNDER THE NATURAL GAS ACT

(Issued March 31, 1964)*

The Commission, by public notice issued April 25, 1963 (28 F.R. 4360, May 2, 1963), proposed to issue a statement of policy and to amend its regulations relating to the requirements to be followed by natural gas pipeline companies submitting applications for certificates of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act. We also proposed to prescribe regulations covering applications to abandon facilities or service under section 7(b) of the Act and to provide a simplified form for use by small distributors seeking gas service for a single community pursuant to section 7(a).

In response to the invitation in our notice, comments were received from 9 pipeline companies, 8 distributing companies, 1 State commission and the Independent Natural Gas Association of America. Generally the comments were favorable and most of the suggestions for revision have been incorporated in the amendments we are adopting in this order.

Four suggestions of some significance, however, are not being adopted. Several respondents suggested lengthening the period for curing deficiencies (§ 157.8) from 20 to 30 days but, since one of the basic purposes of this proceeding is the expedition of cases, we are retaining the 20-day limit. The Secretary will continue, as he has in the past, to grant extensions where a real need therefor is shown.

---

*Published in the Federal Register on April 7, 1964 (29 F.R. 4875).

Several respondents requested the deletion of the requirement in § 157.14(a) (10) *Exhibit H* (vi) to substantiate gas reserves and deliverability when the proposed capacity increase is large—over 25,000 Mcf a day and 5% of sales capacity—since, as stated by INGAA, as long as the annual report of gas supply is filed (as proposed in R-239) proof of gas supply should not be required for any expansion. We agree that the size limitations originally suggested do not reflect the situations in which gas supply information will be necessary and have eliminated them. We believe, however, that such proof will still be necessary in situations where the pipeline seeks to serve major new markets or existing markets from new gas supply sources by new routes involving the extensive expansion of existing facilities, and have revised the provision accordingly.

We are not adopting a suggestion that the requirement in Exhibit I, *Market data* (§ 157.14(a)(11)(i)) for "an explanation" of the end use to which large industrial customers will put the gas be amended by adding "if such an explanation is available." We believe the explanation of end-use is relevant and pertinent and that in view of the limited number of *large* direct sales to which the requirement is applicable, no undue burden will be placed upon applicants in determining the proposed end use.

Objection was made to the added requirement in Exhibit N (§ 157.14(a)(16)) for a system-wide statement of revenues and expenses for the last year preceding the proposed service as well as incremental statements of revenues and expenses for each of the first three full years of operation. While the new information may be to some extent duplicative, filing of the information in the form requested will aid materially in the analysis of the larger projects. It should be noted that the existing limitation—that the information is required only where the revenues and expenses are significantly affected by the new project—is retained in the paragraph.

One other proposal, the amendment to Exhibit J, *Conversion to natural gas*, 157.14(a)(12), requires specific mention. We have modified the amendment so as to limit the applicability of the Exhibit to previously unserved communities and large industrial customers. Although the notice did not propose a comparable amendment to the Exhibit J required in connection with applications filed by local distributors pursuant to section 7(a) of the Natural Gas Act (§ 156.5(a)(11)), we are now amending that subsection in a similar fashion. The amendment does not require the submission of any additional information—in fact, preparation of the Exhibit has been simplified.

Upon consideration of the entire record in this proceeding which includes the notice of proposed rulemaking and all the comments, views and data filed in response thereto, *the Commission further finds:*

(1) Adoption and promulgation of the statement of general policy and the amendments to the Regulations Under the Natural Gas Act are necessary and appropriate to the administration of the Natural Gas Act.

(2) For the reasons heretofore expressed, good cause exists for the adoption herein of the amendments to § 156.5(a)(11) without giving the prior notice provided for by section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7, 15 and 16 thereof (52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717n, 717o), *orders:*

(A) Parts 2, 156, 157 and 250 of the Commission's Rules and Regulations, Chapter I of Title 18 of the Code of Federal Regulations are amended in the following respects: [Omitted in printing—see 29 F.R. 4875].

(B) The amendments adopted herein shall become effective on May 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

ORDER DENYING MOTION TO REOPEN PROCEEDINGS FOR ADDITIONAL EVIDENCE

(Issued March 31, 1964)

On February 21, 1964, Placid Oil Company, Hassie Hunt Trust, H. L. Hunt and Hunt Oil Company (Movants) jointly filed, together with their exceptions to the examiner's decision, a motion to reopen this proceeding for the receipt of evidence rejected by the examiner and for new evidence which, they allege, has become available since the record was closed. Movants allege that the evidence rejected by the examiner is relevant and material and "absolutely essential to the determination of the appropriate price under Section 7." They allege that the new evidence, consisting of group composite cost of service exhibits, should be considered in determining the price issue in this proceeding and that the exhibits have probative value and are relevant and material to the issue of whether the proposed prices are required by the public convenience and necessity.

We have reviewed both the motion, in which the materials which would constitute this "new evidence" have been summarized, and the exceptions concomitantly filed by Movants, in which the rejected evidence has been both summarized and analyzed. We conclude that evidence of this kind is not relevant in producer certificate cases where the initial price should be determined by reference to the "in line" price in the area. *Skelly Oil Company*, 28 FPC 401, 410–412, on appeal *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d, 242. Decided January 23, 1964; CADC, No. 17582, *et al.; Placid Oil Company*, 30 FPC 283, Opinion No. 398, issued July 17, 1963, and Opinion No. 398–A, issued September 11, 1963, 30 FPC 682; *Texaco Seaboard, Inc.*, Opinion No. 383, 29 FPC 593, 595; *United Gas Pipe Line Co.*, 30 FPC 329, Opinion No. 399, issued July 17, 1963 at p. 332; *California Oil Company* v. *F.P.C.*, 315 F. 2d 677 (CA 10); *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC).

The Commission orders:

The motion to reopen the proceedings in Docket No. G-13221, *et al.* for additional evidence submitted by Placid Oil Company, Hassie Hunt Trust, H. L. Hunt and Hunt Oil Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

HOPE NATURAL GAS COMPANY, DOCKET NO. CP64-119; MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP64-133

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, ACCEPTING RATE SCHEDULES, AND APPROVING SETTLEMENT OFFERS

(Issued April 2, 1964)

On November 27, 1963, Hope Natural Gas Company (Hope) filed in Docket No. CP64-119, and on December 9, 1963, Mississippi River Fuel Corporation (Mississippi River) filed in Docket No. CP64-133, their respective applications pursuant to Section 7(c) of the Natural Gas Act, for certificates of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corporation from acreage in the Lake Palourde Field in St. Mary and St. Martin Parishes, Louisiana, and for the construction and operation of such facilities as may be subject to the jurisdiction of the Commission necessary for such sales, all as more fully set forth in the applications on file with the Commission.

The estimated cost of the proposed facilities is $52,636.00 and will be defrayed jointly by Hope and Mississippi River out of their current funds.

Hope and Mississippi River are successors to interests in leasehold rights in a portion of lands and leases in the Lake Palourde Field, St. Mary and St. Martin Parishes, Louisiana, acquired by Mississippi River from Wm. T. Burton Industries, Inc. under a Farmout Agreement dated May 4, 1962, as amended May 14, 1962. Production from a completed well on the Farmout Acreage is presently being delivered to Texas Gas Transmission Corporation and being sold under the currently effective terms of Burton's FPC Gas Rate Schedule No. 2. Initial deliveries were commenced by Burton in March, 1960, under Burton's contract with Texas Gas Transmission Corporation dated November 20, 1959, for which temporary authorization was granted by the Commission in Docket No. G-20243 (consolidated with *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*,) and permanent certification is presently pending.

Hope and Mississippi River proposes each in its own right to sell natural gas to Texas Gas in accordance with the terms of the currently effective Burton rate schedule, to be superseded by Hope's Rate Schedule No. IP-19 and Mississippi River's Rate Schedule No. 23, being the Gas Purchase contract dated November 20, 1959, between Burton and Texas Gas, as ratified and adopted by Hope and Mississippi, and concurrently filed as a special rate schedule. The price for the natural gas so sold will be 20.625 cents per Mcf at 15.025 psia as proposed by Hope and Mississippi River in an Offer of Settlement, as supplemented, filed by Hope on November 29, 1963, and Mississippi River on December 12, 1963, in their respective dockets.

The proposed settlement, as supplemented, effects a reduction in the total initial price of 21.75 cents per Mcf (inclusive of severance taxes and dehydration charges) to 20.625 cents per Mcf (inclusive of reimbursement for Louisiana state taxes) to be effective as of the date of initial delivery; a moratorium on future rate changes until March 31, 1968; and an extension of make-up period for prepaid gas for a minimum of four years.

Hope and Mississippi River further agree that the settlement rate will be subject to prospective adjustment, either up or down depending upon the outcome of the proceedings in Docket No. AR61-2, *et al.*, subject to an allowance for an adjustment to meet any future tax levy to the extent of one-half thereof, if contractual provision is made for reimbursement.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Hope Natural Gas Company, a West Virginia corporation having its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 27, 1943, in Docket No. G-290 (3 FPC 994).

(2) Applicant, Mississippi River Fuel Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-291 (4 FPC 535).

(3) The sales of natural gas hereinbefore described, as more fully described in the applications of Hope and Mississippi River, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Hope and Mississippi River, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas by Hope and Mississippi River, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinbefore ordered and conditioned.

(5) Hope and Mississippi River are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Hope and Mississippi River complying with the conditions of this order and all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(7) It is appropriate in the administration of the Natural Gas Act, and in the public interest to (a) accept for filing Hope's Rate Schedule No. IP-19, inclusive of Original Sheets Nos. 281 through 315 to its FPC Gas Tariff, First Revised Volume No. 2, and Mississippi River's Rate Schedule No. 23, inclusive of Original Sheets Nos. 2 through 36 to its FPC Gas Tariff, Original Volume No. 3, to become effective on the date of the issuance of this order, on the condition that within 15 days thereafter Hope and Mississippi River file revisions

to such rate schedules, so as to reflect the Settlement Rates referred to in the Settlement Offers filed in these proceedings, and (b) approve the Offer of Settlement filed by Hope on November 29, 1963, in Docket No. CP64-119, and filed by Mississippi River on December 12, 1963, in Docket No. CP64-133, as supplemented by their joint letter of January 3, 1964, providing, among other things, for a reduction of the initial contract price to a level of 20.625 cents per Mcf, inclusive of tax reimbursement, for a moratorium on future rate changes until March 31, 1968, and for the extension of make-up provisions for prepaid gas for a minimum of four years, on the condition that Hope and Mississippi River make refund on amounts paid for gas at rates above the settlement rate from the date of initial delivery to the settlement date, together wih interest thereon at the rate of seven (7) percent per annum, said refunds to be passed on by Texas Gas pursuant to its Settlement Agreement in Docket No. RP61-15.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Hope and Mississippi River authorizing the sales of natural gas to Texas Gas Transmission Corporation, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, as more fully set forth in their respective applications and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Hope and Mississippi River complying with the conditions of this order and all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Hope's Rate Schedule No. IP-19, inclusive of Original Sheets Nos. 281 through 315 to its FPC Gas Tariff, First Revised Volume No. 2, and Mississippi River's Rate Schedule No. 23, inclusive of Original Sheets Nos. 2 through 36 to its FPC Gas Tariff, Original Volume No. 3, are hereby accepted for filing effective on the date of the issuance of this order, on the condition that Hope and Mississippi River file revisions thereto within 15 days of the issuance of this order so as to reflect the settlement rates referred to in the Settlement Offer and letter supplement thereto filed by Hope and Mississippi River in these proceedings.

(D) The proposed Settlement Offer filed by Hope on November 29, 1963, and Mississippi River on December 12, 1963, as supplement by their joint letter of January 3, 1964, be and the same are hereby approved and made effective subject to the terms and conditions of this order.

(E) Hope and Mississippi River shall within six months after date of this order make refunds to Texas Gas of amounts paid for gas at rates above the settlement rate from the date of initial delivery to the settlement date, together with interest thereon at the rate of 7 percent per annum, said refunds to be passed on by Texas Gas pursuant to the terms of its Settlement Agreement in Docket No. RP61-15. Hope and Mississippi River shall report to the Commission, in writing, the amount of refund made to Texas Gas, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from Texas Gas showing receipt of the refunds, in conformity with the terms and conditions of this order.

(F) This order is without prejudice to any findings or orders which have been or may hereafter be issued by this Commission in any proceeding now pending or hereafter instituted by or against Hope and Mississippi River.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7155

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued April 2, 1964)

Montana-Dakota Utilities Co. (Applicant), a corporation organized under the laws of the State of Delaware, and qualified to do business in the States of Minnesota, Montana, North Dakota, South Dakota and Wyoming, with its principal business office at Minneapolis, Minnesota, filed an application on March 3, 1964, for authorization, pursuant to Section 204 of the Federal Power Act, to issue (within the meaning of the Federal Power Act) 2,354,738 shares of Common Stock, par value $15 per share, by changing its presently outstanding $5 par value Common Shares into the same number of shares of Common Stock of par value $15 per share.

The increase in par value will be effected by a credit of $23,547,380 to Common Capital Stock. Applicant states this credit will be offset by debits of $20,125,483 to Premium on Common Stock and $3,421,897 to Unappropriated Earned Surplus.

According to the Applicant the increase in par value will be accomplished by an amendment to the Certificate of Incorporation, approved by an affirmative vote of a majority of the outstanding shares in accordance with the General Corporation Law of Delaware. The Applicant states that no additional stock will be issued and also no new certificates for outstanding shares will be issued. The application states that the purpose of the proposed amendment is to effect a more balanced capital structure, which in the opinion of the Applicant's Board of Directors is desirable, by transferring to Common Stock the entire balance in the Premium on Common Stock Account and an additional amount of the Earned Surplus Account sufficient to increase the Common Stock account to $15 per share.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, Montana Board of Railroad Commissioners, North Dakota Public Service Commission, South Dakota Public Utilities Commission, Wyoming Public Service Commission, and to the Governors of each of those States. Notice has also been given by publication in the Federal Register on March 17, 1964 (29 F.R. 3453), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before March 30, 1964, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 26, 1962, *Montana-Dakota Utilities Co.*, Docket No. E-7027, 27 FPC 844.

(2) The proposed change in par value of the outstanding shares of Applicant's Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a state under the laws of which the security issue here involved is regulated by a state commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securi-

ties is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock as described above is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a (a) (1) thereof.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of 2,354,738 shares of Common Stock par value $15 per share, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance of Common Stock is hereby exempted from the competitive bidding requirements of Section 34.1(a), (b), and (c) of the Commission's Regulations Under the Federal Power Act.

(C) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7148

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued April 2, 1964)

Northwestern Public Service Company (Applicant), incorporated under the laws of the State of Delaware and qualified to do business in the States of South Dakota and Nebraska, with its principal place of business in Huron, South Dakota, filed an application on February 7, 1964, and an amendment thereto on March 12, 1964, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of 945,897 shares of Common Stock par value of $7 per share to accomplish a reclassification and a split of Common Stock. The reclassification and split will be carried out by an amendment to the Applicant's Certificate of Incorporation.

The Applicant presently has outstanding 709,423 shares of Common Stock with a par value of $3 per share. Applicant proposes to reclassify its Common Stock, to increase the number of authorized shares from 800,000 to 1,500,000 shares and to change the par value of the presently outstanding 709,423 shares from $3 to $7 per share and then to split its presently outstanding Common shares on a four-for-three basis. This will require the issuance of an additional

236,474 common shares of par value $7 per share for a total of 945,897 shares of Common Stock outstanding, all to have a par value of $7 per share.

The additional shares of Common Stock issuable in connection with the stock split will become issued and outstanding shares of Common Stock immediately upon the proposed amendment to the Certificate of Incorporation becoming effective. The certificates evidencing the presently outstanding shares of Common Stock will *ipso facto* represent a like number of shares of Common Stock of the par value of $7 per share. Certificates evidencing the additional 236,474 shares of Common Stock to be outstanding after the split will be issued shortly after the effective date of the amendment. No fractional shares will be issued. Through the use of nontransferable and nonnegotiable order forms, whereby shareholders will appoint the Northern Trust Company, Chicago, Illinois, as agent, the agent will make all purchases and sales of fractional share interests on behalf of shareholders whether by offset or otherwise on the basis of the prevailing market price of the Company's Common Stock determined by the agent in its discretion. The stockholder will pay the cost of any fractional share interest purchased by him. The other costs and expenses of the agent will be paid by the Company.

According to the Applicant, the proposed amendment to the Applicant's Certificate of Incorporation will be submitted to the vote of Common Stockholders at the Annual Meeting thereof to be held on April 21, 1964. If approved by the holders of a majority of the outstanding shares of Common Stock and if the necessary regulatory authorizations have been obtained, the proposed amendment will become effective upon the filing and recording of a Certificate of Amendment of Certificate of Incorporation in accordance with Delaware law on or about April 22, 1964.

According to the Applicant, such increase in number of outstanding shares and the consequent proportionate reduction in the market price per share will make such Common Stock more available to the average investor and thus, to the benefit of the Applicant and its stockholders, improve the marketability of the Common Stock.

Written notice of the application has been given to the Nebraska State Railway Commission and the South Dakota Public Utilities Commission and to the Governors of those States. Notice of the application also was published in the Federal Register on February 21, 1964 (29 F.R. 2661), stating that any person desiring to be heard or to make any protest with reference to said application should on or before March 12, 1964, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued September 19, 1958, *In the Matter of Northwestern Public Service Company*, Docket No. E-6838 (20 FPC 373).

(2) The proposed issuance of 945,897 shares of Common Stock, par value $7 per share to holders of Applicant's presently outstanding Common Stock will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) The proposed issuance of Common Stock as described above is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulation under the Federal Power Act by reason of paragraph 34.1a(a)(1) thereof.

(4) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance of Common Stock is hereby exempted from the competitive bidding requirements of Section 34.1a (b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

RESERVE OIL AND GAS CO., ET AL., DOCKET NO. G-4720, ET AL.; CREEK OIL COMPANY, INC., DOCKET NO. CI64-457; CUMBERLAND NATURAL GAS COMPANY, INC., DOCKET NO. G-18740

ORDER GRANTING AND MODIFYING TEMPORARY CERTIFICATES AND DENYING INTERVENTION

(Issued April 2, 1964)

On October 16, 1963, Creek Oil Company, Inc. (Creek) filed in Docket No. CI64-457 an application pursuant to Section 7(c) of the Natural Gas (Act) for a certificate of public convenience and necessity and requesting temporary authority to sell and deliver natural gas produced in the White Plains area in Hopkins County, Kentucky, to Cumberland Natural Gas Company, Incorporated (Cumberland) at a price of 15.0 cents per Mcf at 15.025 psia, all as more fully set forth in the application herein.

The subject sale will be made pursuant to a gas sales contract dated August 21, 1963, between Creek and Cumberland which is hereby designated as Creek Oil Company FPC Gas Rate Schedule No. 2.

In a related filing, made October 24, 1963, Cumberland amended its application in Docket No. G-18740[1] to request authority to construct and operate approximately one mile of 4-inch gathering pipeline in Hopkins County, Kentucky, in order to connect its existing gathering facilities with Creek's wells from which the sales proposed in Creek's application in Docket No. CI64-457 are to be made. On July 2, 1959, temporary authorization was granted to Cumberland in Docket No. G-18740 to sell natural gas to Texas Gas Transmission Corporation (Texas Gas) at a point adjacent to Texas Gas' 10-inch pipeline near Mortonville, Hopkins County, Kentucky, under Cumberland's FPC Gas Rate Schedule No. 1. This gas is sold at a price of 21.0 cents per Mcf at 15.025 psia. Due notice of Creek's application in Docket No. CI64–457 has been given by publication in the Federal Register on October 26, 1963 (*Reserve Oil and Gas Co., et al.*, Docket No. G–4720, *et al.*, 28 F.R. 11493).

---

[1] Originally filed on June 8, 1959.

On November 14, 1963, Tartan Oil Company (Tartan) filed a petition to intervene in that docket alleging that it produces gas from the same gas pool or field as proposed by Creek. Tartan further alleges that reserves in the field will be exhausted at an early date, the pressure in the field would be reduced, and excessive and uneconomic drainage of the field may result, thereby preventing Tartan from realizing "* * * the full normal level of production from its wells and its equitable share of those reserves * * *."

Even if it might otherwise be entitled to intervene, Tartan would have no such right here: its petition to intervene was filed after the expiration of the time prescribed in our notice published in the Federal Register on October 26, 1963, and no good reason for the delay in filing has been shown. But, in any event, Tartan has not demonstrated any basis for intervention. Its contentions in effect are that this Commission should perform the functions of prorating takes and adjusting correlative private rights of producers within a field; matters which it seems to us should be decided by the Commonwealth of Kentucky, but which the Commonwealth has not chosen to include with the powers delegated to its appropriate conservation agency (See Kentucky Revised Statutes, Section 353.720). Accordingly, we will deny the petition to intervene.

In support of its request for temporary authority under Section 157.28(c)(2) of the Regulations, Creek alleges that such authorization is necessary to prevent it from suffering the economic hardship of delay.

In accordance with the above we shall grant the temporary certificates requested by Creek and Cumberland and shall deny Tartan's petition to intervene in Docket No. CI64–457.

The Commission further finds:

(1) Creek Oil Company, Inc., and Cumberland Natural Gas Company, Inc., are natural gas companies within the meaning of the Natural Gas Act, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas by Creek to Cumberland is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Based upon the allegations in the applications to invoke Section 157.28 of the Commission's Regulations under The Natural Gas Act, the Commission finds that an emergency exists, within the meaning of the Act.

The Commission orders:

(A) Temporary certificate is hereby granted to Creek Oil Company, Inc., to render the sales proposed in its application filed in Docket No. CI64–457.

(B) The Gas Purchase Contract between Cumberland and Creek dated August 21, 1963, filed as Exhibit B to Creek's application in Docket No. CI64–457 is hereby designated as Creek Oil Company, Incorporated, FPC Gas Rate Schedule No. 2.

(C) The initial rates provided for in Creek FPC Gas Rate Schedule No. 2 shall remain in effect until changed by the Commission in an order issued in these proceedings.

(D) The temporary certificate with the conditions attached shall be accepted as issued, within 30 days herefrom by written acceptance (original and five copies) made by a responsible official of the company. If reconsideration of such temporary certificate is sought, service hereunder shall not be started. If service is commenced under this temporary certificate, the conditions attached shall be effective and the service may not be discontinued without permission of the Commission issued pursuant to the provisions of the Natural Gas Act.

(E) The related proposed rate schedule will be considered accepted for filing upon acceptance of the temporary certificate, as conditioned above, to be effective on the date of initial delivery subject to the provisions of Section 154.94(c) and 154.101 of the Commission's Regulations under the Natural Gas Act.

(F) Creek shall advise the Commission of the date of commencement of deliveries under its rate schedules by making reference in its communication to the rate schedules.

(G) If service is not commenced within 90 days from the date of this temporary certificate, then such temporary certificate shall be void and of no effect.

(H) The issuance of this temporary certificate and the acceptance of the rate schedule are without prejudice to such final disposition of the applications for permanent certificates as the record in the hearing on such applications may require, or to any action which the Commission might take in any subsequent proceeding involving Creek under Sections 4 or 5 of the Natural Gas Act.

(I) The temporary certificate previously granted to Cumberland Natural Gas Company, Inc., in Docket No. G–18740 is hereby amended to permit the construction and operation of approximately one mile of 4-inch gathering pipeline in Hopkins County, Kentucky, as more fully described in the amendment to the application in Docket No. G–18740 filed October 24, 1963.

(J) Within ten days after the facilities authorized in Docket No. G–18740 have been constructed and placed in operation, Cumberland shall file with the Commission in writing and under oath an original and four conformed copies of a notice of the date of completion of construction.

(K) The petition to intervene in Docket No. CI64–457 filed by Tartan Oil Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–158

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 2, 1964)

On January 9, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64–158 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing May 30, 1964, and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission system, said construction not to exceed a maximum total cost of $3,000,000, with no single project to exceed a cost of $500,000, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found in the Presiding Examiners' decision in Docket No. G-855 (7 FPC 213), affirmed by the Commission in its order issued April 2, 1948.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within (60) days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing May 30, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct during the 12-month period commencing May 30, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing May 30, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, DOCKET NO. CP64-161

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 2, 1964)

On January 21, 1964, Wisconsin Power & Light Company (Applicant) filed in Docket No. CP64-161 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to extend its facilities and establish physical connection of its system with facilities proposed to be constructed by Applicant at Campbellsport and to sell and deliver natural gas to Applicant for resale and distribution in the Village of Campbellsport, Wisconsin, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a regulator station and a distribution system in the Village of Campbellsport at an estimated cost of $199,128.

The application shows the estimated annual and peak day requirements of Applicant in Mcf at 14.73 psia to be as follows:

	First year	Second year	Third year
Annual (Mcf)	35,172	62,327	84,009
Peak day (Mcf)	187	373	444

Applicant has received appropriate authorization from the Village of Campbellsport and the Public Service Commission of Wisconsin to construct facilities and to engage in the business of gas distribution.

On January 30, 1964, Michigan Wisconsin filed its answer to the subject application stating that it had no objection to the granting thereof. The estimated cost of Michigan Wisconsin's proposed construction is $56,000 for 2.7 miles of 4-inch pipeline.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 3, 1964, (29 F.R. 2917). No protest or petition to intervene in opposition to the granting of the application has been filed.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company"

within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant, Wisconsin Power & Light Company, is a public utility duly organized and existing under the laws of the State of Wisconsin and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Michigan Wisconsin be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 444 Mcf of natural gas per day to Applicant, as set forth in the application in this proceeding, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin within one year from the date of issuance of this order.

(5) The requirement that Michigan Wisconsin serve Applicant, as proposed, will not place any undue burden upon Michigan Wisconsin nor impair its ability to render adequate service to its existing customer.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 444 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application, in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Michigan Wisconsin within one year from date of issuance of this order.

(C) Michigan Wisconsin shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. G-5471, ET AL.

ORDER GRANTING REHEARING FOR FURTHER CONSIDERATION

(Issued April 3, 1964)

On February 3, 1964, the Commission issued Opinion No. 417 in the above-entitled proceeding, 31 FPC 208. On March 4, 1964, requests for rehearing were filed by Alabama-Tennessee Natural Gas Company and by two of the interested persons[1] permitted to participate as *amici curiae* in this proceeding. Since the statutory period under Section 19(a) of the Natural Gas Act for action on such applications is insufficient to permit a timely and proper disposition of these pleadings, it is necessary and appropriate to grant rehearing for the purpose of enabling fuller consideration of the arguments and allegations adduced.

The Commission orders:

Rehearing in this proceeding is hereby granted for the sole purpose of such further consideration of the aforementioned pending applications.

---

[1] Independent Natural Gas Association of America and the Public Utilities Commission of the State of California.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64-151

FINDINGS AND ORDER AFTER STATUTORY HEARING AUTHORIZING ABANDONMENT

(Issued April 3, 1964)

On January 2, 1964, as supplemented on March 9, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64-151 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon by sale to J. C. Daniels approximately 35.5 miles of 10- to 20-inch pipeline in Gray and Wheeler Counties, Texas, all as more fully set forth in the application, as supplemented.

Applicant and J. C. Daniels have entered into an agreement, dated December 6, 1963, for the sale by Applicant of the above-described pipelines as well as Applicant's Twitty, Pitsch and Kellerville Compressor Stations located along said lines.[1] The subject facilities comprise the westernmost end of the so-called Main Line System of the former Consolidated Gas Utilities Corporation which facilities Applicant was authorized to acquire and operate by Commission order issued July 27, 1960, in Docket No. CP60-79.

Applicant states that the pipelines herein proposed to be abandoned have for a period of time in excess of two years ceased to be utilized for the purpose for which they were built and formerly used, namely, transmission of gas supply; and, further, that their only present use is to supply eight residential rural customers. Applicant states that J. C. Daniels has agreed to continue natural gas service to the eight rural customers without change in rates or conditions of service for the time being. The application indicates that J. C. Daniels proposes to use the subject facilities in a gasoline plant operation in Texas.

Pursuant to the agreement of December 6, 1963, Applicant will sell said facilities to J. C. Daniels for approximately $410,400. Additionally the total original cost of said facilities is estimated at $1,327,881 with a provision for accumulated depreciation for a like amount of $1,327,881.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 2, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement, and exhibits, submitted in support of the authorization herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

---

[1] By Commission order issued December 2, 1963, 30 FPC 1385, in Docket No. CP63-352, Applicant was authorized to abandon, among other facilities, the Twitty Pitsch and Kellerville Compressor Stations.

(3) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, be and the same is hereby granted.

(B) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BATEX, INC., ET AL., DOCKET NOS. G–19656 AND RI60–364[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued April 3, 1964)

On August 21, 1963, Batex, Inc. (Batex) filed an Offer of Settlement[2] relating to its jurisdictional sales of natural gas under its FPC Gas Rate Schedule No. 1 to Tennessee Gas Transmission Company (Tennessee) from Rincon Field, Starr County, Texas (Railroad Commission District No. 4).[3] Batex's FPC Gas Rate Schedule No. 1 is involved in the above-designated rate suspension proceedings.

The following table sets forth the data pertinent to the suspension proceedings involved herein.

Docket No.	Rate schedule No.	Supp. No.	Effective rate	Date effective subject to refund
G–19656	1	4	15.09520	4/15/60
RI60–364	1	5	17.24347	12/14/60

In its Offer of Settlement Batex proposes a settlement rate at the applicable area increased rate level of 14.0¢ per mcf, and agrees to refund, with interest at 7%, all amounts collected in excess of such settlement rate. As of May 1, 1963, refunds would approximate $2,400 exclusive of interest. No objections to the proposed settlement have been received from any interested party.

Since the proposed settlement rate of 14.0¢ per Mcf is acceptable under the provisions of the *Commission's Statement of General Policy No. 61–1*,[4] as amended, for the jurisdictional sales of natural gas from Railroad Commission District No. 4, it is believed that the public interest will be best served by accepting Batex's proposed settlement offer.

---

[1] Both proceedings are consolidated with the Area Rate Proceedings in Docket No. AR64–2, *et al.*

[2] Although Batex filed this offer in the certificate docket, Docket No. CI63–1501, wherein it obtained authorization to make the sales involved here, the proposed settlement has been construed to be applicable to the instant rate proceedings.

[3] Pursuant to the Commission's order issued February 25, 1964 in Docket No. CI63–1501 permission was granted for abandonment by Batex of the subject sale, and Batex's FPC Gas Rate Schedule No. 1 was cancelled.

[4] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Batex on August 21, 1963, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The proposed Offer of Settlement filed by Batex with the Commission on August 21, 1963, is hereby approved in accordance with the provisions of this order.

(B) Within 30 days from the issuance of this order, Batex shall refund to Tennessee all amounts collected in the above-designated proceedings in excess of the settlement rate prescribed herein, together with simple interest at the rate of 7% per annum computed to the date of refund. Batex shall bear all costs incidental to the making of such refunds.

(C) Within 45 days from the date of issuance of this order, Batex shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Tennessee.

(D) Upon full compliance by Batex with the terms and provisions of this order, the Section 4(e) proceedings in Docket Nos. G-19656 and RI60-364 shall be deemed terminated, and severed from Docket No. AR61-2, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, RESPONDENT, DOCKET NO. RP63-4

ORDER DENYING MOTION TO REOPEN

(Issued April 3, 1964)

On March 3, 1964, Carolina Pipeline Company filed a motion to reopen the above-entitled proceeding for the purpose of introducing evidence relating to alleged incidents of discrimination by Southern Natural Gas Company which Carolina says took place in February, 1964. Answers to the motion were filed by Southern Natural Gas Company, South Carolina Natural Gas Company and the Atlanta Gas Light Company.

The initial decision in this proceeding was issued by the Examiner on October 3, 1963, and our Opinion No. 423 affirming that decision was issued on March 30, 1964, 31 FPC 705. Thus, it appears that any matters not disposed of in Opinion No. 423 which Carolina believes are a basis for a further complaint against Southern should be the subject of a new complaint rather than a vehicle for reopening and extending a case in which a final decision has been issued after a full hearing and on a complete record. See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3, 1956).

The Commission orders:

For the above stated reason the motion to reopen this proceeding filed by Carolina Pipeline Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF GREENSBORO, GEORGIA, DOCKET NO. CP64–126; CITY OF UNION POINT, GEORGIA, DOCKET NO. CP64–127

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 3, 1964)

On December 3, 1963, City of Greensboro and City of Union Point, Georgia, (Applicants) filed in Docket Nos. CP64–126 and CP64–127 respectively their application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Transcontinental Gas Pipe Line Corporation (Transco) to establish physical connection of its facilities with those proposed to be constructed by Applicants and to sell and deliver natural gas to them in volumes as hereinafter stated for resale and distribution.

Applicants will construct and operate a jointly owned transmission pipeline approximately 40 miles in length. Each Applicant will construct and operate its own distribution system. Several small communities along the transmission line will also be served.

The daily and annual requirements of the respective Applicants in Mcf at 14.73 psia are estimated as follows:

Year of service	Peak day			Annual		
	Greensboro	Union Point	Total	Greensboro	Union Point	Total
1	749	529	1,278	84,216	75,394	159,610
2	1,036	946	1,982	105,278	91,437	196,715
3	1,324	963	2,287	127,614	108,758	136,372

The estimated cost of the respective municipal projects which includes each Applicant's share of the 40-mile line above-mentioned is as follows: for Greensboro $507,000 and for Union Point $409,500.

Applicants state that financial arrangements are to be made for the sale of 30 year revenue bonds at 5% interest to cover the costs of the projects.

On January 9, 1964, Transco filed an answer stating that it had no objection to providing the proposed service and the point of connection.

Due notice of the filing of the applications and opportunity for hearing thereon have been given by publication in the Federal Register on March 11, 1964 (29 F.R. 3249). No protest or petition to intervene in opposition to the granting of the applications has been filed in this proceeding.

The Commission finds:

(1) Transcontinental Gas Pipe Line Corporation a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 23, 1948, in Docket No. G–1143 (7 FPC 145).

(2) Applicants, City of Greensboro and City of Union Point, are municipalities organized under the laws of the State of Georgia and are legally authorized to engage in the local distribution of natural gas.

(3) It is necessary and desirable in the public interest to direct Transcontinental Gas Pipe Line Corporation to establish physical connection of its gas

transmission facilities with the facilities to be constructed by the Applicants and to sell and deliver to Applicants their daily and annual requirements of natural gas as hereinbefore set forth and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicants' being prepared to receive natural gas from Transco, as proposed, within one year from the date of issuance of this order, and upon Applicants' receiving approval of their projects from the Georgia Public Service Commission.

(5) The requirement that Transco serve Applicants as proposed will not place any undue burden upon Transco nor impair its ability to render adequate service

The Commission orders:

(A) Transcontinental Gas Pipe Line Corporation be and hereby is directed to establish physical connection of its transmission facilities with the proposed facilities to be constructed by Applicants as hereinbefore described and to sell and deliver to Applicants up to 2,287 Mcf daily of natural gas as hereinbefore set forth.

(B) Transco shall report to the Commission in writing the date of commencement of service to Applicants.

(C) This order is hereby conditioned upon the approval of Applicants' projects proposed herein by the Georgia Public Utilities Commission and upon Applicants' being ready to receive natural gas from Transco, as proposed, within one year from the date on which this order is issued.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC NORTHWEST POWER COMPANY, PROJECT NO. 2243; WASHINGTON PUBLIC POWER SUPPLY SYSTEM, PROJECT NO. 2273

ORDER GRANTING REHEARING FOR PURPOSE OF GIVING FURTHER CONSIDERATION

(Issued April 3, 1964)

Applications for rehearing of the Commission's order issued February 5, 1964, 31 FPC 247, in the above-entitled proceedings were filed on March 6, 1964, by Washington Public Power Supply System (WPPSS), the Department of Conservation of the State of Washington, and the Secretary of the Interior.

WPPSS and the Secretary of the Interior also filed motions for stay of the Commission's order, and in addition the Secretary of the Interior also included a petition to have the record reopened in his filing. Pacific Northwest Power Company (PNPC) on March 16, 1964, filed motions to strike the March 6 filings of WPPSS and the Secretary of the Interior. PNPC also filed an answer to the motions for stay of the Commission's order on March 17, 1964.

WPPSS filed an answer to PNPC's motion to strike on March 23, 1964. The Secretary of the Interior filed his answer to PNPC's motions to strike on March 25, 1964, and on March 26, 1964, the Secretary filed a motion to strike material from PNPC's motion to strike or in the alternative to reopen the record.

The Commission finds:

In order to afford additional time for consideration of the matters set forth in the said applications, it is appropriate in the administration of the Federal Power Act that rehearing be granted.

The Commission orders:

Rehearing is granted for the purpose of further considering the issues raised by the said applications of WPPSS, the Department of Conservation of the State of Washington, and the Secretary of the Interior.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–11217, G–14115*, G–18417*, G–18418*, G–13734*, G–15314*, G–15315*, G–18206*, G–18207* AND G–18215*

ORDER ACCEPTING FOR FILING PROPOSED DECREASED RATES SUBJECT TO FURTHER COMMISSION ORDER, AND REQUIRING REFUNDS

(Issued April 3, 1964)**

On February 28, 1964, Phillips Petroleum Company (Phillips) tendered for filing a document purporting to show the decreased rates that Phillips is contractually entitled to under the spiral escalation clauses and favored nation clauses[1] contained in the rate schedules involved in the above-entitled suspension proceedings for various locked-in periods and setting forth the refund obligation amounting to $4,093,934.47, exclusive of interest, that would be applicable in light thereof. In connection therewith Phillips on March 16, 1964 filed notices of change reflecting the decreased rates as set forth in the appendix attached hereto. Phillips' spiral escalation rates are related to rate increases filed by El Paso Natural Gas Company (El Paso), the purchaser herein, in Docket Nos. G–4769, G–12948, and G–17929. By order issued December 4, 1963, 30 FPC 1400, settlement rates were approved for El Paso in the above dockets. Phillips' proposed rate reductions thus reflect the present contractual effect on its rates of the El Paso settlement.

Phillips also states that on February 24, 1964, it tendered to El Paso a refund check, computed as indicated above, which El Paso refused to accept. Phillips takes the position that its tender of refund to El Paso terminated the running of interest in these proceedings. In answer to Phillips' contention, El Paso claims that the determination of proper rates and refunds as to jurisdictional sales is within the province of this Commission, particularly when the rights of third parties may be involved because of El Paso's flow through refund obligations with respect to supplier refunds emanating from the El Paso settlement order. El Paso also states that it cannot agree that the proposed refunds are based on "proper contractual rates", as requested by Phillips.

Prior to the above tender, Phillips filed a motion on January 30, 1964, requesting the Commission to terminate as of February 1, 1964, the further running of interest on any refunds which Phillips may be required to make in the above-entitled proceedings. In support thereof, Phillips stated that the amount of rate reduction required for its rate schedules was dependent upon information from El Paso as to the specific application of the El Paso settlement order to El Paso's various rates, which El Paso had at that time not yet forwarded to Phillips. In answer to Phillips' motion, El Paso advised that it was diligently engaged in compiling the necessary information, and that such information would be available in the near future. As a matter of fact, El Paso did furnish the needed information to Phillips, and this formed the basis for Phillips' instant request. In light of subsequent events as set forth above, we consider Phillips' motion of January 30 to be moot, or, in any event, to be without merit.

We have examined the document tendered by Phillips on February 28, 1964, as well as the notices of change relating thereto and find that Phillips has correctly computed its contract rates based on El Paso's settlement rates, at least insofar as such determination can be made at the present time. We therefore consider it appropriate to order Phillips to make refunds with interest to the date of refund of the difference between the lower contractual rates to which Phillips is entitled at the present time and the higher rates which it filed for in the instant proceedings and collected subject to refund. We are vested with sole authority to require refunds with interest under Section 4(e) and in the absence of a Commission order to that effect, the buyer is under no obligation to accept a refund payment from a producer. There is thus no justification here for accepting Phillips' contention that their interest obligation has terminated.

---

*These proceedings are consolidated in Docket No. AR61–1, *et al.*

**Rehearing denied, 31 FPC 1524. Remanded, *Phillips Petroleum Co.* v. *F.P.C.*, 349 F. 2d 535 (CA10–1965).

[1] The favored-nation rates involved here are based on favored-nation rates of other producers which were triggered by the Phillips' spiral escalation rates also involved in this case.

While the rates set forth in Phillips' filing are properly computed in terms of the contract as of the effective date of El Paso's settlement standing alone, these rates are subject to further reduction as a contractual matter for the periods involved here. Under the terms of the El Paso settlement, El Paso is obliged to flow through to its purchasers any and all refunds plus interest that it may receive from its suppliers as a result of pending Section 4(e) proceedings. The net effect is that El Paso's settlement rates, and consequently Phillips' spirally-determined rates, would be further reduced to the extent that El Paso receives refunds from its suppliers applicable to the relevant periods to which El Paso's settlement rates apply.[2] Since Phillips' rates pursuant to the spiral escalation clauses contained in their contracts are based on El Paso's rates, any further reduction in El Paso's settlement rates will cause a corresponding reduction in Phillips' rates. We do not now decide the extent, if any, to which the refunds by Phillips computed now will themselves necessitate an additional reduction of Phillips' rates pursuant to the spiral escalation clauses.

Since further refunds may be required as a contractual matter in each docket, we shall not terminate the Phillips' Section 4 proceedings at the present time. We also note that with the exception of Docket No. G-11217, Phillips' rates are subject to a determination as to their justness and reasonableness under Section 4(e) of the Act, independent of any contractual justification therefor. (We indicated in Opinion No. 338, 24 FPC 537 at 577, 578 that the only matter left open in Docket No. G-11217 was the contractual issue.)

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept the notices of change listed in the Appendix hereof as of the dates indicated therein subject to further order of the Commission with respect thereto in the above-entitled proceedings and to require refunds as hereinafter ordered.

The Commission orders:

(A) The notices of change designated in the Appendix hereof are accepted for filing as of the dates shown therein subject to further order of the Commission in the above-entitled proceedings with respect thereto.

(B) Within 90 days from the date of issuance of this order Phillips shall refund to El Paso in the above-entitled proceedings all amounts collected subject to refund in excess of the decreased rates shown in the Appendix hereof, together with simple interest at the applicable rate specified in each docket from the date of receipt of such amounts by Phillips to the date of refund.

(C) Within 120 days from the date of issuance of this order Phillips shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from El Paso with respect to such refunds.

---

[2] Similarly Phillips' favored-nation rates may be subject to further reduction.

APPENDIX

Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual decrease	Date filing tendered	Effective date	Cents per Mcf*	
							Rate in effect**	Proposed decreased rate
Phillips Petroleum Co. (operator).	7	1 to 5	El Paso Natural Gas Co. (Goldsmith Plant, Goldsmith Field, Ector County, Tex.) (R.R. Dist. #8).	$54,589	3/16/64	3/11/57	[1] 8.12	7.6226
	7	1 to 7		76,739	3/16/64	6/1/58	[2] 10.2554	9.4161
	7	1 to 8		253,176	3/16/64	1/1/60	[3] 11.57838	10.7402
Phillips Petroleum Co. (operator).	9	1 to 11	El Paso Natural Gas Co. (Crane Plant, McElroy Field, Crane County, Tex.) (R.R. Dist. #8).	44,408	3/16/64	3/11/57	[1] 7.8283	7.3463
	9	1 to 13		113,215	3/16/64	6/1/58	[2] 9.9315	9.1191
	9	1 to 15		79,412	3/16/64	1/1/60	[3] 11.21635	10.4019
Phillips Petroleum Co. (operator), *et al.*	32	1 to 19	El Paso Natural Gas Co. (Goldsmith, Fullerton, Dumas and Eunice Plants, Ector, Andrews and Moore Counties, Tex., and Lea County, N. Mex.) (R.R. Dist. #8 and 10 and Permian Basin).	135,642	3/16/64	3/11/57	[1,4] 8.12	7.6226
	32	1 to 20		27,304	3/16/64	------------	[1,5] 8.12	7.6214
				267,894	3/16/64	------------	[1,6] 11.0773	10.3977
				57,617	3/16/64	------------	[1,7] 8.0535	7.5594
				214,374	3/16/64	6/1/58	[2,4] 10.2554	9.4161
				45,593	3/16/64	------------	[2,5] 10.2554	9.4151
				427,387	3/16/64	------------	[2,6] 13.5282	12.4204
				116,312	3/16/64	------------	[2,7] 10.1699	9.3371
Phillips Petroleum Co. (operator), *et al.*	32	1 to 22	El Paso Natural Gas Co. (Goldsmith, Fullerton, Dumas and Eunice Plants, Ector, Andrews and Moore Counties, Tex., and Lea County, N. Mex.) (R.R. Dist. #8 and 10 and Permian Basin).	194,614	3/16/64	1/1/60	[3,4] 11.57838	10.7402
				90,090	3/16/64	------------	[3,5] 11.57838	10.7393
				426,011	3/16/64	------------	[3,6] 15.27233	14.1661
				153,330	3/16/64	------------	[3,7] 11.48106	10.64915

Phillips Petroleum Co. (operator), *et al.*	33	1 to 8	El Paso Natural Gas Co. (Goldsmith, Fullerton and Eunice Plants, Ector and Andrews Counties, Tex., and Leo County, N. Mex.) (R.R. Dist. #8 and Permian Basin).	147,730	3/16/64	3/11/57	[1], [4] 8.12	7.6226
	33	1 to 9		----------	----------	----------	[1], [5] 8.12	7.6214
	33	1 to 10		----------	----------	----------	[1], [7] 8.12	7.5594
				249,266	3/16/64	6/1/58	[2], [4] 10.2554	9.4161
				----------	----------	----------	[2], [5] 10.2554	9.4151
				----------	----------	----------	[2], [7] 10.1699	9.3371
				224,551	3/16/64	1/1/60	[4], [3] 11.57838	10.7402
				----------	----------	----------	[5], [3] 11.57838	10.7393
				----------	----------	----------	[7], [3] 11.57838	10.6492
Phillips Petroleum Co. (operator).	64	1 to 8	El Paso Natural Gas Co. (Eunice Plant, Monument Area, Lea County, N. Mex.) (Permian Basin).	66,592	3/16/64	3/11/57	[1] 8.0535	7.5594
	64	1 to 9		112,230	3/16/64	6/1/58	[2] 10.1699	9.3371
	64	1 to 10		112,118	3/16/64	1/1/60	[8] 11.48106	10.6492
Phillips Petroleum Co. (operator).	243	1 to 6	El Paso Natural Gas Co. (Hobbs and Lee Gasoline Plants, Lea County, N. Mex.) (Permian Basin).	28,032	3/16/64	3/11/57	[1], [9] 6.6154	6.2095
	243	1 to 7		16,429	3/16/64	----------	[1], [10] 8.6288	8.0993
	243	1 to 11		59,697	3/16/64	6/1/58	[2], [9] 10.1699	9.3371
				35,815	3/16/64	----------	[2], [10] 10.8055	9.9207
				56,813	3/16/64	1/1/60	[8], [9] 11.48106	10.6492
				38,066	3/16/64	----------	[8], [10] 12.19864	11.3147
Phillips Petroleum Co.	10	1 to 11	El Paso Natural Gas Co. (Keystone Plant, Keystone Field, Winkler County, Tex.) (R.R. Dist. #8).	70,510	3/16/64	5/14/58	[11] 10.4873	9.7899
	10	1 to 13		16,497	3/16/64	9/18/59	[12] 11.5321	10.5867
Phillips Petroleum Co.	66	1 to 3	El Paso Natural Gas Co. (Denton Plant, Denton Field, Lea County, N. Mex.) (Permian Basin).	1,756	3/16/64	12/1/58	[13] 11.506	11.0
	66	1 to 4		3,863	3/16/64	9/18/59	[12] 13.98357	12.8336
Phillips Petroleum Co. (operator), *et al.*	256	1 to 2	El Paso Natural Gas Co. (Kenneth "A" Lease, Reagan County, Tex.) (R.R. Dist. #7C).	1,454	3/16/64	12/1/58	[14] 11.506	11.0
	256	1 to 3		473	3/16/64	9/13/59	[15] 14.17237	12.8366
Phillips Petroleum Co.	309	1 to 4	El Paso Natural Gas Co. (O'Harrow and G. H. Dodson Lease, Upton County, Tex.) (R.R. Dist. #7C).	327	3/16/64	9/13/59	[16] 10.30716	9.4632

*Pressure base is 14.65 psia.

**The footnote references in the table herein are listed below the figures to which they refer.

[1] In effect subject to refund in Docket No. G-11217.

[2] In effect subject to refund in Docket No. G-14115.

[3] In effect subject to refund in Docket No. G-18417.

[4] Goldsmith Plant.

[5] Fullerton Plant.

[6] Dumas Plant.

[7] Eunice Plant.

[8] In effect subject to refund in Docket No. G-18418.

[9] Hobbs Plant.

[10] Lee Plant.

[11] In effect subject to refund in Docket No. G-13734.

[12] In effect subject to refund in Docket No. G-18215.

[13] In effect subject to refund in Docket No. G-15315.

[14] In effect subject to refund in Docket No. G-15314.

[15] In effect subject to refund in Docket No. G-18206.

[16] In effect subject to refund in Docket No. G-18207.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION PRODUCING COMPANY (OPERATOR), ET AL., DOCKET NO. G–18354

ORDER AFFIRMING RULING OF PRESIDING EXAMINER

(Issued April 3, 1964)

On January 9, 1964, we issued Opinion No. 414, 31 FPC 41 and accompanying order, in Docket No. G–13811, *et al.*, in which, *inter alia*, we remanded the proceedings in Docket No. G–18354 to the examiner for further hearing and decision upon certain matters.[1] In Opinion No. 414 we stated that we were remanding the proceedings ". . . to be certain of using current and accurate figures . . ." in determining the matters specified as the subject of the remanded proceedings (p. 44). Again, we stated that a more current test year than the year 1958, which was used by all parties in the initial proceedings, be used in the remanded proceedings (*ibid*, pp. 47 and 51).

On February 19, 1964, a prehearing conference was held, in accordance with Section 1.18 of the Rules of Practice and Procedure, and as a result thereof, the Presiding Examiner issued, on February 25, 1964, an order in which he directed all parties to the proceeding to use the calendar year 1963 as the test period in presenting cost of service testimony and evidence.[2] In accordance with Section 1.18(d) of the Rules, certain parties to the proceeding filed their appeals to the ruling of the examiner in regard to the test period.[3]

Subsequent to the issuance of the order of the presiding examiner, on March 6, 1964, 31 FPC 503, we issued Opinion No. 414–A for the purpose of clarifying the issue to be determined in the remanded proceeding in Docket No. G–18354. We stated that the issue is the cost which United Gas Pipe Line Company (United), a wholly owned subsidiary of Union's parent, the United Gas Corporation, should properly include in its cost of service for purchases from Union.[4] We again stated that the propriety of payments by United to Union for gas were to be determined on the basis of a current test year.

On March 12, 1964, the presiding examiner referred the appeals from his ruling to the Commission. The basis for each of the appeals from the examiner's ruling in regard to the test year to be used in the remanded proceeding is that such a test period does not coincide with the test period used in United's rate proceeding, Docket No. RP63–1, which is now pending before the Commission on exceptions to the initial decision of the presiding examiner issued June 17, 1963. In the United proceeding, a test period of twelve months, ending March 31, 1962, adjusted to November 30, 1962, was used by all of the parties presenting cost of service testimony and evidence.[5] Appellants herein contend that the test period to be used by the parties in the remanded Union proceeding must be contemporaneous with that used in the United proceeding, or, in the alternative, the calendar year 1962 must be used, so that the sales volume and the costs related thereto in the test periods will be the same, and because they believe a disparity will prolong final determination in each of the proceedings.

---

[1] Docket No. G–18354 concerns a general rate investigation of Union Producing Company, initiated by order issued April 29, 1959, 21 FPC 607.

[2] The ruling of the examiner notes that: "Union states its records have been closed for the calendar year 1963 and are, therefore, available for a cost of service study." The staff of the Commission agreed with Union to use the calendar year 1963 as the test period.

[3] Appeals were filed by Memphis Light, Gas and Water Division; Mississippi Valley Gas Company; Willmut Gas and Oil Company; United Gas Improvement Company and Philadelphia Electric Company.

[4] Docket No. RP63–1, a proceeding under Section 4 of the Act, concerns a proposed increased rate of United made effective, subject to refund, on January 1, 1963.

[5] The staff, however, presented testimony and evidence relating to 1963 adjustments to United's cost of service. See pages 8–11 of the examiner's decision in RP63–1, issued June 17, 1963.

We have considered the appeals filed to the examiner's ruling in regard to the test year to be used by all parties in presenting testimony and evidence regarding Union's cost of service, and the transcript of the prehearing conference held on March 10, 1964, wherein the question of the proper test period was again discussed subsequent to the filing of the appeals herein.

In view of the fact that the primary purpose of the hearing is to determine the appropriate purchase gas costs of United for a more recent test year and thereafter, and because Union has stated its records for 1963 are closed and available, we find that the ruling of the presiding examiner should be sustained. Accordingly, the appeals therefrom are denied, and all parties hereto shall use the calendar year 1963 as the test period in preparing any cost of service study to be initially introduced.

The Commission orders:

The ruling, issued on February 25, 1964, by the presiding examiner herein, in accordance with Sections 1.18(d) and 1.20(j) of the Rules of Practice and Procedure, directing the parties hereto to use the calendar year 1963 as the test period in cost of service testimony and evidence to be presented, is hereby sustained, and each of the appeals filed herein from said ruling is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY

ORDER APPROVING HEADWATER BENEFITS ARRANGEMENT

(Issued April 6, 1964)

On September 13, 1963, the Chippewa and Flambeau Improvement Company (Company), with principal offices at Eau Claire, Wisconsin, requested approval of a method of compensating it for headwater benefits from its developments on the Chippewa and Flambeau Rivers. Section 13.1 of the Regulations under the Federal Power Act provides for review and approval of headwater benefit arrangements in lieu of a headwater benefit determination under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The Company's four storage reservoirs—Rest Lake, Moose Lake, Chippewa Reservoir,[1] and Flambeau Reservoir—regulate the streamflow at fifteen downstream hydroelectric projects. These are owned by five corporations: Lake Superior District Power Company, Northern States Power Company, Kansas City Star Company, Cornell Paperboard Products Company, and Dairyland Power Co-operative. The Company is also owned by these corporations. They make payments to it for headwater benefits according to Laws of Wisconsin

---

[1] The Company leases the Chippewa Reservoir, Project No. 108, from the Northern States Power Company. The license originally was issued to the Wisconsin-Minnesota Light and Power Company on August 5, 1921.

1911, ch. 640, as amended, Laws of Wisconsin 1913, ch. 759, and Laws of Wisconsin 1921, ch. 399, which is the Company's enabling act. Section 4 reads:

> [The Company] shall . . . be entitled to charge . . . reasonable and uniform tolls . . ., but not exceeding in the aggregate of all its revenues sufficient to pay all reasonable costs of operation and maintenance including rent paid for leased properties and a net annual return on cash capital actually paid in on the stock subscriptions to the grantee. Such net annual return shall be reasonable and just and shall be determined by the railroad commission of Wisconsin in the manner that rates are determined for public utilities . . . .

Between June 10, 1920, when the Federal Water Power Act (Part I of the Federal Power Act since 1935) was approved and December 31, 1962, the Company's owners or their predecessors have been assessed as follows:

Corporation	Period	Assessments
Flambeau Paper Co.	7/1/20–12/31/47	$552,440.62
Kansas City Star	1/1/48–12/31/62	416,903.52
Lake Superior District Power (Chicago)	7/1/23– 6/30/26	8,101.72
Lake Superior District Power (Ashland, Wis.)	7/1/26–12/31/62	748,792.54
Great Western Paper Co.	7/1/20– 6/30/28	37,012.56
Great Western & Lake Superior District Power	7/1/28– 6/30/51	122,815.21
Dairyland Power Coop. (leased plants)	7/1/51–12/31/62	130,165.61
Cornell Wood Products Co.	7/1/20–12/31/62	677,702.23
Eau Claire Dells Improvement Co.	7/1/20– 6/30/59	846,423.91
Wisconsin-Minnesota Light & Power	7/1/20–12/31/23	46,083.89
Northern States Power	1/1/24–12/31/62	5,398,766.43
Dairyland Power Coop. (Flambeau Hydro.)	1/1/51–12/31/62	278,914.92
Total		9,264,123.16

For the most recent period—January 1, 1963, through June 30, 1963—the owners have been assessed as follows:

Cornell Paperboard Products	$9,041.17
Dairyland Power Cooperative	17,553.44
Kansas City Star Co.	13,732.55
Lake Superior District Power Co.	8,829.22
Northern States Power Co.	92,753.48
Total	141,909.86

The Commission finds:

The aforesaid assessments from July 1, 1920 through June 30, 1963 are reasonable compensation to the Chippewa and Flambeau Improvement Company for headwater benefits from its developments on the Chippewa and Flambeau Rivers.

The Commission orders:

The aforesaid assessments from July 1, 1920 through June 30, 1963 are approved under section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefit determination under subsection 10(f) of the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE DETROIT EDISON COMPANY, DOCKET NO. E-6515

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued April 6, 1964)

The Detroit Edison Company (Applicant), a corporation organized and existing under the laws of the State of New York, and qualified to do business as a foreign corporation in the State of Michigan, with its principal place of business in Detroit, Michigan, on February 14, 1964, filed an application for authorization, pursuant to Section 202(e) of the Federal Power Act, for an increase in the amount of electric energy which it is currently authorized to export from the United States to Canada.

By order issued December 17, 1956, 16 FPC 1348, in the above-entitled matter, Applicant was authorized to transmit to the Hydro-Electric Power Commission of Ontario (Hydro), a maximum of 500,000,000 kilowatt-hours of electric energy per year at a maximum rate of transmission of 375,000 kilovolt-amperes by means of a 120,000 volt overhead line crossing the Detroit River between Detroit, Michigan, and Windsor, Ontario, and a 115,000 volt overhead line crossing the St. Clair River between Marysville, Michigan, and Sarnia, Ontario. Applicant presently seeks authorization to increase to 1,000,000,000 kilowatt-hours the maximum amount of electric energy to be exported to Hydro annually at a maximum transmission rate of not to exceed 600,000 kilovolt-amperes over the above transmission facilities, which are the subject of a Permit, pursuant to Executive Order No. 10485, signed by the Chairman of the Federal Power Commission on October 12, 1953, Docket No. E-6516.

The increased amount of energy which Applicant seeks to export will be transmitted in accordance with an interconnection agreement between Applicant and Hydro, pursuant to which the current exportation of energy is being carried on. Under the terms of that agreement, Applicant and Hydro exchange surplus power and energy in excess of their respective load requirements at rates therein set forth with no obligation on the part of either contracting party to buy or sell such surplus power and energy at any time.

Applicant states that the use of the additional energy, proposed to be exported, is primarily to avoid any shortage of supply of electric energy within the area served by Hydro, caused by unusual conditions, such as defects or failure of generating or transmitting equipment, reductions of generating capability caused by low water or because of ice jams in the Niagara Gorge. Applicant further reports that it and Hydro have conducted tests which show that the two transmission lines connecting the respective systems can carry a total of approximately 600,000 kilovolt-amperes under short-time emergency conditions.

Written notice of the application has been given to the Public Service Commission of Michigan, and to the Governor of that State. Notice of the filing of the application has been given by publication in the Federal Register on February 26, 1964 (29 F.R. 2713), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before March 10, 1964, file with the Federal Power Commission, Washington, D.C., 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission orders:

(A) Applicant be and it hereby is authorized to transmit electric energy from the United States to Canada, in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The maximum amount of electric energy which Applicant is hereby authorized to transmit from the United States to Canada is 1,000,000,000 kilowatt-hours annually, at a maximum transmission rate of not to exceed 600,000 kilovolt-amperes; such energy to be transmitted over the facilities referred to above, which are covered by the aforementioned Permit, pursuant to Executive Order No. 10485 signed by the Chairman of the Federal Power Commission on October 12, 1953, Docket No. E–6515.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit referred to in Paragraph (B) above.

(D) Applicant shall conduct all operations, pursuant to the authorization herein granted, in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(E) Applicant shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada, pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate, reports annually, on or before February 15, showing for each month of the preceding calendar year, the kilowatt-hour flow, as set forth in the aforementioned agreement with Hydro, which shall be in such form as to show the gross kilowatt-hours of electric energy received and delivered, the maximum kilowatts of transmission, and the consideration therefor.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission, accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(I) The authorization herein granted shall supersede in all respects that heretofore granted by the aforementioned Commission order issued December 17, 1956.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

GILCREASE OIL COMPANY, DOCKET NO. G-16862

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued April 6, 1964)

On February 3, 1964, Gilcrease Oil Company (Gilcrease) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Gilcrease. The offer relates to sales made under Supplement No. 5 to Gilcrease's FPC Gas Rate Schedule No. 1 in Wharton County, Texas (Texas R.R. Com. District #3). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective by Gilcrease on June 1, 1959.

Under the terms of the offer, Gilcrease proposes to eliminate the favored-nation and price redetermination provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Gilcrease's annual revenues will be decreased about $853 from the presently effective rates. No protests or objections have been filed to the offer.

Gilcrease, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $7,770, exclusive of interest.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61-1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Gilcrease's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, shall our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Gilcrease's rate and rate schedule.

The Commission finds:

The proposed settlement by Gilcrease of the above-designated proceedings on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Gilcrease on February 3, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Gilcrease on February 3, 1964, is hereby approved in accordance with the provisions of this order.

(B) Gilcrease shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and executed contractual amendment to its FPC Gas Rate Schedule No. 1 eliminating the favored-nation and price redetermination provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Gilcrease shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest thereon, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Gilcrease has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(E) The acceptance by the Commission of Gilcrease's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Gilcrease, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–101; EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–139

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 6, 1964)

On November 1, 1963, Northern Natural Gas Company (Northern) filed in Docket No. CP64–101, and on December 13, 1963, El Paso Natural Gas Company (El Paso) filed in Docket No. CP64–139, their respective applications, pursuant to Section 7(c) of the Natural Gas Act, for certificates of public convenience and necessity authorizing the transportation and exchange of 100,000 Mcf daily of natural gas, subject to the jurisdiction of the Commission, all as more fully set forth in the applications on file with the Commission.

Northern and El Paso are parties to an agreement entitled "1963 Services Agreement" covering the exchange of up to 525,000 Mcf of natural gas daily, which agreement has been amended by an agreement dated October 4, 1963, providing for the exchange of an additional 100,000 Mcf daily, of which 50,000 Mcf will be on a firm basis, and 50,000 Mcf will be on a best effort basis.[1]

Northern proposes to construct and operate approximately 16.9 miles of 30-inch loop line between El Paso's Dumas Compressor Station and Northern's Sunray Compressor Station, and approximately 20.4 miles of 30-inch loop line north of the Sunray Station, in order to receive the increased firm volumes of up to 575,000 Mcf daily; no additional facilities being proposed for the best efforts gas.

---

[1] Northern pays El Paso 2¢ per Mcf on all volumes except for 50,000 Mcf delivered in Beaver County, Oklahoma, and Ochiltree County, Texas.

The cost of Northern's proposed facilities is estimated to be $3,777,000 which will be defrayed from cash on hand, reserve accruals and retained earnings.

El Paso proposes to construct and operate approximately 33.2 miles of 20-inch pipeline looping on a portion of its existing 24-inch Dumas line, a new 5400 Hp Compressor Station located on the Dumas line, two (2) new packaged field compressor stations consisting of 220 and 125 Hp units, respectively, and additional metering and communication facilities.

The cost of El Paso's proposed facilities is estimated to be $3,994,000 which will be defrayed from current working funds, supplemented as necessary by short-term bank loans.

At the present time Northern delivers gas to El Paso principally at El Paso's Plains Compressor Station located in Yoakum County, Texas, and a small volume of gas is delivered into El Paso's Plains-to-Dumas pipeline, from the Prentice Gasoline Plant also in Yoakum County, Texas. El Paso returns equal volumes of gas to Northern principally at a point of interconnection at the outlet of El Paso's Dumas Compressor Station located in Moore County, Texas. In addition thereto a total of 50,000 Mcf daily may be delivered by El Paso at a point in Beaver County, Oklahoma, and several points in Ochiltree County, Texas. El Paso also delivers for the account of Northern, certain volumes of gas to Pioneer Natural Gas Company from its Plains-to-Dumas pipeline.

Northern proposes to deliver an additional 100,000 Mcf daily on a firm and best efforts basis to El Paso at El Paso's Plains Compressor Station, and in exchange therefor El Paso proposes to deliver equal volumes to Northern at El Paso's Dumas Compressor Station.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on April 2, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(3) The proposed exchange and delivery of natural gas between Northern and El Paso, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas, construction and operation of facilities and transportation of natural gas are required

by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Northern and El Paso are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Northern's and El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Northern and El Paso in these proceedings, authorizing the exchange and delivery of natural gas, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the applications and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon Northern's and El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 6 months from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PUBLIC SERVICE COMPANY OF INDIANA, INC., PROJECT NO. 2359

ORDER ISSUING PRELIMINARY PERMIT AND DENYING PETITION TO INTERVENE

(Issued April 6, 1964)

Application was filed on April 16, 1963 by Public Service Company of Indiana, Inc. (Applicant) of Plainfield, Indiana, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Brookville Pumped Storage Project No. 2359 to be located on East Fork Whitewater River in the vicinity of Brookville, in Franklin County, Indiana, which would affect the Corps of Engineers' proposed Brookville Flood Control Reservoir by using the latter as the lower reservoir.

Applicant requests the period of any preliminary permit issued be for a period of 36 months since the Corps' flood control reservoir is still in the planning stage and the results of Applicant's investigations will be influenced by the reservoir levels and capacities established by the Corps.

The Secretary of the Army and the Chief of Engineers, in commenting on the application, recommended that any studies undertaken by Applicant under the preliminary permit should be coordinated with those of the District Engineer, U.S. Army Engineer District, Louisville, Kentucky, in order to permit evaluation of any effects on the authorized and incidental functions of the Corps' reservoir. No objection was made to issuance of a preliminary permit.

The Department of the Interior, in commenting on the application, recommended, for inclusion in any permit issued, conditions in the interest of the Department.

The Department of Health, Education, and Welfare, although invited to comment on the application, has not done so to date.

The Division of Water Resources, Department of Conservation, State of Indiana, expressed its desire to be supplied with any information relating to the effect of the project on recreation.

The Indiana Flood Control and Water Resources Commission filed a petition to intervene in this proceeding stating that while the State of Indiana has no objection to the granting of a preliminary permit for the project, it desires to notify the Federal Power Commission of the nature and extent of the State's interest in the project, being water supply storage and recreation, and to request that the State be afforded a proper opportunity for the coordination and protection of its interests in the course of the investigation and studies of Applicant.

Since a preliminary permit does not authorize construction of a project, we do not believe intervention at this time is necessary to protect any rights the State of Indiana or its agencies may have. Should an application for license be filed for the construction of Project No. 2359, the petitioner would be afforded an opportunity to intervene on that application.

The Whitewater Valley Citizens Committee has protested that a preliminary permit for Project No. 2359 should not be granted until it has been determined that the U.S. Corps of Engineers' afore-mentioned Brookville Reservoir is to become a reality. The latter project is opposed by the protestant. Since the permit will not authorize construction of the project and is unrelated to consummation of the Brookville Reservoir by the Corps, the protest does not state grounds for rejection or postponement of the permit.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Indiana.

(2) Public notice of the application has been given as required by the Act.

(3) The proposed project will utilize surplus water from a Government dam.

(4) The proposed project would consist of: an artificial upper reservoir of about 7,350 acre-feet storage capacity located on high ground east of the proposed Brookville Flood Control Reservoir of the Corps of Engineers; a penstock; a powerhouse, adjacent to the Brookville Reservoir (which will serve as the lower reservoir) having a total of about 240,000 kilowatts in reversible pump-turbine generating units.

(5) Grant of the permit would facilitate the making of the requisite plans for the proposed project described in finding (4) above and securing the other data and performing the other acts required by Section 9 of the Federal Power Act.

(6) The proposed project is of sufficient apparent merit to justify giving the Applicant a permit which would maintain its priority of application for a period of three years from the effective date of the permit.

The Commission orders:

(A) A preliminary permit is hereby issued to Public Service Company of Indiana, Inc., (hereinafter referred to as the Permitee) for a period of 36 months, effective as of January 1, 1964, for the sole purpose of maintaining priority of application for license for Project No. 2359, to be located on the East Fork Whitewater River, in the vicinity of Brookville, in Franklin County, Indiana, and affecting a Government dam, subject to the terms and conditions of the Act, which are incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is subject to the terms and conditions set forth in Form P-1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, Chicago, Illinois, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, coordinate its studies with the District Engineer, Corps of Engineers, U.S. Army Engineer District, Louisville, Kentucky, in order to permit evaluation of any effects on the authorized and incidental functions of the Brookville Reservoir.

Article 11. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Indiana Department of Conservation, Division of Fish and Game, for the purpose of planning and designing adequate conservation measures to mitigate and compensate for the loss of or damage to existing fish and wildlife resources and to develop and improve these resources where practicable.

Article 12. The Permittee shall, during the period of project planning, consult with the National Park Service and the appropriate department or agency of the State of Indiana to determine the extent of any archeological survey and salvage that may be necessary.

Article 13. The Permittee shall, during the period of project planning, cooperate with the Division of Water Resources, Department of Conservation, State of Indiana, and the Indiana Flood Control and Water Resources Commission in order that adequate consideration can be given to the water supply storage and recreation interests of the respective agencies.

Article 14. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) The afore-mentioned petition to intervene filed by the Indiana Flood Control and Water Resources Commission is hereby denied without prejudice to the right of the petitioner to file such a petition in the event an application for license is filed for Project No. 2359.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 424

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-26; WARRIOR RIVER NATURAL GAS DISTRICT, DOCKET NO. CP63-70; GULF OIL CORPORATION, DOCKET NO. CI63-123; AND HUMBLE OIL & REFINING COMPANY, DOCKET NO. CI63-129

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 6, 1964)*

Syllabus

1. Record is inadequate to establish with reasonable certainty that Warrior River distribution project can be financed or that markets necessary for economic feasibility are available. P. 792.
2. Southern's need for additional main line capacity is fully supported by the record. P. 793.
3. Commission *rejects* allegations of coal interest that there is ample capacity on Southern's system to meet estimated firm market requirements through 1965-1966 season, or that approval of increase would place Commission in position of allowing expansion in capacity to enable continuation of interruptible sales without interruption. P. 793.
4. Evidence here is inadequate to predicate any definitive ruling on appropriateness of 90 percent rachet in determination of billing demand in Southern's CD and CDL rate schedules. P. 794.
5. There is no reason at this stage to make any findings as to propriety of manner in which Southern presented its market evidence—deficiencies, if any, are not such as would warrant remand. P. 794.
6. Contention that Southeast Georgia extension be denied on ground of excess capacity or that construction therof be made conditional upon substitution of smaller diameter pipe, is *rejected*. P. 795.
7. Since proposed industrial sale to Brunswick accounts for more than 15 percent of branch line's revenues, written agreement therefor should be secured by distributor—lacking this, affected customers should agree to make contributions in accordance with *Northern Natural* formula. P. 796.
8. It is not Commission's function to bar pipeline from extending natural gas service to unserved area solely on ground that expected third year revenues may not quite measure up to return allowed on existing system operations—extension of branch lines is to be encouraged provided no undue burden is placed on existing customers. P. 796.
9. It is in the public interest to grant limited term certificates to producer-applicants, as modified by offer of settlement and herein. Pp. 797, 798.
10. Commission *issues* certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act; *denies* application for order under Section 7(a) of the Act.

William S. Tarver and *Hugh J. Morgan, Jr.* for Southern Natural Gas Company.

M. Campor O'Neal for the Warrior River Natural Gas District, *City of Vidalia* Georgia and South Georgia Natural Gas Company.

John E. Thomason and *Arthur F. Whitt* for the Gulf Oil Corporation.

William H. Holloway, Jesse H. Foster, Jr., Bernard A. Foster, Jr. and *Sherman S. Poland* for the Humble Oil & Refining Company.

---

*Initial decision appears on p. 801. Memorandum Opinion No. 424-A, issued June 4, 1964, denying rehearing, etc., 31 FPC 1387.

Albert G. Norman, Jr. and *Allen Post* for the Atlanta Gas Light Company.

John T. Ketcham, Stanley M. Morley and *Louis Flax* for the Carolina Pipeline Company.

Morton L. Simons, David K. Kadane and *Edward M. Barrett* for the Long Island Lighting Company.

Peyton Graham Bowman, III, Harry A. Poth, Jr. and *Richard Merriman* for the Mississippi Valley Gas Company and South Carolina Natural Gas Company.

Kent A. Brown and *Barbara M. Suchow* for the New York Public Service Commission.

H. H. Hillyer, Jr. and *Andrew McCollam, Jr.* for the South Atlantic Gas Company.

Thomas H. Adams, Jerome J. McGrath, John A. McGrath and *Thomas C. Williams* for the Southern Propane Company.

Robert E. Lee Hall, Jerome J. McGrath and *John A. McGrath* for the National Coal Association.

Thomas C. Williams, Jerome J. McGrath and *John A. McGrath* for Fuels Research Council, Inc.

Welly K. Hopkins, Jerome J. McGrath and *John A. McGrath* for the United Mine Workers of America.

Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

Ross, *Commissioner:*

This consolidated proceeding is before the Commission on exceptions to an initial decision issued by the presiding examiner on October 24, 1963. The proceeding primarily involves an application by Southern Natural Gas Company (Southern) in Docket No. CP63-26 for a certificate of public convenience and necessity under Section 7 of the Natural Gas Act for a major expansion of its pipeline facilities to be effected at a cost of $23,213,853. Included in this total is the sum of $8,076,991 for the construction of a new branch line to extend from a point near its Ocmulgee compressor station on Southern's main South Line in the vicinity of the city of Macon in central Georgia, to Brunswick on the southeast coast, a distance of some 175 miles. This line would bring natural gas to 36 communities in an area not presently served by any pipeline, perhaps the largest area in the southeastern states which remains without natural gas service. The only new resale customer proposed to be supplied directly by Southern is the city of Vidalia, Georgia; as to the others the gas would be sold to Atlanta Gas Light Company (Atlanta) at eleven delivery points to be established on the extension and Atlanta will construct lateral lines and operate natural-gas systems within each of the communities. To this extent the southeast Georgia project is a joint undertaking by Southern and Atlanta. The remainder of Southern's proposal involves the permanent certification of additional main line compressor facilities to bring its third-year daily design delivery capacity up from 1,420,000 Mcf to 1,515,000 Mcf, an increase of 95,000 Mcf per day, the looping and reinforcement of certain existing supply laterals, installation of minor measuring facilities and line taps, and a substantial addition to its South Louisiana gas supply facilities. There was also consolidated an application by the towns of Parrish and Oakman, Alabama, joining together as the Warrior River Natural Gas District, for an order under Section 7(a) directing Southern to initiate a new service. Finally, the proceeding includes applications for limited certificates by Gulf Oil Corporation and Humble Oil & Refining Company to sell a specific volume of 1.25 trillion cubic feet of gas to be produced from offshore West Delta Block 27 Field, Plaquemines Parish, Louisiana, to

Southern over an approximate 22-year period. As originally proposed the sales would have commenced at a total initial price of 21.25 cents per Mcf, thereafter to escalate at the rate of 2 cents each four years during the contract period.

The presiding examiner would grant a certificate to Southern substantially in accordance with the terms requested in the application and without condition. In sum, he found that the operations and extensions of facilities as proposed meet fully the standard set by Section 7, including the demonstration of adequate gas supply and markets, and that the facilities are reasonable and feasible from the standpoints of cost, design, financing and pipeline economics. He denied, *inter alia*, petitions by Carolina Pipeline Company, the Coal Interests,[1] and Southern Propane Company for rejection of the application for authorization to construct the southeast Georgia extension as well as a further request by the latter two interveners that construction of the line, if certificated, be conditioned on obtaining firm contracts from Atlanta's proposed large volume industrial interruptible customers. He also refused to adopt conditions suggested by staff counsel regarding the type of market evidence to be required of Southern in future certificate cases and calling for an evaluation of the 90 percent rachet provision in the definition of billing demand in Southern's tariff. The application by Warrior River in Docket No. CP63-70 was denied in the initial decision for the reason that the project there proposed had not been shown to be capable of financing or economically feasible. On the producer applications the examiner would grant the request by applicants that the certificates provide for their expiration and abandonment of the sale on delivery of the total volume specified in the contracts. No exceptions have been taken to the conclusion that certificates as so limited should be issued. The examiner's allowance of one cent per Mcf over the previously determined in-line prices in South Louisiana of 20 cents per Mcf for production subject to the state severance tax and 18.5 cents per Mcf for gas produced within the Federal domain because of claimed "premium features" included in the contracts was excepted to by the Public Service Commission of the State of New York, Long Island Lighting Company, and our staff.

Exceptions in addition to those indicated have been filed by the other above-named interveners, Carolina Pipeline, Coal Interests, and Southern Propane, and jointly by the producers. Replies to the exceptions, as provided in Section 1.31(a) of the Rules of Practice and Procedure, have been submitted by Southern, Atlanta, and jointly by the producers. As subsequently brought out, the portion of the initial decision relating to the initial price at which certificates should be issued to the producers and the exceptions addressed thereto have been rendered moot through the filing of a settlement offer by Gulf and Humble reducing the initial price proposed to be charged Southern for this production. No opposition to the settlement has developed and the proposal is accepted herein.

On February 4, 1964, after the submittal of exceptions, a petition was filed by Southern Propane to reopen the proceedings for the receipt into evidence of certain letters, copies of which were attached, allegedly having material bearing upon the determination of the economic feasibility of the southeast Georgia extension, specifically the amount of gas which had been estimated would be sold by Atlanta to industrial customers. Answers to the petition were filed by staff counsel, Carolina Pipeline, Southern and Atlanta. In addition Southern filed a reply contending that the "answer" of Carolina Pipeline should be rejected as an impermissible filing under Sections 1.9(a) and 1.33(a)(2) of the Rules of Practice and Procedure. These matters are discussed further at *infra*, p. 795 of this Opinion.

---

[1] Fuels Research Council, Inc., National Coal Association, Inc., and United Mine Workers of America.

A complete description of the proposed projects, the services intended to be provided, estimated costs and other pertinent data are contained in the initial decision and need not be repeated here, except to the extent necessary to determine the exceptions.

No exceptions have been filed to the denial without prejudice of the application by Warrior River in Docket No. CP63-70. We agree with the examiner that the evidence presented in this record is inadequate to establish with reasonable certainty that the distribution project can be financed or that the markets necessary for economic feasibility are available. The deficiencies are clearly highlighted in the initial decision. The disposition of the application made therein will be adopted as the decision of the Commission.

The primary issues brought out in the exceptions, insofar as they relate to the application by Southern, are as follows:

1. Does Southern need the additional main line capacity in order to meet its firm gas requirements?

2. Should the Commission, in the certificate order to be issued in this case, provide for a future proceeding to evaluate the continued propriety of the 90 percent rachet provision in the definition of billing demand in Southern's CD and CDL rate schedules?

3. Should the Commission, as a condition to the order issued herein, require that Southern, in future certificate cases, submit market evidence in a form different from that presented in this case?

4. Has the construction and operation of the southeast Georgia extension, as proposed by Southern, been shown to be economically feasible and otherwise required by the public convenience and necessity?

The Coal Interests alone raise the first issue, staff raises the second and third, and the last is raised by Carolina Pipeline, the Coal Interests, and Southern Propane.

Upon our review of the record we find that we are generally in agreement with the determinations made by the examiner in the matters of adequacy of gas supply, financing, and reasonableness of the proposed facilities in cost and design. We believe, however, that certain modifications of the decision are necessary in regard to markets and to the economic feasibility of the southeast Georgia extension as effected by the lack of firm industrial contracts. The specific details of the evidence and the validity of the findings made on these points are discussed, to the extent necessary, in the ensuing coverage of the issues on which the exceptions have been taken.

The exceptions submitted by Carolina Pipeline include a request for oral argument before the Commission. We conclude that no useful purpose would be served by such argument and that the request should be denied.

Increase in Main Line Capacity

The Coal Interests do not contest the examiner's finding that the record shows an estimated increase of 109,024 Mcf in Southern's firm peak-day market requirements for the 1965-1966 heating season over 1962-1963 firm requirements of 1,406,918 Mcf,[2] which increase would utilize the entire 95,000 Mcf per day proposed addition[3] to the system design delivery capacity. They allege, however, that Southern can meet all the indicated increase in firm requirements without any increase in main line capacity. This contention is based on the fact that on December 12, 13, and 14, 1962, when its most recent peak-days of record occurred, Southern sold 94,000 Mcf, 97,000 Mcf, and 133,000 Mcf, respectively, to direct industrial interruptible customers. These sales, they argue, could have been curtailed if needed to meet firm requirements and can be terminated in the future and the capacity so utilized diverted to supply the expected increase in firm resale requirements.

---

[2] With a present system-wide design daily delivery capacity of 1,420,000 Mcf, Southern currently has only 13,082 Mcf of excess capacity over existing firm requirements.

[3] Including 29,933 Mcf as the estimated firm third-year peak-day contract demand requirement on the southeast Georgia extension.

The examiner rejected the argument that the sales to interruptible customers on the three days noted demonstrated that Southern had ample unobligated daily capacity which could be used to make additional firm sales. As he noted, the evidence shows that 99 percent of Southern's system-wide delivery capacity is contractually obligated to meet its firm requirements and that, by its tariff, it must be prepared to supply the contract demands and maximum delivery obligations for which its customers have contracted without curtailment. The operation of the 90 percent rachet in Southern's CD and CDL schedules, the examiner found, caused Southern's customers to reduce their takes on these days, to the extent they could do so, to 90 percent of their contract demand in order to minimize payments under the billing demand provision.[4] As a result of this restriction in takes by the contract demand customers, and with some withdrawal from line-pack on December 14, Southern had the gas available for industrial sales. However, while Southern had capacity on its system in excess of *actual* firm peak-day sales, and used the excess to provide direct industrial interruptible service, the evidence effectively demonstrates that this excess was nothing Southern was entitled to rely upon, even assuming that the 90 percent rachet provision of its tariff were to continue in force.

In our opinion the examiner's determination with regard to Southern's need for the additional main line capacity is fully supported by the record and should be adopted. In past Southern expansions the Commission has approved programs providing for first-year capacity well in excess of existing contract requirements and, most recently,[5] substantially in excess of its estimated third-year daily delivery obligations. In each instance the firm contract demand has built up within a short time to utilize almost the entire increased design capacity. A comparison of the average estimated increase of 36,341 Mcf in firm peak-day market requirements for 1963–1964, 1964–1965, and 1965–1966 with actual experience of Southern in the preceding 10-year period, where the firm contract daily delivery obligation increased at an average rate of 71,159 Mcf in each season, indicates little basis for concluding that any overbuilding of capacity will result from approval of the proposed addition to main line facilities. Contrary to the allegations of the Coal Interests, we are unable to conclude that there is ample capacity on Southern's system to meet its estimated firm market requirements through the 1965–1966 season (to say nothing of later periods) or that approval of the increase would place the Commission in the position of allowing an expansion in pipeline capacity to enable the continuation of interruptible sales without interruption.

---

[4] The manner of operation of this provision is spelled out in greater detail in the initial decision.

[5] *South Georgia Natural Gas Company, et al.,* Docket No. G–9892, *et al.,* Opinion No. 325, 22 FPC 211 (1959). The Commission there stated:

> Southern's system in its design and operations differs from many other pipeline systems; over the years as Southern's pipeline has grown, the excess capacity on its system has varied from a substantial amount to very little, due perhaps to the disparate character of its system and operations, among other facts. The amount of excess capacity resulting from its present proposals [57,000 Mcf] appears to be reasonably within the range it has experienced in the past. This amount may reasonably be expected to decline as the company's operations continue. [22 FPC at p. 215.]

Evaluation of 90 Percent Rachet

Staff has requested that, in issuing a certificate herein to Southern, we attach a condition that the appropriateness of the 90 percent rachet in the determination of billing demand be made an issue in Southern's next proceeding or in a separate proceeding. Staff contends that only in this way will it be possible to resolve the recurrent claim that there is built in excess capacity on Southern's system, including a determination whether its customers may, as suggested, be overestimating their actual requirements by 10 percent in order to keep from taking more than 90 percent of their contract demand on a limitation day. The examiner denied the requested condition on the ground that the validity of the tariff provision was not properly in issue in this certificate proceeding, and that adequate means are available to all parties for the initiation of such a proceeding.

The Commission's action in prescribing rates for Southern which continued the 90 percent rachet in effect without change was raised by Atlanta in Southern's last rate proceeding. However, because the issue was not presented until the oral argument before the Commission, rather than during the hearings, we concluded it could not be resolved there.[6] The evidence in this proceeding similarly is inadequate to predicate any definitive ruling on this provision. Nevertheless, sufficient question has been raised regarding the provision to warrant further inquiry. At the present time, our staff is conducting discussions with Southern looking toward elimination of the 90 percent rachet. In view of this fact, we consider it inappropriate to institute a new formal proceeding to explore this issue at this time.

Market Evidence

Staff also excepted to the examiner's refusal to require that Southern improve its market evidence in future certificate proceedings. We do not believe that such an admonition is appropriate. If Southern in the future files evidence in a manner inconsistent with our rules it can and should be rejected unless good cause is then shown for the deviation.[7] We see no reason why we should make any finding at this stage of the proceedings as to the propriety of the manner in which Southern presented its market evidence since the deficiencies, if any, are not such as would warrant remanding this proceeding for further hearings at this time.

Southeast Georgia Extension

The region through which the proposed extension will run is the last large area in Georgia without natural gas service. Only 6 of 61 cities in the state with populations in excess of 5,000 do not now have service. The proposed extension will make natural gas available to 5 of these, as well as to 31 smaller communities. As noted only the city of Vidalia will be supplied directly by Southern; distribution to and in the other cities and towns will be by Atlanta, which has obtained the necessary franchises and a certificate from the Georgia Public Service Commission to permit construction and operation of the intrastate facilities.

The two primary issues regarding the extension are (1) the capacity of the proposed line, and (2) whether the submission of firm contracts for any or all of the industrial sales proposed by Atlanta should be required as a condition to

---

[6] *Southern Natural Gas Company*, Docket Nos. G-20509 and RP60-15, Opinion No. 379-A, 29 FPC 779, 780-781 (1963).

[7] We do not mean to suggest that a requirement of our rules for supplying certain types of information can be ignored in the hope or expectation that other evidence presented at the hearing may lessen the need for the omitted material. To the extent that the examiner may have reached a different conclusion, we disagree.

Southern's certificate. In addition to opposing the extension *per se*, Carolina Pipeline, the Coal Interests, and Southern Propane contend that a line of lesser diameter than the approximately 174 miles of 12¾ inch O.D. pipeline which Southern proposes to build would be adequate to supply the needs of the area for the near future and that the proposed line is not economically feasible whereas a smaller capacity line might be. Based on the evidence presented in the hearing the examiner found that adoption of the recommendation for the smaller line would result in a curtailment of industrial sales by Atlanta through approximately 20 to 30 percent of the year. Atlanta's project, as presented, depends heavily for its own economic feasibility on the contemplated interruptible industrial sales, with 7,017,579 Mcf out of a third-year annual requirement of 8,809,319 Mcf being earmarked for such sales. In turn, the economic feasibility of the southeast Georgia extension hangs on the sales by Southern to Atlanta.[8] Thus, if Atlanta is restricted in its ability to supply the full estimated industrial needs of its customers, the feasibility of both projects will be seriously impaired. The examiner, with staff's concurrence, concluded that the line should be authorized as proposed in order to carry the full 55,399 Mcf third-year peak-day load.

Exceptions also were based on the fact that the maximum 82,230 Mcf per day through-put of the branch line may not be used for as much as 10 or 11 years, indicating a possible initial overbuilding of capacity. As the examiner finds, however, the smaller alternative line proposed by Carolina Pipeline would result in a saving in construction costs of only $1,369,932 as against an additional amount of at least $4,468,170 which Southern would be required to expend beginning in about the third year or shortly thereafter to bring the capacity up to the proposed line and serve the probable increased requirements in southeastern Georgia through the forthcoming years.

We have carefully and completely considered the arguments in opposition to certification of the southeast Georgia extension as proposed in the application and conclude that such contentions should be overruled for the reasons as herein stated and as more fully set out by the examiner. The record does not convince us that the extension should be denied on the ground of excess capacity or that the construction thereof should be made conditional upon the substitution of smaller diameter pipe. The exceptions addressed to these elements of the decision will be denied.

Although 80 percent of Atlanta's estimated third-year requirement consists of interruptible sales, it has no firm commitments from such customers. The Coal Interests and Southern Propane note specially that one intended customer, Brunswick Pulp and Paper Company, would account for over one-half of Atlanta's proposed industrial sales and another, The Semet-Solvay Division of Allied Chemical Corporation, for one-sixth of the interruptible requirement. They contend that firm contracts should be required for the industrial sales, at least those to Brunswick and Allied, and have excepted to the examiner's refusal to so order.

It was on this state of the record that the case was before us for decision. As earlier brought out, Southern Propane then sought to reopen the proceeding, pursuant to Section 1.33 (a) and (c) of the Rules of Practice and Procedure, in order to introduce into evidence letters from Brunswick and Allied bearing dates of January 29 and January 22, 1964, respectively. These letters, which are by their terms in apparent reply to certain unidentified communications addressed to each company by the Treasurer of Southern Propane,[9] allegedly prove that neither of these companies intends to purchase gas from Atlanta. Based on the statements contained in these letters, and because of the alleged dependence on the sales to Brunswick and Allied to show the line's economic feasibility, Southern Propane contends that the southeast Georgia extension cannot be found to be economically feasible.

---

[8] Out of total third-year revenues of $3,154,060, Atlanta is estimated to pay $3,074,430.

[9] The original interrogatories sent by Southern Propane were not attached.

Contrary to the averment of Southern Propane, it is our opinion that the letters do not "indicate clearly" that the sales will not be made. The letter from Brunswick is particularly vague and indefinite. But we do not need to consider the answers filed by Southern and Atlanta to these claims or otherwise attempt to resolve the dispute by further hearing since, for the reasons set forth below, we believe that a written agreement should be secured from Brunswick (but not Allied) that it will take gas from Atlanta and that, lacking this, the two customers who are to receive service from the new lateral should agree to make contributions in accordance with the *Northern Natural* formula.

We do not believe that it is the function of this Commission to bar a pipeline under our jurisdiction from extending natural gas service, and the benefits to be derived therefrom, to an area not presently being served solely on the ground that the revenues expected to be produced by the third year of operation may not quite measure up to the return the Commission has allowed on the existing system operations. Rather, the extension of branch lines for the purpose of filling in existing service areas is to be encouraged wherever and whenever possible, provided that no undue burden is placed on the existing customers. Construction of new facilities of the type herein applied for may, for a time, somewhat reduce the overall system-wide rate of return. But if there is reasonable assurance that the new line within a normal buildup period will not continue to operate in a deficit condition, the fact that the authorization by initially reducing overall company return may tend to defer or diminish a possible reduction in rates by the company to its existing customers does not, standing alone, constitute grounds for denial of the certificate.[10]

The examiner recognized from various past Commission decisions, including the recent *Northern Natural* case,[11] that firm industrial contracts normally have been required when needed by the pipeline applicant to obtain financing for its project and, also, where the specific large volume industrial sales contemplated "appear to have a strong bearing on the economic feasibility of the project and where there is reason to question whether in fact the sales will be made."[12] Interveners point out that the approval of the branch lines in the above-cited case was conditioned on the submission of contracts for those industrial sales individually accounting for more than 15 percent of the projected branch line's revenues. In this case the sale to Brunswick would supply 28 percent of Southern's gross revenue from the branch line while that to Allied accounts for less than 10 percent of branch line revenues. We think that our decision in *Northern* should be followed here, and that the examiner's departure therefrom based upon the general testimony as to the likelihood that the industrials would in fact take gas, has only resulted in the supplemental pleadings referred to above.

The examiner found that a substantial portion of the sales depend on Brunswick and Allied and, on this basis, concluded that such sales are necessary to the economic feasibility of Atlanta's project. It is not clear from the subsequent discussion whether he was saying that the sale to Allied, as distinct from the combined sales, is necessary to the economic feasibility of the project. To the extent he was we disagree. As brought out above the sale to Allied will supply less than 10 percent of the projected branch line revenues. In our opinion the test used in Opinion No. 404 in determining those industrial sales having such a strong bearing on the branch line's economic feasibility as to require a contract as a condition to certification is a reasonable and practical accommodation of the problem and is the proper test to be applied in this proceeding. The only sale in this category is the sale to Brunswick. Accordingly, we shall condition the certificate issued to Southern for the construction of the extension upon the submission of a contract with Brunswick Pulp and Paper Company for the purchase by it of the approximate third-year volume claimed in the record.[13] In the event this contract cannot be secured, we shall require in the alternative that the customers of Southern who are to purchase gas from the extension, namely Atlanta and Vidalia, make contributions in aid of construction in accordance with the formula set out in *Northern Natural Gas Company*, Opinion No. 324, 22 FPC 164, 172–173, 179 (D) (iii). Computations utilizing this formula reveal that contributions will be required of Atlanta in the amount of $959,716 and from Vidalia in the amount of $46,023, a total of $1,005,739. These computations are shown in the appendix to this Opinion. Since the figures are based on third-year estimated sales, they are, of course, subject to change as actual service commences.[14] In order to protect Atlanta and Vidalia from an unwarranted contribution in the event actual third-year sales equal or exceed those estimated, the attached order will provide for a refund of contributions should this eventuality occur.

---

[10] *Minneapolis Gas Company* v. *F.P.C.*, 278 F. 2d 870 (CADC), cert. denied, 364 U.S. 891.

[11] *Northern Natural Gas Company, et al.*, Docket No. CP62-85, *et al.*, Opinion No. 404, 30 FPC 859 at p. 864, issued September 30, 1963.

[12] *Ibid.*

Producer Applications

On January 28, 1964, again subsequent to the filing of exceptions and while the proceeding was under our consideration, an offer of settlement was filed jointly by Gulf and Humble in Docket Nos. CI63–123 and CI63–129. Applicants propose (1) a total initial rate of 20.625 cents per Mcf at 15.625 psia; (2) refund of the difference between 20.625 cents and 19.0 cents per Mcf, plus interest at 7 percent per year, collected for gas subsequently determined to have been produced from an area not within the taxing authority of the State of Louisiana; and (3) a 5-year moratorium on price changes commencing with the date of initial deliveries, except that rate change filings may be made within the period for (a) one-half of any additional taxes levied by Lousiana or the United States; (b) upward or downward adjustment prospectively to the applicable area rate ultimately determined in the South Louisiana area rate proceeding, Docket No. AR61–2, by an order no longer subject to judicial review; and (c) to the extent that the maximum statutory suspension period under Section 4(e) of the Act may be extended beyond five months or the Commission may be authorized to lengthen such suspension period. By letters filed January 31 and February 3, 1964, the New York Public Service Commission and Long Island Lighting Company, the only interveners active in the producers' dockets, stated that they do not oppose certification of the sale on the terms proposed in the settlement agreement.

---

[13] Atlanta has indicated that it is not customary in Georgia to file rate schedules until a gas supply has been obtained and the company is ready to begin service and that, for this reason, it cannot contract to sell gas to proposed interruptible customers at any given price. It contends that a contract with the necessary contingency clauses which this situation entails would have little utility. However, as brought out in the record, the proposed rate levels were presented to the Georgia Commission and were utilized by that agency in issuing a certificate. In our opinion, a signed agreement by Brunswick that it will enter into a contract to purchase the approximate third-year annual volume indicated by Atlanta at the appropriate rate upon Atlanta's readiness to begin service will be adequate for the purpose herein.

[14] In its answer to Southern Propane's petition, Atlanta states that the estimated sales to some industrial customers have already undergone substantial upward revision.

The provision for adjustments in price based on the outcome of the proceeding in Docket No. AR61-2 would limit such adjustments, if any, to preclude their effectiveness prior to the conclusion of judicial review of our final order. We cannot now commit the Commission to conditionally staying the effectiveness of its final order therein. This matter will be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The settlement proposal, as so modified, conforms to the settlement pattern heretofore approved for many of the dockets severed from the proceeding in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, and in which certificates have been issued. Acceptance of the settlement proposed herein likewise is in the public interest. Accordingly, we shall grant the request for the issuance of permanent certificates in accordance with the application as modified by the offer of settlement, as further modified in the preceding paragraph. The exceptions addressed to these applications are now moot and need not be considered.

The Commission further finds:

(1) Southern is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) Southern's proposed facilities hereinabove referred to, as more fully described in its application, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Gulf and Humble, independent producers of natural gas, are now, or upon initiation of the proposed sales to Southern will be, "natural-gas companies" within the meaning of the Natural Gas Act and are, or will be, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(4) The sales of natural gas proposed by Gulf and Humble hereinabove referred to, as more fully described in their applications, are subject to the jurisdiction of the Commission and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of our order herein and the conditions attached to the certificates herein issued, Southern, Gulf, and Humble are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed by Southern, and the sales proposed by Gulf and Humble, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity upon the conditions hereinafter set forth, and certificates should be issued to each of them as ordered below.

(7) Issuance of a certificate to Southern, under the conditions hereinafter set forth, will not place an undue burden on it or its existing customers, nor impair its ability to render adequate service to existing customers.

(8) The application for an order under Section 7(a) filed by Warrior River Natural Gas District in Docket No. CP63-70 should be denied.

(9) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(10) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) A permanent certificate is hereby issued to Southern, upon the condition hereinafter set forth, for the construction and operation of the facilities proposed, as more fully described above and in its application.

(B) The certificate issued to Southern, to the extent it relates to the southeast Georgia extension, is conditioned upon the submission of an acceptable contract or precedent agreement with Brunswick Pulp and Paper Company providing for the purchase of an approximate third-year volume of 3,650,000 Mcf. In the alternative Southern shall receive, as contributions in aid of construction, $959,716 from Atlanta and $46,023 from the city of Vidalia.

(C) Three years and 60 days from the date of first rendering service from the southeast Georgia extension, Southern shall file with the Commission a statement showing the actual volumes delivered in the third year and associated revenues compared with the estimates presented in this proceeding. If actual sales equal or exceed those estimated, Southern shall also submit for the Commission's approval a plan for refunding any contributions made in aid of construction to conform to actual experience.

(D) Permanent certificates of public convenience and necessity are hereby issued to Gulf and Humble, upon the conditions hereinafter set forth, for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications.

(E) The certificates issued in paragraph (D) above are granted upon the condition that Gulf and Humble comply fully with the terms of the settlement proposal as herein modified, which settlement, as so modified, is expressly approved.

(F) The certificates issued in paragraph (D) above are hereby conditioned to limit the sales to Southern of natural gas by each applicant to such applicant's proportionate part of 1,250,000,000 Mcf of natural gas at 15.025 psia, based upon each applicant's proportionate part of the total gas reserves in the West Delta Block 27 Field, offshore Plaquemines parish, Louisiana, as provided in each producer applicant's gas sales agreement with Southern; and each producer applicant's respective certificate shall terminate and further sales to Southern by such applicant shall cease when such applicant shall have sold to Southern the volumes herein authorized to be sold.

(G) The grant of certificates herein, and approval of the settlement proposal in Docket Nos. CI63-123 and CI63-129, shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending by or against the respective applicants, particularly any proceeding under Section 5 of the Natural Gas Act.

(H) Each of the certificates herein issued shall be accepted in writing and under oath by the respective applicants within 30 days of the date of issuance of this order.

(I) The facilities authorized herein shall be constructed and placed in operation within one year from the date of issuance of this order.

(J) The certificates herein issued are not transferable and shall be effective only so long as the respective applicants continue the acts and operations hereby authorized in accordance with the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(K) The general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), (d), and (e) of Section 157.20 of the Commission's Regulations shall attach to the certificate issued to Southern and to the exercise of the rights granted thereunder.

(L) The application of Warrior River Natural Gas District in Docket No. CP63-70 is denied, without prejudice.

(M) The motion for opportunity to present oral argument before the Commission is denied.

(N) Except as herein granted, the exceptions to the examiner's decision are denied.

(O) The petition by Southern Propane Company to reopen the proceeding, filed February 4, 1964, is denied.

(P) The examiner's decision, to the extent not inconsistent, is hereby adopted as part of this Opinion and Order.

APPENDIX

CONTRIBUTION REQUIRED FOR DOCKET No. CP63-26

(EXCLUDING SALE TO BRUNSWICK PULP AND PAPER COMPANY)

Cost of Branch Line	$7, 801, 470
Cost of Measuring Stations	275, 521
Total	8, 076, 991
Gross Revenues	2, 290, 105
Less Cost of Gas	−1, 112, 300
Net Revenues	1, 177, 805
Cost of Service	2, 466, 788
Less Cost of Gas	−1, 112, 300
Cost of Service on Branch Line	1, 354, 488
Less Cost of Service on Measuring Stations [1]	−55, 104
Total	1, 299, 384

Ratio that net revenues fall short of cost of service on branch line, less cost of service on measuring stations=$121,579÷$1,299,384=9.36%.

9.36% of Cost of Branch Line	$730, 218
100% of Cost of Measuring Stations	275, 521
Total Contribution Required	1, 005, 739

---

[1] Computed at 20% of cost of measuring stations.

CONTRIBUTION BY CUSTOMER

	On branch line			On measuring station	Total
	Total revenues	Percent of total	Contribution		
Atlanta Gas Light Co	$2,210,475	96.52	$704,806	$254,910	$959,716
City of Vidalia	79,630	3.48	25,412	20,611	46,023
	2,290,105	100.0	730,218	275,521	1,005,739

INITIAL DECISION

OF THE PRESIDING EXAMINER, ON APPLICATIONS UNDER SECTIONS 7(a) AND 7(c) OF THE NATURAL GAS ACT

(Issued October 24, 1963)

TABLE OF CONTENTS

I. Issues 805
II. Gas Supply 806
III. Markets
  A. Southern's System as Fully Expanded 807
    1. Construction Now For Capacity Needed in Three Years 810
    2. Southern's FPC Tariff 812
  B. Two-Year Peaking Gas Service 814
  C. Warrior River's Section 7(a) Application 815
  D. Southeastern Georgia Extension Separately (Distributors, Markets and Related Matters) 819
    1. Atlanta Gas Light Company 820
      (a) Firm Industrial Contracts not Required 825
      (b) Economic Feasibility 827
    2. City of Vidalia, Georgia 828
IV. Facilities and Their Costs
  A. Present System 831
  B. Southern's System as Fully Expanded 831
  C. Southeastern Georgia Extension Separately 834
V. Financing 839
VI. Economic Feasibility
  A. In General 840
  B. Southeastern Georgia Extension Separately 844
VII. Gulf and Humble's Joint Sale and Project 849
  A. The West Delta Block 27 Field 850
  B. The Contracts 851
  C. Producers' Contentions 852
  D. Limited Certificate 854
  E. In-Line Price 855
  F. Premium Features 858
  G. Tax Reimbursement 869
VIII. Order 872

TAYLOR, *Presiding Examiner:* This is a consolidated proceeding under Section 7 of the Natural Gas Act, 52 Stat. 824 (1938), 15 U.S.C. Sec. 717(f). It involves related applications for certificates of public convenience and necessity by Southern Natural Gas Company (Southern), Gulf Oil Corporation (Gulf), and Humble Oil & Refining Company (Humble). Southern seeks permission under Section 7(c) of the Act to enlarge and extend its system substantially. Gulf and Humble seek authority under the same section to sell natural gas to Southern. Also involved is an application by the Warrior River Natural Gas District (Warrior River) for an order under Section 7(a) of the Act directing Southern to establish physical connection with the facilities of, and sell natural gas to, Warrior River.[1]

Southern is a "natural-gas company" as that phrase is used in Section 2 of the Act (52 Stat. 822 (1938) 15 U.S.C. Sec. 717(b)). It owns and operates an interstate pipeline system which extends from a point in Texas near the Louisiana border to Aiken, South Carolina. Included in the system are approximately 5,183 miles of pipe and 25 compressor stations. It now proposes to install about 258 miles of additional pipe, ten compressors in the existing stations, and certain other facilities having an estimated cost, as adjusted herein, of $23,213,853. Part of the project consists of constructing a new pipeline from the vicinity of Macon to Brunswick, Georgia, a distance of about 174 miles (hereinafter referred to as the "southeastern Georgia extension"). It would serve 36 communities in an area of Georgia presently unserved with natural gas and would require the construction of about 181 miles of pipeline and other facilities, including some seven miles of loop, at an estimated cost of $8,076,991. This section of the project evoked substantial controversy. The remaining project consists of (a) compressor and other facilities designed to increase the third-year design daily delivery capacity from 1,420,000 Mcf to 1,515,000 Mcf per day (an increase of 95,000 Mcf per day),[2] (b) looping facilities along six existing branch lines, (c) additions to its southern Louisiana gas supply facilities, and (d) measuring facilities and line taps to serve Section 7(a) applicants. Southern also requests authority (1) to inaugurate a two-year peaking gas service, and (2) to purchase, and operate on a permanent basis, an experimental compressor unit which was installed previously with Commission authority, all as more fully set forth hereinbelow.

The only new resale customer proposed to be supplied by Southern is the City of Vidalia, Georgia. Southern does, however, request authority to sell and deliver gas to Atlanta Gas Light Company at eleven new delivery points to be established on the proposed southeastern Georgia extension. In addition, it has no objection to the Commission's granting Warrior River's application, and certain other Section 7(a) applications not consolidated herein, provided the Commission determines that the proposed distribution projects are economically feasible. Appendix A, attached hereto and incorporated herein by reference, is a map of Southern's system. It indicates the facilities which Southern, and others, propose to construct. (It is a copy of Item A by reference, as revised to show all 36 communities to which service is proposed in southeastern Georgia.)

Southern does not request authority to sell and deliver specific quantities of gas to specified customers. Instead it intends to make available to presently authorized customers and to Vidalia, through the 1965-1966 winter, their full peak-day firm natural gas requirements as are evidenced by the contract demands or maximum delivery obligations fixed by their respective service agreements. This is consistent with the manner in which Southern has operated its system in the past under its FPC Tariff and Commission orders. *Southern Natural Gas Co.*, Docket No. G-1907, 12 FPC 516, 532, affirmed by the Commission, 12 FPC 550; *South Georgia Natural Gas Co.*, Docket No. G-14587, 22 FPC, 211, 215; and *City of Monticello, Georgia*, Docket No. CP63-156, order issued May 14, 1963, 29 FPC 912.

---

[1] Southern's application was filed in Docket No. CP63-26 on July 26, 1962, and supplemented on September 4, 1962, November 13, 1962, and April 19, 1963. Gulf's application was filed in Docket No. CI63-123 on July 26, 1962, and supplemented on January 8, 1963. Humble's was filed in Docket No. CI63-129 on July 27, 1962, and supplemented on January 8, 1963. Humble's was filed in Docket No. CI63-129 on July 27, 1962, and supplemented on January 17, 1963. Warrior River's application was filed in Docket No. CP63-70 on September 20, 1962.

[2] Unless otherwise stated, all volumes are shown at a pressure base of 14.73 psia.

Gulf and Humble (hereinafter sometimes referred to jointly as the Producers) are independent producers of natural gas and are natural-gas companies within the meaning of Section 2 of the Act. They request authority under Section 7(c) of the Act to sell to Southern in interstate commerce for resale, under separate contracts, their respective proportionate parts of a specific volume of 1.25 trillion cubic feet of natural gas at 15.025 psia. The gas is to be produced from leases in which they own interests in the West Delta Block 27 Field, Plaquemines Parish, Louisiana. The Producers request that the certificate issued to each of them shall authorize the termination of such sale when the aforesaid volume has been sold to Southern. The proposed initial price under the Gulf contract is 21.25 cents per Mcf at 15.025 psia, including tax reimbursement of 1.75 cents per Mcf. The proposed initial price under the Humble contract is also 21.25 cents per Mcf at 15.025 psia, but no provision is made for reimbursement of existing taxes.

Warrior River is a municipality as defined in Section 2 of the Act, and is incorporated in the State of Alabama with its principal place of business at Parrish, Alabama. It requests an order under Section 7(a) of the Act requiring Southern to establish physical connection of its transportation facilities with those of Warrior River, and to sell natural gas to it for distribution in the towns of Parrish and Oakman, Alabama and the territory surrounding such municipalities.

The described applications were consolidated for hearing by notice issued by the Secretary dated February 8, 1963. The same notice also consolidated a Section 7(a) application filed by the Chattahoochee Valley Gas District (Valley Gas), in Docket No. CP63-163. Because the latter application was interdependent upon other applications which had not been filed with the Commission, it was severed from this consolidated proceeding by notice issued by the Secretary dated March 4, 1963.

By order dated March 7, 1963, fourteen parties were permitted to intervene in this proceeding to the extent of their asserted rights and interests as set forth in their petitions.[8] All parties except Alabama Gas entered appearances.

The hearing was convened on March 11, 1963, and was concluded on April 29, 1963, after 25 actual hearing days.

Southern was permitted, without objection, to amend its Exhibit P, Part (i), attached to the application (Item G, by reference) by substituting sheets 4 and 5 thereof. The amendment resulted from conferences between Southern and

---

[8] Alabama Gas Corporation (Alabama Gas); Carolina Pipeline Company (Carolina); Fuels Research Council, Inc., National Coal Association, Inc., and United Mine Workers of America (Coal Interests); Long Island Lighting Company (Long Island Lighting); Mississippi Valley Gas Company (Mississippi Valley); Public Service Commission of the State of New York (PSC of New York); South Carolina Natural Gas Company (South Carolina Natural); Atlanta Gas Light Company (Atlanta); South Atlantic Gas Company (South Atlantic Gas); Southern Propane Company (Southern Propane); South Georgia Natural Gas Company (South Georgia Natural); and the City of Vidalia (Vidalia). The last five intervened only in Docket No. CP63-26. Long Island Lighting intervened in all but Docket No. CP63-70.

Staff and was filed on April 9, 1963, as Supplement No. 3 to the application. It changes certain language to show specifically that the purchaser of the peaking service is one who has entered previously into an agreement with Southern for greater contract demands for one or more of the winters 1963–1964, 1964–1965 and 1965–1966, than were entered into for the winter of 1962–1963.

On May 6, 1963, after the conclusion of the hearing, Southern filed an Application for Temporary Authority pursuant to Section 7(c) of the Act for a temporary certificate to construct and operate a portion of the facilities requested herein. The application was granted by letter order dated August 5, 1963. Among other things, it authorized Southern to construct facilities (1) to increase its system delivery capacity by approximately 40,000 Mcf per day to supply the firm requirements of its customers for the 1963–64 heating season, (2) to reinforce its supply system in southern Louisiana, and (3) to reinforce certain lateral lines to permit delivery of increased quantities of gas to present customers.[8](a) Appendix B, attached hereto and incorporated herein by reference, shows the location, cost and other details concerning all the facilities proposed by Southern. The specific facilities authorized by the temporary certificate are designated by an asterisk on sheets one through four of the said Appendix. The certificate included the following condition:

> This temporary certificate is issued on the condition that after the installation of the facilities herein authorized, and during the period of effectiveness of the temporary certificate, the total deliveries of gas sold on an interruptible basis and the volumes delivered to resale customers in excess of contract demands shall not exceed the maximum volumes delivered on any day during the months of November 1962 through February 1963.

Initial, answering, reply, and supplemental reply briefs were filed by various parties. Since Staff's position was not set forth at the hearing, Carolina was permitted to file a supplemental reply brief. Southern, Atlanta, Southern Propane, and the Coal Interests responded to such brief. The Coal Interests, Southern Propane, and Carolina, opposed the granting of all or part of Southern's application. Long Island Lighting and the PSC of New York opposed the granting of the Producers' applications at the proposed initial price. Carolina, a customer of Southern, proposed a substantial modification to Southern's design for the southeastern Georgia extension.

Of the remaining interveners, all but the City of Vidalia are now customers of Southern and support the applications in which they intervened. Evidence concerning the need of the proposed customers in southeastern Georgia for natural gas was presented jointly by Southern and Atlanta, and by Vidalia, on its own behalf. Vidalia's petition requested, among other things, an allocation of natural gas from Southern for sale and distribution by the City. Southern requests the authority to commence such service.

Southern, Gulf, Humble, Warrior River, and Vidalia put in direct cases. All but the latter two put in a rebuttal case. Carolina put in a direct case designed to show, in general, that Southern proposes to overbuild the facilities for the southeastern Georgia area in advance of need and to the detriment of present rate-paying consumers. Staff introduced an exhibit consisting of a compilation of all contracts in the southern Louisiana area from June 7, 1954, through

---

[8](a) On October 11, 1963, Southern filed a Petition for Modification of only the peaking gas service provisions in the temporary certificate.

1962.[4] The evidence pertinent to Atlanta's position was introduced as part of Southern's case and was confined solely to matters relating to the proposed southeastern Georgia extension.

Staff recommended that Southern's application be granted subject to certain conditions subsequently discussed; that the Warrior River application be denied; and that the Producers' applications be granted subject to certain price conditions. In recommending that Southern's application be granted subject to certain conditions, Staff contends that:

> * * * the evidence presented raises serious questions regarding (a) the lack of realism inherent in the estimates of Southern's firm gas requirements, (b) the strong possibility that Southern's system presently has excess capacity which was constructed solely for the purpose of serving so-called interruptible customers and that the granting of Southern's application herein will perpetuate this objectionable practice, and (c) the obvious fact that Southern's proposed southeastern Georgia extension would be economically infeasible were it not for the apparent current profitability of Southern's existing system which will enable Southern to initiate service to the proposed southeastern Georgia communities and still enable Southern to earn—on a rolled-in, system-wide basis—in excess of the 6.24 percent rate of return which the Commission allowed Southern in *Southern Natural Gas Company*, Docket Nos. G–20509 and RP60–15, issued February 18, 1963, Opinion No. 379, 29 FPC 323. [Staff Brief, pp. 6, 7.]

The more specific contentions of the parties will be set forth in the text of this initial decision.

I. *Issues*

In reaching a decision concerning the applications filed by Southern, Gulf and Humble, the Examiner is called upon to determine whether or not they have established that they are able and willing to do the acts and to perform the services proposed in their respective applications and whether or not the proposed services, sales, operations, construction, extensions, and acquisitions are or will be required by the present or future public convenience and necessity.

A. Included in such a determination, insofar as Southern's application is concerned, are such elements as an adequate gas supply, adequate markets, facilities which are reasonable and feasible from the standpoint of cost and design, reasonable and feasible financing, and the economic feasibility of the projects. In this case, the primary subsidiary issues included within the foregoing elements are as follows:

(1) Does there already exist on Southern's system sufficient capacity to supply all of the firm needs of its existing customers in the winter of 1965–1966?

(2) On the proposed southeastern Georgia extension it is estimated that interruptible sales by the distributor (Atlanta) in the third year of operation will account for 7,017,579 Mcf of the total estimated sales of 8,809,319 Mcf, excluding peak shaving. Should firm commitments from any of the proposed interruptible customers be required?

(3) Since the capacity of the proposed southeastern Georgia extension is expected to be almost three times the third-year firm requirements of Atlanta and Vidalia, is the construction of the extension as proposed by Southern required by the public convenience and necessity?

---

[4] Such area is defined as that portion of the State of Louisiana lying south of the 31° parallel and including all areas, both state and federal, in the Gulf of Mexico off the shore of Louisiana.

(4) Are the facilities proposed by Southern for its system as fully expanded, and those for the southeastern Georgia extension separately, economically feasible?

B. The Gulf and Humble applications raise only the issue of whether the proposed initial price is or will be required by the public convenience and necessity. In a certificate proceeding, as here, such a determination may be based upon resolution of the following questions:[6]

(1) Does the application or evidence of record signal the existence of a situation that probably will not be in the public interest?

(a) Is the proposed price out of line?

(b) Will approval of the application result in a triggering of general price rises or an increase in Southern's existing rates by reason of favored-nation clauses or otherwise?

(2) If question No. B(1) is answered in the affirmative, does the present or future public convenience and necessity nevertheless require certification at the proposed initial price?

The issue under Section 7(a) of the Act is whether the project is necessary or desirable in the public interest. In this case the primary subsidiary issue is whether Warrior River has shown that its project probably can be financed and whether it is economically feasible.

II. *Gas Supply*

In General

No party has questioned the adequacy of Southern's long-term gas supply. Its gas reserve estimate and deliverability studies were for the 20-year period January 1, 1962, to January 1, 1982. The reserve-estimate study shows that the reserve-life index is 21 years. The deliverability study shows that Southern has a gas supply which is ample to meet fully each annual delivery requirement, including the proposed increased deliveries, for a period of 18 years from January 1, 1962. This more than meets the general 12-year deliverability life standard set by prior Commission decisions. See, among others, *Trunkline Gas Co.*, Opinion No. 321, 21 FPC 704, 708–709; *Northern Natural Gas Company*, Opinion No. 345, 25 FPC 1234. *Cf. Northern Natural Gas Company, et al.*, Docket No. CP62–85, *et al.*, Opinion No. 404, 30 FPC 859, issued September 30, 1963.

As of January 1, 1962, Southern's gas supply was estimated to consist of 11,413,837 MMcf in-place reserves, of which 9,083,801 MMcf are expected to be recoverable and 8,548,241 MMcf deliverable during the 20-year period January 1, 1962, to January 1, 1982. Such supply consists of gas available to Southern as of January 1, 1962, adjusted to include (1) the 1,275,034 MMcf of gas at 14.73 psia it expects to receive from Gulf and Humble and (2) the 25,000 Mcf per day at 14.9 psia it expects to purchase from United Gas Pipe Line Company at a point near Perryville, Louisiana, commencing about November 1, 1964, pursuant to order of the Commission in Docket No. CP63–241, dated June 12, 1963. This additional purchase will amount to 142,607 MMcf from November 1, 1964, the date of first delivery, to January 1, 1982.

Annual input requirements are expected to increase from 395,774 MMcf in 1962 to an estimated 438,568 MMcf in 1966, and thereafter are expected to remain constant through 1981, for a total annual input requirement of 8,660,814 MMcf.

---

[6] ***Atlantic Rfg. Co. v. Pub. Serv. Comm'n.* 360 U.S. 378 (1959); *United Gas Improvement Company v. Federal Power Comm'n.*, 283 F. 2d 817 (CA 9), certiorari denied, *sub nom. California Company v. United Gas Improvement Co.*, 365 U.S. 881.**

Annual deliverability would equal each annual input requirement from January 1, 1962, through December 31, 1979, a period of 18 years. In 1980 and 1981 there will be deficiencies of 9677 MMcf and 102,896 MMcf, respectively, resulting in a total annual deliverability of 8,548,241 MMcf, or 98.7 percent of the total 20-year requirement.

Southern's deliverability study was based upon the back-pressure method and, therefore, treated connected fields, including the new West Delta Block 27 Field, as depletion type fields in which deliverability will diminish as reservoir pressures decline with the exhaustion of reserves. Most of the fields are located in southern Louisiana. Many of them have exhibited effective pressure maintenance due to water drive. Accordingly, the assumption that Southern's south Louisiana fields were depletion type fields represents a conservative approach and, except as indicated below, increases the reliability of the study. (The reservoir computations concerning the West Delta Block 27 Field were made from data furnished by the Producers. Such data does not permit of a finding that the reservoirs in the said Field are waterdrive reservoirs.)

In addition, Southern's gas supply reserve study was supported by the so-called Davis Curve method. Southern does not rely upon the Davis Curve method, but included it at the request of the Staff. It was received in evidence as a means of comparison with the results of the back-pressure method. Both methods of estimating deliverability produced substantially identical results.

In its deliverability study Southern has shown estimates for the Lake St. John Field but none for the Cranfield Field. On its map (Appendix A), the Lake St. John Field is not shown to be attached to Southern's system. However, the sale of gas to Southern from the Lake St. John Field, as well as from Cranfield Field, was certificated by the Commission in Docket No. G–16680 in contemplation of the connection of the Lake St. John Field to Southern's system. The two fields constitute a single source of supply for Southern. On July 22, 1963, the Commission in Docket No. CP63–246 granted Southern authority to extend its system to the Lake St. John Field.

Gas Supply: The West Delta Block 27 Field

Southern's purchase of the West Delta Block 27 Field gas is the only purchase from independent producers proposed in support of Southern's system expansion. Southern has executed contracts with Gulf and Humble, dated June 22, 1962, and June 21, 1962, respectively, for the purchase of a total of 1,275,034 MMcf of pipeline quality gas (1,250,000 MMcf at 15.025 psia). Each contract was amended by letter agreements dated December 11, 1962. The gas is to be produced from the offshore field and delivered to Southern at a plant which is to be built by the Producers near Venice, in Plaquemines Parish, Louisiana. A detailed description of the West Delta Block 27 Field will be set forth in the Producer section of this decision. The contractual provisions and Southern's take-or-pay obligations will also be discussed therein. The Examiner finds that Southern has an adequate gas supply.

III. *Markets*

A. *Southern's System As Fully Expanded*

The aggregate requirements of Southern's existing and proposed customers are shown in Exhibit 1, and in Exhibit 26 for actual pipeline sales through 1962, and are summarized as follows (all figures are at 14.73 psia and are exclusive of company used and unaccounted for gas):

Actual	Winter peak day [1]	Year (actual)	Annual
1958–59	1,115,835	1959	335,890,000
1959–60	1,225,674	1960	356,471,000
1960–61	1,308,243	1961	364,776,000
1961–62	1,317,607	1962	384,426,099
(The following are estimated as of Nov. 26, 1962)			
1962–63	1,406,918	1963	383,475,000
1963–64	1,450,405	1964	397,300,000
1964–65	1,483,959	1965	412,396,000
1965–66	1,515,942	1966	423,500,000

[1] As used herein, "peak day" delivery obligation and "requirements" are synonymous with "contract demand" or "maximum delivery obligation" as those terms are used in Southern's tariff. Under its tariff (6th Revised, Volume No. 1) Southern must render firm service to, among others, customers who contract for a specific quantity (contract demand) and, at the buyer's option, to any buyer whose purchases have not exceeded 5,000 Mcf on any three consecutive days during the past 24-month period (maximum delivery obligation).

The above table shows that the cumulative increases in peak-day market requirements for 1963–1964, 1964–1965, and 1965–1966 are, respectively, 43,487 Mcf, 77,041 Mcf, and 109,024 Mcf. (Noncumulative increases for each of the said three-year periods are 43,487 Mcf, 33,554 Mcf, and 31,983 Mcf). The customers who are expected to account for such increases, and the amounts in Mcf, are summarized cumulatively as follows:

Type of customer	1963–1964	1964–1965	1965–1966
Resale jurisdictional	18,391	42,853	69,353
Firm direct	None	1,400	1,400
New customers proposed by Southern	19,072	25,634	29,933
Section 7 (a) and (c) applications [1]	6,024	7,154	8,338
	43,487	77,041	109,024

[1] Seven section 7(a) applications and one section 7(c) application make up these totals. Such applicants are:

(a) *Chattahoochee Valley Gas District*, Docket No. CP63–123. It requested a third-year allocation of 4,536 Mcf. It was severed from this proceeding and no new notice of hearing has been issued.

(b) *City of Dora, Ala.*, Docket No. CP63–269. It requested a third-year allocation of 956 Mcf. A "Notice of Application" was issued on Oct. 11, 1963.

(c) *City of Monticello, Ga.*, Docket No. CP63–156. Granted on Apr. 4, 1963.

(d) *City of Noxapater, Miss.*, Docket No. CP63–128. Granted on May 27, 1963.

(e) *City of Steele, Ala.*, Docket No. CP62–173. Granted on Sept. 6, 1962.

(f) *City of Temple, Ga.*, Docket No. CP63–122. Granted on Feb. 11, 1963.

(g) *Warrior River Natural Gas District*, Docket No. CP63–70. It requested a third-year allocation of 744 Mcf. The examiner finds the application should be denied.

(h) *City of Whitesburg, Ga.*, Docket No. CP63–55. This involved a section 7(c) application by Southern to construct the facilities necessary to deliver gas to Atlanta which proposed to construct and operate a distribution system in Whitesburg. Granted on Jan. 8, 1963.

These increases were based primarily upon information contained in market data forms which Southern sent to its customers to be completed and returned by them. The forms were transmitted by a letter setting forth the terms of a proposed precedent agreement. By returning a properly executed copy of the letter to Southern, each customer accepted the terms specified in the letter and agreed "to enter into a Service Agreement specifying in Exhibit A thereto, the contract demands indicated on the attached market data forms for the winters of 1963–1964, 1964–1965, and 1965–1966 . . . ." (Item E by reference, Part (v) — 3 and 4) such letters were sent to 104 resale customers. Seventy-one replies were received. Ten of the 71 replies were unacceptable to Southern because the estimates were not in accordance with the past experience of such customers. (Nine of the 10 were small municipally-owned projects. One was a nonjurisdictional customer.) No replies were received from 33 small municipally-owned projects. The 61 acceptable estimates were checked by Southern and found to be reasonable and attainable. Such estimates represent about 95 percent of the total 1965–1966 contract demands and maximum delivery obligations for the customers to whom requests were sent. Estimates for the 43 small customers which were not received, or which were not considered reasonable, were made by Southern.[8] Such estimates were based upon its past experience and knowledge of the indicated applicable trend of sales in the communities involved. Examination was made of actual sales, particularly for the past three years, and the trend was projected, giving consideration to experienced annual degree day deficiencies and minimum temperatures.

With respect to estimates of direct sales, letters were addressed to the larger direct customers requesting their estimates of requirements. Most of the replies received indicated that they expected their gas requirements would continue at the same rate as in 1961. Quantities for Southern Nitrogen Company reflect an increased requirement due to a plant enlargement. Sales to Alabama Power Company and South Carolina Generating Company were projected at the minimum annual quantities provided for in their present contracts. The remaining smaller users were projected at current rates of use.

Southern introduced into evidence a market data form for each resale-customer and a representative blank copy of the precedent agreement signed by each customer. Southern, however, in filing its application did not comply with Section 157.14(a)(11)(v) of the Commission's Regulations, which provides that each applicant accompany its application with a "Conformed copy of each contract for sale or transportation of natural gas by means of the proposed facilities." As a result of such noncompliance, and another matter stated below, Staff recommends that the granting of Southern's application be subject to certain conditions designed, as in *American Louisiana Pipe Line Co.*, 20 FPC 575, 602 to require Southern to improve its exhibits and testimony in future certificate proceedings so as to make them conform with the Commission's regulations.

The Commission expects market estimates to be based upon firm estimates, and not upon "letters of intent or the so-called pre-emptive rights of [a] tariff to establish marketability." *Michigan Wisconsin Pipe Line Co.*, 24 FPC 177, 179. *Cf. Northern Natural Gas Co.*, 25 FPC 1234, 1244. The market evidence in Item E, which is summarized in Exhibit 1, is not based upon the type of evidence criticized in the *Michigan Wisconsin* case. The fact that a conformed copy of each contract was not filed might be a ground for refusing to accept the filing of the application. The lack of such data does not prevent the applicant from otherwise supporting these estimates. In this case, Southern's market witness reviewed the estimates and adequately explained the details concerning the market data. The Examiner finds that the market estimates in Item E and Exhibit 1 are supported by substantial evidence.

Although Staff agrees that the record supports the estimates in Exhibit 1, the contention is made that the Examiner should not consider, for any purpose, certain increased estimates testified to by Southern's witness without objection by any party. However, the testimony was not supported by any documentary evidence. The Staff's view is that since "Southern did not make the original precedent agreements a part of the record, there are no documents in the record which can be amended to reflect changes in the customers' increased requirements." (Staff Brief, p. 12.)

---

[8] Carolina had been attached to Southern's system about five months before Southern sent out the market data forms. No form was sent to Carolina. It did, however, phone its estimates to Southern.

The testimony concerning the increased quantities desired by Southern was later reflected in Exhibit No. 27. In the years 1963–1964, 1964–1965, and 1965–1966, the increases total 7692 Mcf, 7605 Mcf, and 10,160 Mcf, respectively. Precedent agreements have been entered into for such increases but, as in the case of the other estimates, no conformed copies were offered in evidence. The increased estimates are not, however, reflected in Southern's economic feasibility exhibits. The Examiner finds that the increased estimates have been supported adequately for the limited purpose of showing that there exists a market for such quantities which may be used to obviate the necessity of revising its revenue exhibits to reflect the elimination of the third year requests by the Chattahooche Valley Gas District (4536 Mcf), the Warrior River Natural Gas District (744 Mcf), and the City of Dora, Alabama (956 Mcf). The aforesaid increases of 10,160 Mcf will absorb the loss from these requests and leave a balance of 3924 Mcf. This latter quantity would be available in case any estimates proved to be excessive. If necessary, Southern will be able to serve increased quantities by minor changes in compressing facilities, which changes would increase its capacity about 11,000 Mcf per day. The Examiner finds that the imposition of conditions herein similar to those in *American Louisiana Pipe Line Co., supra*, as recommended by Staff, are not warranted.

1. *Construction Now For Capacity Needed In Three Years*

Prior to the 1963–1964 heating season, Southern proposes to construct all of the facilities which will produce the additional 95,000 Mcf of capacity. The "design daily delivery capacity" of Southern's entire system as of November 1, 1962, was 1,420,000 Mcf. The quoted phrase is used to express the continuing deliverability of the system during periods of winter peak demand. Such capacity is predicated on "the specific contract quantities located at the specific contract locations" and was, therefore, the total pipeline system sales requirement as of that date. (Tr. 659)[7] The proposed immediate increase in design capacity of 95,000 Mcf will raise the total sales requirement to 1,515,000 Mcf for the year 1963–1964. Since total pipeline system firm requirements in 1962–1963 were 1,406,918 Mcf, Southern now has 13,082 Mcf of excess design capacity. This excess, and the proposed 95,000 Mcf increase, will provide excess daily design delivery capacity of 108,082 Mcf beginning with the winter of 1963–1964.

As previously shown, the total increased requirements for the winters of 1963–1964 through 1965–1966, exclusive of the late increases, are 43,487 Mcf, 77,041 Mcf and 109,024 Mcf, respectively. Southern, therefore, will have available during the winters of 1963–1964 and 1964–1965 unused firm daily requirements of 64,595 Mcf and 31,041 Mcf, respectively. It proposes to sell such excess as peaking service gas, and now has firm contracts for 15,900 Mcf and 17,570 Mcf, respectively, as more fully developed hereinbelow.

As a result, Southern will have available, after allocation of the peaking service requirements, an excess in daily design delivery capacity in 1963–1964 and 1964–1965 of 48,695 Mcf and 13,471 Mcf, respectively, and a deficiency in 1965–1966 of 942 Mcf.

---

[7] The design daily delivery capacity of Southern's entire system was increased from 990,000 Mcf per day to 1,365,000 Mcf per day under authority of a certificate issued August 7, 1959 in Docket No. G–14587 (*South Georgia Natural Gas Company*, 22 FPC 211). Giving effect (a) to commencement of sales to Florida Gas Transmission Company at Franklinton, Louisiana, authorized by the Commission in Docket No. CP60–92, to several small distributors, and to Texas Eastern Transmission Corporation, and (b) to the construction of 14.4 miles of 20-inch pipeline as loops along the Gwinville-Pickens Line, authorized by the Commission in Docket No. CP61–206, such capacity became approximately 1,420,000 Mcf per day on November 1, 1962.

In the past, Southern has followed the practice of providing in each expansion program first-year capacity somewhat in excess of contracted requirements. It has found that the loads gradually build up so that the difference between the customers' first-year contract demand and the designed capacity is utilized. This has been done with Commission approval. *Southern Natural Gas Co.*, Docket No. G–1907, 12 FPC 516, 525–528, affirmed by the Commission, 12 FPC 550; *South Georgia Natural Gas Co.*, Docket No. G–14587, 22 FPC 222, 230–234, affirmed by the Commission, 22 FPC 211.

The following tabulation details the foregoing practice and also shows singular results for the three years in question herein:

Winter	Firm contract daily delivery obligations (Mcf)	Design capacity; (Mcf)	Percentage of excess of design capacity over firm daily delivery obligations
1951–52	585, 036	634, 000	8. 4
1952–53	695, 332	718, 000	3. 3
1953–54	819, 866	870, 000	6. 1
1954–55	880, 097	936, 000	6. 4
1955–56	971, 461	990, 000	1. 9
1956–57	985, 418	990, 000	. 5
1957–58	988, 762	990, 000	. 1
1958–59	1, 115, 835	1, 185, 000	6. 2
1959–60	1, 225, 674	1, 365, 000	11. 4
1960–61	1, 308, 243	1, 365, 000	4. 3
1961–62	1, 317, 607	1, 365, 000	3. 6
1962–63	1, 406, 918	1, 420, 000	. 9
1963–64	1, 450, 405	1, 515, 000	4. 5
1964–65	1, 483, 959	1, 515, 000	2. 1
1965–66	1, 515, 942	1, 515, 000	[1]

[1] No excess. As previously noted, approximately 11,000 Mcf of additional capacity could be provided by minor changes in compressing facilities if it is needed.

In *South Georgia Natural Gas Co., supra,* the Commission approved a capacity of 57,000 Mcf in excess of Southern's third-year contract daily obligations. As in that case, approval now of all the facilities necessary to deliver a third-year capacity of 95,000 Mcf is needed because Southern's system will benefit from having excess capacity available to meet emergencies, to provide flexibility of operations and to meet hourly demands. Also, the amount of excess capacity resulting from such immediate construction is "within the range it has experienced in the past," and "may reasonably be expected to decline as the company's operations continue." (22 FPC at 215).

As noted by Staff Counsel, however, neither the *South Georgia Natural Gas Co., supra,* nor *Southern Natural Gas Co., supra,* discusses the problem presented in this case. During three extremely cold days last winter Southern sold to its direct industrial interruptible customers quantities of gas which would be approximately sufficient to meet the expected third-year requirements of its proposed firm customers. As a result of this fact, the Coal Interests contend that Southern now has capacity to meet the expected firm contract demand and maximum delivery obligations of its customers; that Southern's proposed installation is not to meet firm loads but to supply the industrial interruptible market which could readily be supplied by other more abundant fuels; that the use of gas for such inferior purposes would result in replacing it with higher cost gas in the future; and that approval of Southern's application would amount to approval of the installation of facilities for mainline delivery capacity for interruptible service.

In support of their position that Southern now has capacity to meet the third-year estimated requirements of 95,000 Mcf, the Coal Interests show that on December 12, 13, and 14, 1962, when the temperature was well below the design temperature of 20° F, Southern sold approximately 94,000 Mcf, 97,000 Mcf, and 133,000 Mcf, respectively, for use by direct industrial interruptible customers. These sales could have been curtailed if needed to meet firm requirements. The point, therefore, is that such sales can be terminated in the future and the capacity used to serve the expected increase in customer requirements. The situation on the three days in question is shown by the following table (all figures in MMcf at 14.73 psia):

Date	Present authorized capacity	Total pipeline sales	Excess over authorized capacity	Excess over firm requirement of 1,406	Direct interruptible sales included in total	Total firm sales
Dec. 12, 1962	1,420	1,448	28	42	94	1,354
Dec. 13, 1962	1,420	1,394	(26)	(12)	97	1,296
Dec. 14, 1962	1,420	1,507	87	101	133	1,374

The problem posed by the availability of such capacity is completely different from that presented by building excess capacity in the first year to serve third-year contract demands and maximum delivery obligations. The aforesaid sales to direct interruptible customers were made possible primarily by the operation of a 90 percent ratchet provision in Southern's tariff. (On December 14 there was also some withdrawal from line storage.) In short, the Coal Interests' contentions are based upon the purported invalidity of the tariff provision. For the reasons subsequently stated, the Examiner finds that the Commission has recognized that interruptible sales are very important to the financial stability of Southern's system and has considered such fact in designing rates applicable to the system. Accordingly, any action which would have the effect of nullifying the operation of a valid tariff provision should only be taken after a hearing where the rate design of Southern's system was in issue.

2. *Southern's FPC Tariff*

As required by its tariff, Southern must be prepared at all times to deliver without curtailment the contract demands and maximum delivery obligations for which its customers have contracted. (See Section 2 of the CD, G and CDL Rate Schedules, 6th Revised Volume, No. 1, of Southern's FPC Gas Tariff.) All of such customers are located in approximately the same latitude in the southeastern section of the United States. As a result, there is not the variation in temperatures which is experienced by pipelines which run from south to north, traversing regions of disparate climates. In order, therefore, to be certain of meeting its legal obligations, Southern cannot assume or rely upon diversity in the incidence of peak requirements, but must provide pipeline system capacity equal to the sum of its contract obligations to deliver firm gas.

The 90 percent ratchet provision previously referred to is found in the definition of Billing Demand in Southern's rate schedules applicable to its "contract demand" and "contract demand limited" service (CD and CDL). In the CD rate schedules Billing Demand is defined as follows:

The greater of—

(1) 90% of the sum of the CONTRACT DEMANDS at all delivery points hereunder of PURCHASER, or

(2) the largest quantity of gas delivered to PURCHASER hereunder on any day during the 12 months period ending with the close of the current month on

which notice by COMPANY (given pursuant to Section 16.2 of the GENERAL TERMS AND CONDITIONS) to limit the taking of gas to CONTRACT DEMAND at all delivery points of PURCHASER hereunder was in effect for the entire day; however, in computing such largest quantity there shall be excluded quantities in excess of CONTRACT DEMAND delivered at any delivery point.

In view of the above provision concerning Billing Demand (and the provision in the CDL schedules is of similar effect), Southern's CD and CDL customers try to keep their purchases down to 90 percent of Contract Demand when they are given notice by Southern, pursuant to Section 16.2 of the General Terms and Conditions in the Tariff, to limit the taking of gas to Contract Demand for the entire day. This releases capacity which can be utilized for direct sales. All of Southern's customers were on continuous official notice to restrict their takes to contract quantities for the entire days of December 12 and 13. Upon the CD and CDL customers' cutting back to 90 percent of Contract Demand, a substantial amount of system capacity was made available for the sale of gas to direct interruptible customers.

Exhibit No. 27 shows that the total firm jurisdictional requirements of Southern's CD and CDL customers during the 1962–1963 winter totaled 1,274,109 Mcf. The direct interruptible sales on both December 12 and 13, when all customers were limited to contract demand for all of each of those days, were less than 10 percent of that amount. This shows that the capacity made available on such days by voluntary restriction of takes to 90 percent of contract demand, and withdrawal from line storage on December 14, accounted for the availability of capacity to make the indicated direct interruptible sales. December 14, 1962 was a Friday. The weather was moderating. In anticipation of the warmer weather to come and an expected reduction in requirements for industrial sales during the coming weekend, Southern's dispatchers released Southern's customers from the previously imposed restrictions to contract quantities at about 10:00 A.M., on December 14. This permitted the withdrawal from line storage (also called line pack) of 90,253 Mcf to serve direct interruptible customers.

The foregoing shows that for three days in December 1962 Southern had capacity on its system in excess of its actual firm-peak sales, and that Southern used this excess to provide direct industrial interruptible service. As demonstrated, however, Southern's tariff had the effect of permitting most of such sales. Approval of the instant application would, therefore, simply perpetuate the existing sales pattern and tariff provisions.

The Coal Interests, therefore, are in effect making an attack on a part of Southern's tariff which, if successful, would have a far-reaching effect on Southern's existing customers. *Cf. Granite City Steel Company* v. *F.P.C.*, 320 F. 2d 711 (CADC), No. 17150, decided May 23, 1963. Southern's recently approved rate design was accomplished in full recognition of the extensive reliance by Southern on interruptible sales made either directly or through its resale customers. See *Southern Natural Gas Company*, Opinion No. 379, 29 FPC 323, rehearing denied, April 19, 1963. The opinion in that case is replete with references to Southern's need for industrial sales. See pages 343–345, 348–350, 350–352, and 353–354 of the opinion. At page 348 of such opinion the Commission stated that:

> Southern serves an area of the United States which does not experience prolonged periods of cold weather, and consequently has a high percentage of sales for industrial use, either directly or through its resale customers, to balance its firm loads for domestic and commercial use. Approximately 50 percent of Southern's jurisdictional deliveries are for resale to industrial customers, with residential and commercial firm loads operating at about

30 percent annual load factor. Of its total system deliveries, approximately 25 percent is sold directly to industrial customers, the bulk of such sales being on an interruptible basis. Economic operation of Southern's system requires the maintenance of these industrial loads,[28] which have been built up on the basis of the rate patterns heretofore evolved through a series of rate settlements approved by the Commission.

In view of the considerable emphasis placed on industrial sales by the Commission, a denial of the application on the grounds urged by the Coal Interests would, in effect, cancel the tariff provision relied upon by Southern without a hearing directed to the rate problem. The Examiner concludes that Southern should be entitled to rely upon the 90 percent ratchet provision in its tariff unless the provision is canceled after a hearing specifically directed to such provision.

Staff recommends that the application be granted subject to the condition that the propriety of the 90 percent ratchet provision be made an issue in Southern's next certificate proceeding or in a separate proceeding. It states that ". . . only upon a full and complete record can the constant issue of 'excess capacity' on Southern's system be decided upon a record comprised of 'substantial evidence' ". (Staff Brief, p. 24) Since adequate means are available to Staff and all parties by which such a proceeding may be initiated, the order herein will not contain the requested condition.

B. *Two-Year Peaking Gas Service*

As shown hereinabove, Southern will have available during the winters of 1963–1964 and 1964–1965 unused firm daily requirements of 64,595 Mcf and 31,041 Mcf, respectively. (Such sums are exclusive of the increases in customers' requirements of 7,692 Mcf and 7,605 Mcf, respectively, which are not reflected in Southern's economic feasibility exhibits.) Southern requests permission to sell such capacity for peaking service use during such heating seasons. The sales would be in accordance with the Form of Service Agreement for Peaking Service attached to its Supplement No. 3 to its application and its proposed Rate Schedule PS. Staff recommends that Southern be permitted to institute such service.

The peaking service now has been contracted for by nine of Southern's jurisdictional customers, as follows:

Customer	Peaking demand in Mcf at 14.73 psia	
	Nov. 1, 1963–Oct. 31, 1964	Nov. 1, 1964–Oct. 31, 1965
Gas Light Co. of Columbus	4,000	5,000
Trussville	1,000	1,000
South Carolina Natural Gas Co.	5,000	5,000
Southeast Alabama Gas District	2,500	3,000
Warner Robins	600	620
Northwest Alabama Gas District	300	300
Cullman-Jefferson Counties Gas District	600	650
Vicksburg	1,000	1,000
Austell	900	1,000
Total	15,900	17,570

---

[28] The importance of industrial sales to Southern's system operations is heightened by the fact that Southern has no available underground storage facilities. Southern must therefore either market its minimum commitments for purchased gas or pay for gas not taken. During the test year Southern's total volume of purchased gas exceeded its minimum take-or-pay requirements by only 2.3 percent.

A new rate schedule is to be filed subsequently and denominated as Rate Schedule PS. This rate schedule provides a peaking service monthly demand charge of 60 cents per Mcf and a commodity charge of 25 cents per Mcf.

The peaking service rate is based on and is approximately equivalent to the unit cost of service. It will produce revenues of about $155,000 annually. The demand charge was designed to recover the fixed charges on the additional investment which makes the service possible. Such investment totals $4,677,725. The investment per Mcf in facilities to increase system delivery capacity by 95,000 Mcf daily is $49.24. Fixed charges were estimated at 15.5 percent of the investment, or $7.63 per year per Mcf. This is equivalent to 63.5 cents per month. The latter figure was rounded to 60 cents to arrive at the demand charge. Southern considers it essential that all of the fixed costs be recovered by the demand charge since there is no assurance of the delivery of any specified quantity of peaking service gas. The commodity charge was fixed at 25 cents to cover variable costs. This charge was slightly higher than Southern's highest purchased gas cost in south Louisiana (23.2 cents per Mcf), the difference of 1.8 cents being sufficient to cover the other variable costs related to the service. (The "other variable costs" are discussed in the economic feasibility section of this decision.)

The cost of manufacturing gas with peak shaving equipment ranges from $1.00 to $1.19 per Mcf, exclusive of fixed charges related to the investment in peak shaving plant. On an equivalent two-part rate basis to that used by Southern (60 cents demand, 25 cents commodity), Atlanta's peak shaving costs, expressed as demand and commodity components, would be 73 cents and $1.20 per Mcf, respectively. In addition, contract demand customers may purchase peaking gas on so-called limitation days and thereby avoid increased billing demands which otherwise would result if takes of gas could not be limited to 90 percent of contract demand.

The peaking gas service will be available to any CD customer who enters into an agreement with Southern for a contract demand for one or more of the winters of 1963–1964, 1964–1965, and 1965–1966 greater than its contract demand for the winter of 1962–1963.

The Examiner finds that the proposed peaking service constitutes a reasonable two-year use of the excess capacity referred to herein.

C. *Warrior River's Section 7(a) Application:*

The towns of Parrish and Oakman, Alabama, joined together and formed the Warrior River Natural Gas District to bring natural gas to them. Warrior River is a municipality as defined in Section 2 of the Natural Gas Act and is incorporated under the laws of the State of Alabama. Each town granted a franchise to Warrior River and the latter is authorized lawfully to engage in the local distribution of natural gas to the public and in the surrounding area. Oakman had a population in 1950 and 1960 of 1022 and 849, respectively. Parrish had a population in 1950 and 1960 of 757 and 1608, respectively.

Warrior River proposes (1) to construct a supply line connecting with Southern's existing lateral line near Cordova in Walker County, Alabama, and to extend this supply line to Parrish and then to Oakman, (2) to construct distribution systems in each of these towns, (3) to serve line tap customers along the transmission line, (4) to finance the cost of its project by the issuance of

$455,000 principal amount of its revenue bonds, and (5) to purchase from Southern the following annual and peak-day requirements:

	Annual requirements (Mcf)	Maximum daily requirements (Mcf)
First year	50,142	560
Second year	58,076	647
Third year	66,779	744

Southern has agreed to provide such service if the Commission determines that the distribution project is economically feasible. If Warrior River's application were approved, Southern would be required to install a tap, meter, and regulator at a cost of $11,319. It has included such costs as part of the total cost of facilities in its application herein. If all the facilities proposed in such application were approved, Southern would have sufficient capacity to supply the stated firm gas requirements of Warrior River through the 1965–1966 winter.

Staff recommends that Warrior River's application be denied

> . . . because there is no substantial evidence in the record upon which to base a conclusion that the markets necessary for economic feasibility are available. Also the staff cannot accept as satisfactory an engineering report which Warrior River's financing witness indicated is not 'good' enough for a determination regarding the issuance of bonds. [Footnote omitted; Staff Brief, p. 63.]

Warrior River asserts that although the report in question did contain certain sub-total errors, such errors did not affect the total estimate of potential customers and that the project is economically feasible when considered as a whole.

Southern is the most feasible source of supply for Warrior River. No undue burden would be placed upon Southern by approval of the project. There is also a public need for and there would be a public benefit from approval of natural-gas service to the public in Warrior River's gas district. The record, however, does not permit of a finding that the proposed project can be financed or that it is economically feasible. Accordingly, approval of the application is not necessary or desirable in the public interest.[8]

The required distribution facilities are estimated to cost $455,000 and are proposed to be financed through the sale of 30-year revenue bonds bearing interest at 5½ percent. The debt-coverage ratio, based on third-year sales and a 30-year amortization for the bond issue, would be 1.54. The 1.54 debt-coverage ratio was based upon an engineering report which contained certain material errors, as will be subsequently shown.

Warrior River entered into a contract with a fiscal agent to make arrangements to obtain the $455,000 by whatever legitimate means was necessary. There is no contract at this time to purchase the bonds which the District plans to issue. The fiscal agent's willingness to purchase the bonds was contingent, in part, upon receiving a supplemental report from the engineering witness for Warrior River.

The fiscal agent testified that the engineering report submitted in evidence herein was in the nature of a "preliminary report" and that he had not checked any of the figures therein to see if they were correct. He testified that he had glanced through the report but was not going to depend on it in deciding whether or buy or sell the bonds. In making his decision he would depend upon, among other things, his judgment of the growth potential of the area, which he believes to be good, and upon the supplemental report which will be rendered by the engineering witness in this case. If the Commission were to approve the application based upon the present report, construction bids then would be obtained and a house-to-house survey undertaken. They would then "knock on the doors, then we will find out how many customers we can get, and we will sign them up and make them put up a $5 or $10 deposit. That is very expensive and time-consuming." (Tr. 1531–1532)

---

[8] The criteria to be applied under Section 7(a)'s prescription of "necessary and desirable in the public interest" are set forth in *Panhandle Eastern Pipe Line Co., et al.*, 15 FPC 1421, 1425–1426.

As grounds for his opinion that the bonds could probably be sold, the witness also relied upon (1) his knowledge of the economics of the areas, including his opinion that the water customers in Oakman and Parrish were potential customers, (2) Alabama statutes to the effect that no principal had to be paid on the bonds for 10 years and that the amortization period might be extended to 40 years instead of 30,[9] and (3) certain conclusions in the engineering report, which are discussed hereinbelow. He also said that the bonds Warrior River proposed to issue were desirable because of their tax-free 5½ percent interest rate and that they would be purchased by wealthy individuals and insurance companies who would be more interested in getting interest on their money than in getting repayment of the principal.

The parties have not cited any case, and the Examiner knows of none, whereby the Commission has permitted the economic feasibility of a Section 7(a) project to be determined on the basis of a period greater than 30 years. Yet the fiscal agent proposes a period up to 40 years "if there is any question about [the project]." (Tr. 1515)

Since the fiscal agent did not rely upon a 30-year amortization schedule or upon the facts in the existing engineering report for his opinion that the bonds could be sold, his testimony that his firm "would buy" the bonds, or that the project "can be financed," does not support a finding that the bonds probably can be financed (Tr. 1509, 1512). It will now be shown that the report in evidence herein does not constitute substantial evidence of economic feasibility.

Obviously, the accuracy of any economic feasibility study depends upon the estimate of the number of customers which would attach to the natural-gas system. Although the financial witness presented by Warrior River did not check any of the figures in the engineering report, he relied upon the conclusion in the report of a 1.54 debt-coverage ratio in the third year and a 2.8 coverage in the 30th year. He also relied upon a statement to him by the engineering witness that the project could be financed for $500 a customer. The latter statement appears incorrect on its face because the third-year cost per customer is $597.11 ($455,000÷762 customers). As subsequently shown, the 1.54 debt-coverage ratio conclusion is not supported by this record.

Field surveys were made under the engineering witness' direction by two of his men in the summer of 1960. They were rechecked in the fall of 1961. As a result of these surveys, the number of actual buildings in the two towns was plotted on maps of the two communities. These maps were in evidence as Items R and S. The number of actual buildings along the transmission line between Southern's supply line and the town of Parrish, and between the town of Parrish and the town of Oakman, were also counted. The actual count of the number of buildings was reflected in Item Y, Sheet 1, in two columns designated as "residential" and "small commercial." During this survey, which was checked by the engineering witness, the number of potential customers was estimated. This estimate, insofar as the towns of Parrish and Oakman are concerned, was made by an on-the-spot examination and evaluation of the structures. In making the estimate of potential customers, they eliminated "those residences or buildings which we would call substandard (sic) or in our opinion just wouldn't use natural gas." (Tr. 1431–32) Insofar as the area along the transmission line was concerned, there was counted as potential customers only those houses which were considered to be within "economical reach" of the transmission line (Tr. 1470).

---

[9] The Alabama statute which permitted amortization over a 40-year period has been amended to permit amortization in 50 years. (Code of Ala., 1961 Cum. Supp., Title 37, Sec. 255(a)). The same section, however, provides that all revenue bonds ". . . shall be payable in annual installments, the first of which shall be payable no more than three (3) years after the date of such bonds . . . ." This provision casts doubt upon the witness' statement that under the Alabama statute no principal has to be paid on the bonds for 10 years.

The actual count of buildings and the estimated 10th-year-potential customers were shown on Sheets 1 and 10 of Item Y to be as follows:

Location	Residential		Small commercial	
	Actual	Potential	Actual	Potential
Transmission line between source of supply and Parrish	69	117	5	4
Transmission line between Parrish and Oakman	90		6	
Incorporate limits of Oakman	296	308	45	35
Incorporate limits of Parrish	519	500	54	51
	974	925	110	90

Staff brought out on cross-examination that the potential estimate of 308 customers for the town of Oakman was more than the actual number of buildings shown for the town. After the noon recess the engineering witness made additional calculations concerning this discrepancy and then stated as follows:

> Item Y, Page 10—in my opinion the difference between the residential customers shown in Oakman as 308 against Item Y, page one of the total of 296 and the figures shown for transmission service under Item Y, page 10, there is apparently a discrepancy between those.
>
> We have made some calculations during the noon hour, and, using the total of 925 potential residential customers shown on sheet one of Item Y to the total number of residential customers over the whole system, rounding out is 95 per cent. Taking that and applying it to the total residential customers on the transmission main and also to Parrish, it makes a change in both of those items on sheet 10, Item Y.
>
> In my opinion, that is where the error is. It still comes out to the same overall residential customers which, according to the count and calculation, is correct.
>
> Q. What would be the number of residential customers along the high pressure transmission line under your new allocation of customers?
>
> A. Taking the total on Item Y, sheet 1 of 15, adding the 69 and the 90 together, you come up with 195. 95 per cent of that, you come up with 143 residential customers. At Oakman we place it at 282.
>
> Q. Would you leave Parrish at the present 500 estimate?
>
> A. I would leave Parrish at the estimated 500, yes, sir. These figures are 282 and 143, and using 95 per cent we run over the totals; so we have rounded them off at 282 and 143 respectively for Oakman and the transmission main. It still adds up to the total potential of all customers of 1015. [Tr. 1464, 1465, 1466.][30]

It is obvious that the percentage figure used by the witness in making the corrections was not used by the witness in initially determining the number of 10th-year potential customers. As previously shown, the 10th-year potential customers were arrived at by observation and exclusion of those that were sub-standard or too far from the transmission line to be within economic reach. The 95 percent figure is the percentage relationship between total residential buildings (974) and the estimated potential customers (925). The use of this percentage to make an allocation of customers between the town of Oakman on the one hand, and the transmission line on the other hand, has no foundation. What the witness did was to eliminate houses from the city of Oakman without ascertaining whether or not they were sub-standard and, at the same time, adding houses to the transmission line without knowing whether or not they were within economic reach of the line.

---

[30] It should be observed that 95 percent of 159 (the 195 in the transcript is a typographical error) is 151 customers instead of 143 as stated by the witness. This matter was not brought out at the hearing or in briefs.

The Examiner finds, therefore, that there would be at least 26 less customers in the 10th year, and 19.5 in the third year. (The third-year customers were estimated at 75 percent of the 10th-year customers.) A recomputation of the debt-coverage ratio based upon, among other things, the lower number of 3rd-year customers, decreased purchase gas cost, Btu adjustments, and changes in construction cost, might show a debt-coverage ratio in the neighborhood of 1.5. On the basis of this record, however, such a finding cannot be made.

The conclusion herein renders it unnecessary to consider the validity of the witness' method of ascertaining those potential customers who would connect to the line in the third and tenth years.

The Examiner finds that Warrior River has not met its burden of proving by substantial evidence that the proposed project is economically feasible or that it can probably be financed. The following proposed findings by Warrior River are denied:

(1) It is necessary and desirable in the public interest to direct Southern to establish physical connection of its transportation facilities with the facilities which the District proposes to construct and operate and to sell and deliver up to 744 Mcf of natural gas per day for resale in the Towns of Parrish and Oakman and surrounding area, as more fully described in the application in this proceeding.

(2) The District should, within six months of date of this order, submit to this Commission proof of its ability to obtain the funds necessary for this project as proposed herein.

Warrior River's application should be denied. The denial, however, should be without prejudice to its making a future showing, if it is able to do so, of a project that is economically feasible and which can be financed. *Cf. South Georgia Natural Gas Company*, 22 FPC 211, 216.

D. *Southeastern Georgia Extension Separately* (*Distributors, Markets, and Related Matters*)

The proposed distributors in the southeastern Georgia area are Atlanta Gas Light Company (Atlanta) and the City of Vidalia, Georgia (Vidalia). Each intervened in this proceeding. Atlanta is a Georgia corporation and has been in business since 1856. Its operations are wholly intrastate and are limited to the retail distribution of natural gas. Atlanta supports Southern's application and urges that the Commission direct Southern to furnish to it the additional contract demands provided for in the precedent agreement dated May 30, 1962, as amended and supplemented (Item E, Part (v-1) and Exhibit 7).

Vidalia also entered into a precedent agreement with Southern (Item E, Part (v-2)) and desires an allocation of natural gas from Southern. It did not, however, file a Section 7(a) application but filed the material provided for in the proviso to Section 1.8(c) of the Commission's Rules of Practice and Procedure. Its request is to be judged under the requirements of Section 7(a) of the Act. *American Louisiana Pipe Line Company*, 16 FPC 897, 898. For the reasons hereinafter stated, the Examiner finds that the proposed southeastern

Georgia project is required by the public convenience and necessity, and that service to Vidalia is necessary and desirable in the public interest.

The contention by the Coal Interests and Southern Propane that Atlanta should be required to procure firm contracts from its proposed industrial interruptible customers is discussed in detail hereinbelow. For the reasons subsequently expressed, the Examiner finds that firm contracts are not required.

1. *Atlanta Gas Light Company*

In Georgia, Atlanta distributes natural gas to 76 cities located in 36 counties in the State. It also distributes propane-air gas to Waycross in Ware County, and to Brunswick in Glynn County, Georgia. All such distribution is pursuant to a certificate of public convenience and necessity issued by the Georgia Public Service Commission.

Atlanta, which is Southern's largest customer, receives approximately 87 percent of its natural-gas requirements from Southern under Southern's CD-3 rate schedule. Its contract demand on this schedule is 458,000 Mcf per day. The natural-gas supplies for Atlanta's service areas in Heard, Clarke, and Oconee Counties are obtained from Transcontinental Gas Pipe Line Corporation; and those for Lowndes County from South Georgia Natural Gas Company. The requirements of these areas are in no way involved in this proceeding and Atlanta does not seek any additional gas in this proceeding for such areas. Southern furnishes in whole or in part the natural-gas supply for the remainder of Atlanta's service areas.

The southeastern Georgia project is in substance a joint undertaking by Southern and Atlanta to provide natural-gas service for the first time to the Georgia coastal area near Brunswick and the towns and cities between Brunswick and Macon, Georgia.[11] This is the last remaining large area within the State of Georgia without natural-gas service. Only six of the 61 cities and towns in Georgia with a population in excess of 5,000 do not have natural-gas service. The proposed extension would provide service to five of them, including Vidalia, Brunswick, and Waycross, Georgia.

In this proceeding, Atlanta seeks an additional supply of natural gas from Southern in order to provide natural-gas service to Waycross, Brunswick, and 33 other communities. All of the 35 communities will be served from the pipeline which Southern proposes to construct. Gas will be delivered to Atlanta at 11 delivery points along this line.

The 35 communities are as follows:

Ailey
Alamo
Alma
Baxley
Blackshear
Brunswick
Cadwell
Chester
Danville
Darien
Dexter
Dudley
Eastman
Glennville
Glenwood
Hazlehurst
Helena
Hinesville
Jeffersonville
Jesup
Ludowici
Lumber City
Lyons
McRae
Milan
Montrose
Mt. Vernon
Odum
Patterson
Reidsville
Rentz
Screven
Soperton
Swainsboro
Waycross

---

[11] Brunswick is the industrial center for the entire area for both manufacturing and shipping, and can be expected to have the most rapid growth of any area to be supplied by the southeastern Georgia extension. When natural-gas service was extended to Savannah, Georgia in 1963, new industries were drawn to it. See *Southern Natural Gas Co.*, Docket No. G-1907, 12 FPC 550. With the availability of natural gas in Brunswick, new industries can reasonably be expected to be drawn to it.

Atlanta has obtained franchises from each of the 35 cities which permit it to build, own and operate natural-gas systems within the corporate limits of those cities. No conversions of customer's propane-air appliances in Brunswick and Waycross will be necessary in order to utilize natural gas.[12] Atlanta proposes to construct lateral lines to each of the communities from Southern's proposed Macon-Brunswick line, to build distribution systems in the 33 new towns, and to expand its present facilities in Waycross and Brunswick. The estimated cost of the laterals to be constructed by Atlanta is $4,002,633, and the estimated cost of the distribution systems and additions in Waycross and Brunswick is $4,778,201. The total cost for Atlanta's proposed new facilities is $8,780,834. Flow diagrams, detailed construction costs, and distribution maps of the lateral and distribution facilities proposed by Atlanta in the 35 towns were received in evidence. Atlanta's estimated third-year investment in the southeastern Georgia facilities is expected to be $9,815,047. The difference of $1,034,213 between such third-year investment and the estimated expenditures represents Atlanta's present investment in propane-air facilities in Brunswick and Waycross.

Atlanta applied to the Georgia Public Service Commission for amendment of an existing certificate to permit it to construct and operate the intrastate distribution facilities above described.[13] Public hearings were held before that body during October 1961 and September 1962. The same evidence introduced by Atlanta in the instant proceeding was before the Georgia Public Service Commission. The rate levels placed in evidence in this proceeding were also before the said Commission. They were not, however, filed formally because Atlanta was "not . . . in a position to hold [itself] out [to] serve any customer in the area." (Tr. 1933.) Upon such evidence, the Georgia Commission found that:

> Based upon the proposed level of rates presented by the Company and upon the present price of other sources of energy available in the area, it appears that the project will be entirely practical from an economical point of view [Exhibit 8, p. 6.]

On November 2, 1962, the Georgia Public Service Commission issued Atlanta an amended certificate as requested by it.

The Chairman of the Georgia Public Service Commission appeared in this proceeding as a witness and urged this Commission to grant Southern the necessary authority for service to the southeastern Georgia area. He stated, in part, that:

> I am personally familiar with the southeast Georgia area. We regulate other utilities which now serve there. The opinion of the Georgia Public Service Commission, which Commission has authorized me to appear here, is the same as that brought out by the public witnesses in the hearings which we conducted; namely, that natural gas is badly needed in the area; that it will benefit the citizens through lower rates and superior service; that it will aid in industrial growth. [Tr. 492.]

Atlanta presented detailed evidence concerning its firm market requirements in the southeastern Georgia area. In estimating the requirements of the 35 southeastern Georgia communities to be served by Atlanta, engineering crews first reviewed with representatives of the communities the level of rates which would be in effect if Atlanta constructed and operated a distribution system in the community. If the community was interested in natural gas service, engineering crews made a house count of the existing homes in the community and industrial engineers prepared a survey of the industrial plants in the community.

---

[12] Such appliances were converted to use either natural gas or 1350 Btu propane-air gas in 1953 and 1956, respectively. Since such conversions, Atlanta has distributed only 1350 Btu propane-air gas—so-called "interchange gas"—in these communities.

[13] The "existing" certificate was issued on November 17, 1961. Among other things, it permitted Atlanta to build a line from Savannah, Georgia, where Southern's line now terminates, southwest to Waycross, Georgia, serving Brunswick and certain intermediate points. The line was never built.

Having made the house count and industrial survey, Atlanta estimated the number of customers that it expected to attach the first, second, and third years of operation. Such estimates were based on the number of houses and industries actually existing in each town at the time of the house count and industrial survey. No consideration was given to any possible increase in population or growth of the community.

Potential customers were then assigned to the usual classifications, and summaries prepared for each community reflecting (1) the number of customers in each classification for the first three years of service, (2) the firm and interruptible requirements, both on an annual and peak-day basis, of customers in each classification, (3) total requirements of all customers, both on an annual and peak-day basis, and (4) that portion of such requirements which Atlanta expects to obtain from Southern and from liquefied petroleum gas.

Although its witness was cross-examined extensively, no significant question was raised regarding the validity of the firm estimates or the validity of the methods utilized in making such estimates. The Examiner finds that the firm estimates are reasonable and attainable. The estimates of interruptible industrial customers is a more troublesome matter and now will be discussed.

A summary of the classifications referred to above shows that Atlanta's peak-day requirements in 1964, 1965, and 1966 are estimated to be 19,711 Mcf, 25,340 Mcf, and 30,287 Mcf, respectively. The annual requirements for the same periods of time are estimated as 3,940,653 Mcf, 7,215,381 Mcf, and 8,824,434 Mcf. Liquefied petroleum gas will be used as peak shaving gas to supply 1,711 Mcf, 1,340 Mcf, and 2,287 Mcf of such requirements, respectively. The remainder of the needed supply will be procured from Southern pursuant to the terms of a precedent agreement dated May 30, 1962, as amended by letter agreement dated January 8, 1963. The agreement, as amended, provides for Southern to furnish Atlanta, at 11 delivery points on the new line, contract demand quantities of 18,000 Mcf, effective November 1, 1963, or as soon thereafter as the pipeline which Southern shall construct is placed in operation, 24,000 Mcf effective November 1, 1964, and 28,000 Mcf effective November 1, 1965.[14] Atlanta's annual requirements, less volumes to be supplied by peak shaving, are estimated as 3,932,098 Mcf, 7,208,681 Mcf, and 8,809,319 Mcf in 1964, 1965, and 1966, respectively. The third-year annual requirement consists of the following:

	Third-year annual (Mcf)
Interruptible industrial sales	7, 017, 579
Firm sales, including residential, small commercial, public authorities, company use, unaccounted for and firm industrial	1, 806, 855
Less volumes to be supplied by peak shaving	15, 115
Total to be purchased from Southern	8, 809, 319

---

[14] Exhibit "A" to the precedent agreement dated May 30, 1962, had provided for contract demands of 19,000 Mcf, 26,000 Mcf, and 30,000 Mcf, respectively, for the periods indicated above. The contract demands were reduced due to Vidalia's election to operate its own natural gas distribution system and Atlanta's decision to use liquefied petroleum gas to meet the peak-day requirements of nine additional southeastern Georgia communities added to its project.

Of the estimated total interruptible annual sales of 7,017,579 Mcf, all but 182,341 Mcf would be made to the following customers in the volumes shown below:

Industrial customer	*Third-year annual volumes (Mcf)*	*Now uses*
Brunswick Pulp & Paper Co	3,650,000	Oil.
Best Wall Gypsum Co	900,000	Oil.
Allied Chemical, Solvay Division	1,150,000	Oil.
Hercules Powder Co	270,000	Oil and propane.
Swainsboro Printing & Finishing Co	383,190	Oil.
Filtered Rosin Products Co	144,343	Oil and propane.
Georgia State Prison	107,705	Oil and propane.
Atlantic Coast Line Railroad	177,000	Oil.
Fort Stewart	53,000	Oil, propane, and coal.
Total	6,835,238	

Sales to all the industrial interruptible customers are expected to account for $2,526,328 of a total of $5,017,597 in revenue that Atlanta expects to receive in the third year from the proposed southeastern Georgia project.

Atlanta's estimates of industrial markets were based on industrial surveys, conversations between its industrial engineer and proposed customers, and Atlanta's experience in prior expansions in the State. The method employed by Atlanta in its industrial surveys was explained by its President as follows:

> * * * we have had an office in Brunswick for many, many years, going back beyond 1930, and we know these industries and these customers there. Our local people are in daily contact with them. We make an industrial survey, and it is a very complete study. We go into the customer's plant, check the equipment he has, his present fuel, his cost of handling that fuel, any changes that he is likely to make, any improvements in efficiency that we might make both from the sale of fuel and generally with engineering help, and we determine first what a breakeven point or if you like, how much the customer can afford to pay for gas, and then we determine if we can sell him gas at a rate less than that, a rate that would permit him to amortize any equipment over a short period of time and then save him some money. [Tr. 2015].

There is presently in operation in the area an interruptible industrial load of about 100,000,000 therms. Atlanta's experience indicates that it can be reasonably assured of from 30 to 40 percent of this load during the first year; 60 to 70 percent the second; and 70 to 80 percent the third year if the price of gas is competitive with other fuels. In recent conversions (that is, from manufactured to natural gas) at Athens, Augusta, and Valdosta, Georgia, Atlanta has achieved greater percentages.

Atlanta's *average* proposed third-year rate levels are as follows:

Classification of service:	*Average rate/cents/therm*
Residential	15.47
Commercial small	13.52
Industrial small	10.78
Public authorities	10.05
Industrial firm	6.50
Industrial interruptible	3.60

The steps in such proposed rate schedules are as follows:

Residential:		
4 therms or less per month	$1.50	minimum bill.
Next 11 therms used per month	.16	per therm.
Next 185 therms used per month	.13	per therm.
Over 200 therms used per month	.095	per therm.
All over 50 therms used per month for air conditioning	.07	per therm.
Commercial and small industrial:		
4 therms or less per month	1.50	minimum bill.
Next 11 therms used per month	.16	per therm.
Next 285 therms used per month	.13	per therm.
Next 300 therms used per month	.08	per therm.
Over 600 therms used per month	.07	per therm.
(Certain summer loads will be $0.06 per therm.)		
Large industrial:		
First 40,000 therms used per month	.04	per therm.
Over 40,000 therms used per month	.031	per therm.
(Both subject to a fuel adjustment clause.)		

These are the same rate levels presented by Atlanta in the proceedings before the Georgia Public Service Commission. The proposed residential, commercial small, and industrial small rate levels are now lower than those prevailing in Jacksonville, Florida; Charleston, South Carolina; and Savannah, Georgia. The proposed firm and interruptible industrial rate levels on the average would be about the same as those prevailing in Savannah, Georgia, which is about 70 miles from Brunswick.

The proposed firm and interruptible industrial rate levels will have a fuel price adjustment clause geared to the delivered price of sulphur free Bunker C oil (also called No. 6 oil) in the Brunswick area. Under this clause, the large industrial rate will be 10 percent less than the cost to the customer of Bunker C oil as fired. Stated differently, Atlanta's rate is designed to be 90 percent of the price of oil. Smaller industries will realize greater savings. The fuel adjustment clause is keyed to a base price of Bunker C oil of $2.15 per barrel. The current price is $2.35.

Atlanta's so-called "escape clause" becomes operative when it has dropped its price to the customer down to two cents above its cost of gas. Its present cost of gas from Southern for the commodity component is 23.67 cents per Mcf. The point where it would no longer reduce its price under the competitive clause formula would be 25.67 cents per Mcf, or 2.57 cents per therm. The present cost of a barrel of sulphur free Bunker C oil equal to 25.67 cents per Mcf is $1.64. Since the current price of said oil is $2.35 per barrel, the price would, therefore, have to decline from $2.35 to $1.64 per barrel before the price of gas would be so low that Atlanta would be unable to provide prospective industrial customers with savings in their fuel costs.

Exhibits showing competitive fuel data for Brunswick, Waycross, Jesup, and Swainsboro—the four largest cities in the area proposed to be served by Atlanta—were introduced in evidence. The exhibits show, and the Examiner finds, that the 3.1 cent per therm step in the proposed large industrial rate is less than the cost of each of the current competitive fuels in any of the cities involved.

As previously shown, at present the principal industrial fuel used by the proposed interruptible industrial customers is fuel oil. Oil burners may be converted to natural gas by the substitution of a "gas gun" for an "oil gun" (Tr.

2018). In the case of the Brunswick Pulp and Paper Company the gas gun substitution would cost about $25,000 each. Conversion to natural gas would result in a savings of at least 10 percent over the cost of present fuel. The savings to Brunswick Pulp and Paper Company would amount to about $150,000 a year over and above the cost of amortizing the conversion to natural gas.

The Examiner finds that Atlanta has designed its proposed rates so that they will be below the cost of the competing fuels now used by the proposed customers in an amount which will probably result in the customers buying natural gas from Atlanta when it is available. The fact that the price of oil per barrel would have to drop more than one-third of its present price before Atlanta would stop selling gas to the proposed industrial customers, supports the further findings, which is hereby made, that the price will probably remain competitive for the foreseeable future.

1(a) *Atlanta—Firm Industrial Contracts Not Required*

The Coal Interests and Southern Propane contend, among other things, that in the absence of firm commitments from Atlanta's proposed large industrial interruptible consumers this Commission cannot properly find that the proposed southeastern Georgia project is economically feasible. In support of this argument they cited numerous cases[15] and pointed out that there are no firm commitments whatsoever from any of the proposed interruptible customers even though such customers account for 79.5 percent of Atlanta's third-year total natural gas and propane requirements.[16] They show that there have been several proposals to bring gas to the southeastern Georgia area and that none of them was successful. The two most important are found in *Atlantic Gulf Gas Co.*, 10 FPC 79, 1018 (1951), and *South Georgia Natural Gas Co.*, Docket No. G–14587, 22 FPC 211, 230 (1959). The latter involved, in part, a proposal by Georgia Coastal Natural Gas Corporation to build a pipeline in the same southeastern Georgia area as here and for Southern to supply the gas. Critical reference was made to the failure of Atlanta to build a line from Southern's line near Savannah to Brunswick, although as previously shown the Georgia Public Service Commission authorized it to do so on November 17, 1961. Although the record is not free from ambiguity, the Examiner finds that a contributing cause to at least one of such failures was the inability of the Georgia Coastal Natural Gas Corporation to procure firm contracts from proposed interruptible customers. Reference is also made to the fact that one customer, the Brunswick Pulp and Paper Company, would account for over half of Atlanta's proposed interruptible requirements. Much stress is laid upon the fact that no witnesses from any of the proposed interruptible customers appeared to testify as to their willingness to utilize natural gas if it were to become available.

Staff cited and discussed numerous cases and concluded that firm contracts are not necessary in this case.[17]

---

[15] *General Gas Pipe Line Corp.*, 2 FPC 705, 708; *Northern Natural Gas Co.*, Docket No. G–17485, Opinion No. 324, 22 FPC 164; *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264, 311, affirmed *sub nom. Lynchburg Gas Company* v. *Federal Power Commission*, 275 F. 2d 847 (CA 3, 1960); *Michigan Wisconsin Pipe Line Company*, Opinion No. 336, 24 FPC 177, 190; *Transcontinental Gas Pipe Line Corp.*, 27 FPC 859, 863, 872. Reference was also made to *Southern Natural Gas Company*, Docket No. CP61–187, 25 FPC 727, 728.

[16] 1966 total requirements of 8,824,434 Mcf (8,809,319 Mcf natural gas and 15,115 Mcf propane), of which 7,017,579 Mcf is for proposed interruptible customers.

[17] Such cases included the following: *Transcontinental Gas Pipe Line Corporation*, Opinion No. 302, 17 FPC 360; *Transcontinental Gas Pipe Line Corporation*, Opinion No. 315, 20 FPC 264; *Transcontinental Gas Pipe Line Corporation*, Opinion No. 315–A, 21 FPC 138, rehearing denied, 21 FPC 399, affirmed *sub nom. Lynchburg Gas Company* v. *Federal Power Commission*, 275 F. 2d 847.

An analysis of the various cases cited by the parties, and the recent case of *Northern Natural Gas Company, et al.*, Docket No. CP62–85, *et al.*, Opinion No. 404, 30 FPC 859, decided September 30, 1963, shows that firm contracts from industrial customers are usually required where they are needed in order for the company to obtain financing for the project. They are also generally required for sales to large volume industrial customers where the "contemplated sales appear to have a strong bearing on the economic feasibility of the project and there is reason to question whether in fact the sales will be made." (*Northern Natural, supra*, p. 864.), Atlanta's plan of financing has been arranged, is sound, and has not been questioned. The expenditures for the project will be financed in the same manner as its normal construction requirements—by cash generated from operations plus short-term bank loans which will be replaced by permanent financing. The precise type of permanent financing depends upon market conditions prevailing at the time of such financing.

Atlanta's credit is good. Its First Mortgage Bonds are rated A. On March 27, 1963, Atlanta sold 27 million dollars worth of bonds. They carried a coupon rate of 4⅜ percent and were offered to the public at 4.305 percent. The cost to the company was 4.3565 percent. The prospectus for the issue disclosed the existence of the proposed southeastern Georgia project involved herein. Approximately six million dollars of the proceeds of the bond issue will be used for construction. Atlanta's 1963 construction budget is some 11 million dollars. The bond proceeds are not necessarily earmarked for instant project; however, they will be used to repay bank loans that have been used for general construction.

Atlanta has an agreement with a group of Georgia banks presently in effect under which Atlanta can borrow up to $13,875,000 at the prime rate. Currently Atlanta is not indebted to these banks. Atlanta's net income for the calendar year 1962 was $3,978,478. The Examiner finds that firm contracts are not needed in order for Atlanta to obtain financing for the project.

In this case a substantial percentage of sales depends upon two customers, namely, Brunswick Pulp and Paper Company and Allied Chemical. The Examiner finds that on the record herein such sales are necessary to the economic feasibility of the project.[18] Nevertheless, firm contracts should not be required.

The general rule requiring a firm contract where one or two customers account for a substantial portion of the interruptible sales is not one to be applied in a vacuum. Each case must be decided on its own facts. The evidence is clear that the rates proposed by Atlanta, and which were before the Georgia Public Service Commission, are lower than the price of the competitive fuels now used by the proposed industrial customers. Also, it is clear that the said Commission will see that the rates remain competitive. The important question, then, is whether or not the record supports a finding that the proposed customers will be willing to buy gas at the proposed rates. The Examiner finds that they will.

---

[18] Atlanta contends that its project would be feasible if it made none of its proposed industrial sales. The Chairman of the Georgia Public Service Commission was of the opposite view (Tr. 498). Furthermore, a loss of all industrial sales would, under Southern's minimum bill provision, result in Atlanta's paying for 1,886,779 Mcf of gas which it could not take, thereby decreasing its rate of return. (28,000 Mcf/CD × 90% × 365 days × 40%, minus firm sales of 1,792,421 Mcf). The decreased rate of return, however, was not computed in the record. The record does not permit of a finding that Atlanta's project would be economically feasible if it failed to get all of its industrial load. Southern introduced figures showing that the loss by Atlanta of 50 percent of its industrial sales would reduce the 6.1 percent rate of return (subsequently computed for the southeastern Georgia extension separately on the basis of a 22.32 cents per Mcf gas cost) to 5.7 percent; and if 25 percent of such sales were lost the rate of return would be 5.9 percent. Even if such rates of return were satisfactory herein for Southern, the record does not permit of a finding that the project would be economically feasible for Atlanta if it were to lose such industrial sales.

The President of Atlanta testified without contradiction that the proposed industrial companies stated that they would buy gas from Atlanta if they could save money by doing so. Such testimony was sufficient to shift the burden of going forward to the Coal Interests and Southern Propane. Their cross examination revealed no facts which created any doubt in the Examiner's mind concerning the testimony. In this case, therefore, a written contract, or the appearance of the company officials, would amount to cumulative evidence because such evidence would establish only that the companies would take gas from Atlanta if it were priced competitively.

The Examiner has found previously that the gas will be priced competitively and can be expected to remain so for the foreseeable future. The proposed industrial customers have said they would use gas under such circumstances. No further evidence is needed. The Examiner finds (1) that there are reasonable grounds for anticipating that the industrial loads will be attached, and (2) that no firm contracts are required.

1(b) *Atlanta—Economic Feasibility*

Atlanta's projected sales and revenues for the first, second, and third years are as follows:

	1st year	2d year	3d year
Therm sales	39,406,530	72,153,810	[1] 88,241,680
Revenues	$2,444,801	$4,018,930	$5,017,597

[1] The third-year therm sales are based upon 8,809,319 Mcf of gas per year to be purchased from Southern, and 15,115 Mcf of gas per year to be supplied by liquefied petroleum gas.

Based upon the rates ordered by the Federal Power Commission in its Opinion No. 379, Southern's recent rate case, the estimated third-year return to Atlanta from the proposed facilities is 5.92 percent. Upon the basis of Southern's rates prior to such order, the comparable third-year rate of return was estimated to be 5.57 percent. Under the rates presently in effect pursuant to the order of the Commission dated March 7, 1963, the comparable third-year rate of return would be 5.77 percent.

As previously shown, the rate levels presented by Atlanta in this proceeding, as set forth hereinabove, were before the Georgia Public Service Commission. The rate schedule was not filed formally because Atlanta was not then in a position to hold itself out to serve any customer in the area. The Georgia Public Service Commission found the project economically feasible. In the certificate issued to Atlanta, it stated as follows:

> It appears that the Company will not have to rely solely upon its revenues from this system. However, it further appears that the Company will have to apply developmental rates for a reasonable period of time, and that it will expect to make some present reduction in rates in Brunswick and Waycross, and will increase the load in those two cities through conversion from manufactured to natural gas. Based upon the proposed level of rates presented by the Company and upon the present price of other sources of energy available in the area, it appears that the project will be entirely practical from the economic point of view. In the event the price of gas to the Company is increased at any time, the said rates could be adjusted to reflect reasonable increases in the cost of gas and still remain competitive.

> This, however, is not to be construed as approval of any specific rates, and before commencing service, the Company shall file schedules of its rates and charges as well as any industrial contracts. The Commission finds that the project as presented is economically feasible. [Exhibit 8, p. 6.]

Although Atlanta's rate of return in 1962 was about 6.26 percent, as computed from the figures in Exhibit No. 10, the Examiner finds that its project probably will be economically feasible. The Georgia Commission will consider Atlanta's system-wide operations as a whole, thereby providing that other consumers in Georgia shall pay the difference between any disproportionate rate of return which Atlanta may earn in southeastern Georgia as compared with the rate of return which the Georgia Commission may find is appropriate for the company as a whole. As a result, there is no question in this case of the ability of Atlanta to meet the interest payments on its bonded debt. *Cf. Transcontinental Gas Pipe Line Corporation*, 17 FPC 360.

One further matter: The Coal Interests contend that

> * * * if Southern's delivery capacity had been limited to its intended use, *i.e.*, firm sales, and if interruptible sales held to a minimum, the need today to buy higher cost gas to replace depleted reserves would not be as great. To authorize further expansion of pipeline facilities which would be used to promote interruptible usage manifestly would not be compatible with the public interest. [Brief, p. 11.]

The defect in this contention is that the Commission has recognized that interruptible sales are important to Southern's economic welfare and has designed rate provisions to foster such sales.

2. *City of Vidalia, Georgia*

Vidalia is a municipality as defined in Section 2 of the Natural Gas Act and is legally authorized to engage in the local distribution of natural gas to the public. It was incorporated as a town in 1894 and as a city in 1902. A new charter was issued in 1922. The population in 1950 and 1960 was 5,819 and 7,569, respectively. It is situated in a predominantly agricultural area and has good natural resources, labor supply, and climate. It is an active community and its population should continue to grow and develop in the foreseeable future.

In this proceeding Southern requests authority to sell and deliver gas to Vidalia from its proposed Macon-Brunswick line at or near Alma, Georgia. Vidalia, in turn, proposes (1) to construct, own and operate a municipal gas system consisting of a transmission line from Southern's proposed point of delivery and a distribution system within its corporate limits, and (2) to purchase gas from Southern in the following annual and maximum daily amounts:

Year of operation	Requirements in Mcf at 14.73 psia	
	Annual	Peak day
First	85,987	1,094
Second	110,873	1,395
Third	128,190	[1] 1,619

---

[1] Computations in various exhibits herein were based upon a third-year peak-day quantity of 1,933 Mcf, notwithstanding the aforesaid 1,619 figure. The former figure was furnished to Southern when it prepared its original exhibits. The decrease of 314 Mcf will not affect Southern's economic feasibility exhibits because the late customer requirements will supply quantities in excess of the decreases. Even if the decreases were not absorbed in any manner by new customers, the effect on Southern's operation in the third year would be *de minimis*.

The required distribution facilities are estimated to cost $730,000 and will be financed through the sale of 5½ percent revenue bonds payable solely from the net revenues of the system. They will mature in annual installments in each of the years 1966 to 1987. During the first three years of operation $27,800, $26,700 and $21,300, respectively, are reserved for the cost of service lines and conversions. In the fourth year, the debt service coverage will be 1.54. The debt coverage ratio in 1987 will be 1.57.

The Vice President and Manager of the municipal department of the investment firm of First Alabama Securities, Inc. testified that he had reviewed the pertinent exhibits herein and that based upon an analysis of such exhibits and current market conditions it was his opinion that the bonds proposed to be issued by Vidalia were marketable and that his firm would be willing to purchase them at par. He did not consider the third-year investment per customer of approximately $495 as being "out of line" for a construction project (Tr. 1293). His opinion concerning marketability and his willingness to purchase the bonds were not in any way based upon Vidalia's application to the Housing and Home Finance Agency for the purchase of the bonds by that Agency at a 3¾ percent interest rate. At the time Vidalia's case was presented at the hearing (March 20 and 21, 1963), such Agency had not taken final action on the Vidalia application. At page two of its reply brief Vidalia states that the Agency has agreed to purchase the bonds as aforesaid. Obviously, such statement cannot be considered, and has not been considered, in deciding this case.

An engineer experienced in making market surveys, and in designing and constructing municipally-owned and operated natural-gas systems, testified in support of Vidalia's application. In 1962 he conducted Vidalia's market survey. He also designed its distribution system. No party challenged his testimony, or any other aspect of Vidalia's case, in their briefs to the Examiner.

The market survey was divided into the following three parts; (1) the location of structures on the map, (2) a door-to-door canvass of residences to determine the types of fuels being used, fuel costs and the attitude of residents to proposed natural-gas service, and (3) a direct contact with and interview of representatives of all prospective commercial and industrial customers. Occupants of 74.9 percent of all residences were contacted and the representatives of 100 percent of the large commercial and industrial establishments were interviewed.

The fuel survey revealed that liquefied petroleum (LP) gas and fuel oil are the fuels most frequently used by residents for heating their homes and that LP gas and electricity are mainly used for cooking and water heating. For all practical purposes, no coal and very little wood is used as fuel. At the rates proposed to be charged by Vidalia for gas sold by its system, natural gas will be cheaper for the average residential and small and medium commercial customer than other fuels presently available.

Customers were classified according to uses of gas and the number in each classification was based upon the type of fuel now used by them and the experience of other systems now in operation. The requirements of each class of customers for each usage (cooking, water heating and space heating) were then determined. In estimating residential space heating requirements, weather conditions were studied, the degree day deficiency for each month of the heating season established, and the volumes of gas required to heat the home during each such month determined.

Requirements for each use of gas, determined as aforesaid, were then applied to the number of customers in each classification and the annual and peak-day requirements were tabulated. These requirements are reasonable and attainable.

Vidalia proposes to take gas service from Southern's New Brunswick lateral in the southeastern part of Wheeler County, Georgia, at its intersection with Bell's Ferry Landing Road and to construct approximately 21½ miles of 4½-inch O.D. lateral transmission line from that point northwest to Vidalia. The transmission line will be constructed along the right-of-way of state and county highways with the result that right-of-way costs will be kept to a minimum. The line as designed is adequate to deliver gas to the distribution system at not less than 25 pounds per square inch pressure. A flow diagram showing the conditions during initial operations and also the maximum capacities of the system was prepared. The transmission line is of adequate size and capacity to transport gas in volumes sufficient to meet the requirements of the distribution system over a 30-year period.

Vidalia also proposes to construct an intermediate pressure distribution system which will operate at a pressure between 15 to 30 pounds per square inch. The distribution system is designed to provide a minimum pressure of 5 to 10 pounds per square inch at the extremities of the system at the 30th year design load. The system so designed is adequate to provide natural-gas service to the city.

The estimated direct construction costs are $590,000. The difference between that sum and the total cost of $730,000 is for the payment of interest for a two-year period on the revenue bonds, fiscal and legal costs, operating capital, equipment and supplies, and customer conversions. The cost estimates are based on bids currently being received for comparable construction. The system can be constructed and placed in operation within the cost estimates set forth.

Included in the cost estimates are provisions for meters, valves, service lines, and assemblies for connecting 796 customers. Also included is an additional allowance of $19,950 to convert the customers' LP gas appliances for use for natural gas and modification of house piping if necessary.

Upon completion of the construction of the system by the construction contractor, the city will itself take over the work of adding new customers. It will cost the city about $100 per customer to add the service lines and other necessary equipment. The cost of the connections after the initial construction period will be provided for from the revenues of the system. As previously shown, certain revenues were allocated for this purpose during the first three years of operation. This results in an unsatisfactory debt-coverage ratio until the fourth year of operation. In this case such ratio is adequate and reasonable.

The Examiner finds that Southern is the most feasible source of supply for Vidalia; that there is a public need for and will be a public benefit from natural-gas service to Vidalia; that the project can be adequately financed and is economically feasible; that no undue burden will be placed upon Southern by approval of Vidalia's project; and that the project is necessary and desirable in the public interest.

IV. *Facilities and Their Costs*

The reasonableness of the cost of the proposed facilities, as set forth in Appendix B hereof, is not an issue in this proceeding. Furthermore, all parties agree that the facilities listed in Appendix B are adequate. Three parties, however, contend that the facilities are either not needed or are more than adequate.

The Coal Interests contend there is no need for any new facilities to meet the estimated increase in capacity of 95,000 Mcf per day because Southern now has an excess capacity of approximately such amount. The Examiner has found to the contrary. Other than for the southeastern Georgia extension, no party has raised any further objection to the construction of the proposed facilities. Carolina, the Coal Interests, and Southern Propane contend in effect that the pipeline for the southeastern Georgia extension should be of a smaller size. This contention is discussed in detail hereinbelow. For the reasons subsequently stated, the Examiner finds that the facilities and the cost thereof for the entire project, and the facilities and costs related to the southeastern Georgia extension separately, are adequate and reasonable and are or will be required by the public convenience and necessity.

A. *Facilities: Present System*

As shown on the map attached hereto as Appendix A, Southern's main transmission system consists of two lines, known as the North Line and the South Line, which are generally parallel to each other and approximately 80 miles apart. The North Line extends about 460 miles from the Monroe gas field in northeastern Louisiana to Atlanta, Georgia; the South Line extends about 504 miles from the Gwinville gas field in south-central Mississippi to Aiken, South Carolina. The North Line and the South Line are interconnected by three cross-connecting lines, known as the Gwinville-Pickens Line, the McConnell-Selma Line, and the Macon-Atlanta Line. Gas moves into the system through three supply systems; the Logansport-Perryville System, the Cranfield Field Line, and the South Louisiana Supply System. The South Louisiana Supply System extends approximately 68 miles south from the Gwinville gas field in south Mississippi to Southern's Franklinton compressor station near Franklinton, Louisiana. From Franklinton the supply system branches into two legs, the west leg extending in a southwesterly direction to the Duck Lake Receiving Station, and the east leg extending in a southeasterly direction to Southern's Olga Compressor Station in Plaquemines Parish, Louisiana. There are various laterals connecting these two lines to gas fields.

B. *Facilities and Costs: Southern's System as Fully Expanded*

In Appendix B hereof the facilities to be constructed are grouped in four categories as follows: (1) facilities proposed for the southeastern Georgia extension, (2) compressor horsepower required to increase main line capacity by 95,000 Mcf per day, (3) facilities required to increase the capacity of the south Louisiana supply system, and (4) facilities proposed for reinforcement of six lateral lines. In addition, a separate listing shows the measuring facilities and line taps which would be necessary if Southern were required to serve the Section 7(a) applicants listed in Appendix B. Of such applicants, only Warrior River's application is consolidated herein and, as previously shown, should be denied. Except for the Chattahoochee Valley Gas District and the City of Dora, Alabama, the remaining Section 7(a) applications have been granted. The towns of Eclectic, Alabama, and Buena Vista and Cave Springs, Georgia, which were originally listed in Southern's application, were eliminated by Southern from further consideration because they failed to proceed with their projects.

All of the increase in main line and supply system delivery capacity is to be achieved by the installation of additional compressing facilities in existing compressor stations as shown in Appendix B. The Rankin compressor station is on a connection between Southern's North and South Lines. The changes at this station are for the purpose of providing more economical operation of the station.

The additional horsepower to be added at the Enterprise station includes the 2,500 horsepower packaged gas turbine centrifugal compressor unit which was authorized on July 9, 1962, on an experimental basis in Docket No. CP62-191.

Testing was to be carried on jointly by Southern and the manufacturer's representative for a one-year period; and if performance were satisfactory, Southern would seek authorization from the Commission to acquire the unit. By order of the Commission dated January 4, 1963, Southern was given to and including March 9, 1963, within which to complete construction and place the unit in actual operation. It was placed in operation on February 4, 1963.

In its present application Southern requests authority to purchase the unit and operate it on a permanent basis. On the basis of about one month's operation of the unit, Southern is convinced that the unit "is going to do what it is said it will do." (Tr. 773) On the basis of the operation of this unit it has decided to go forward with five new ones. No party opposes this part of the application in Docket No. CP63-26. The Examiner finds that Southern should be permitted to purchase the unit and operate it on a permanent basis.

The reinforcement of the six lateral lines will require about 50 miles of pipeline loops, varying in outside diameter from 4½ inches to 12¾ inches.

Facilities for service to the southeastern Georgia area consists principally of 7.5 miles of 16-inch O.D. pipeline loop extending east along the main South Line from the Ocmulgee station and approximately 174 miles of 12¾ inch pipeline extending southeast, from the eastern end of the 16-inch loop, to Brunswick, Georgia.

The West Delta Block 27 Field gas is to be taken into Southern's system by means of a 22-inch O.D. pipeline extending southeast from the southern terminus of Southern's Lake Washington line approximately 27 miles to a point near Venice, Louisiana.

Southern also asks authority to construct and operate the river crossing, metering and regulating stations and other appurtenant facilities shown on Appendix B.

Except for the supply facilities and the Calera and Milledgeville branch line loops, which are needed solely to permit repairs of present lines and increase safety of operations, the facilities to be constructed were designed to increase the capacity of Southern's pipeline system to enable it to deliver quantities of gas approximately equal to Southern's maximum firm contract delivery obligations during the 1965–1966 winter. Construction of facilities to produce capacity which will enable Southern to meet customer requirements for three years in advance is, as previously shown, consistent with the policy which Southern has followed with the approval of the Commission.

The 1965–1966 contract demands and maximum delivery obligations also represent the winter peak-day requirements. When the application was filed such requirements were 1,513,813 Mcf. Subsequently, the requirements increased to 1,515,942 Mcf and an exhibit reflecting such increased requirements was received in evidence. Other pertinent exhibits were changed to reflect the increases. Southern was of the opinion, and the Examiner finds, that these changes in requirements were so slight as not to detract from the validity of the design of the system and its ability to meet the 1965–1966 winter-peak requirements.

As shown in the Market section hereof, late requests for increases in contract demands amount to 10,160 Mcf in 1965–1966. Such increases would bring the 1965–1966 peak-day firm requirements up to 1,526,102 Mcf per day. If necessary, this increase in capacity could be added within a relatively short time and at a low cost by supercharging and relocating one compressor engine and making minor piping and cylinder changes at another compressor station.

The additional compressor facilities proposed to be installed on the south Louisiana supply system are for the purpose of permitting the transportation to

Gwinville of the West Delta Block 27 gas, and also to permit Southern to take additional quantities of gas which are available from fields connected to the south Louisiana supply system. These compressing facilities have been designed so as to permit Southern to take from any field, to which its system is and will be connected, the maximum contract quantity. Southern is now in a position where the minimum takes required by its gas purchase contracts exceed system input requirements. As a result, it is necessary that the additional flexibility be achieved so as to permit the make-up of deficiencies in takes below minimum take obligations.

The system was designed to meet hourly requirements during the peak periods of the day as well as peak-day requirements. Peak-hour requirements exceed average hour requirements, particularly during the heating season, and Southern is obligated under its tariff to deliver gas at an hourly rate of up to six percent of the daily contract demand and maximum delivery obligation. Stated differently, Southern must provide capacity sufficient to supply 144 percent of the customers' daily contract delivery divided by 24 hours.[19] Peak-hour requirements for points at and west of the Reform station on the North Line, and at and west of the Enterprise station on the South Line, can be fully provided for by gas from line storage; but for points east of such stations some portions of such requirements on days of maximum demand must be provided for from line flow, as distinguished from line storage. All engines at the Reform station and at the Enterprise station will, therefore, be utilized at substantially full capacity on the design load day and will determine the through-put capacity of the North Line and South Line, respectively. However, the stations east of Reform and Enterprise have an apparent excess of compressor capacity for the design load day, but all of such capacity is needed to meet peak-hour requirements.

Southern's estimates of construction costs based on detailed studies sponsored by its Chief Engineer are set forth in Appendix B hereof.

Cost estimates of metering and regulating facilities, land and land rights, pipe laying, general construction and overhead and installation of gas driven reciprocating engines were based on Southern's past experience for similar work, adjusted when necessary to compensate for increased costs of materials and installation. Other cost estimates were based upon freight tariffs, manufacturers' prices, past experience and discussion with manufacturers' representatives. After the original exhibits were filed certain adjustments in the estimates were made.

Southern states that the net change in the cost of facilities covered by the application, taking into consideration the reduction in the cost of line pipe and the additions and eliminations of line taps and measuring stations, resulted in a net reduction in the cost of facilities shown on Item F of $257,294, and a cost of all facilities to be constructed of $23,156,453. To this cost, however, there must be added the sum of $57,400, which represents the cost of four additional measuring stations to be constructed on the southeastern Georgia extension. The adjusted total cost is $23,213,853.

All of the major facilities are to be constructed under contract. Some of the minor facilities such as measuring facilities and line taps may be installed with Southern's own forces. No contracts have been awarded for the work with the exception that the service of a surveying party has been contracted for in order to perform preliminary survey work on the southeastern Georgia extension.

All of the facilities to be installed will be operated as integral parts of Southern's system and construction is to be commenced within 30 days following the issuance of a certificate.

---

[19] Southern's Gas Tariff, Sixth Revised Volume No. 1, Sheet 43.

C. *Facilities and Their Costs: Southeastern Georgia Extension Separately*

Carolina, the Coal Interests, and Southern Propane contend that Southern's proposed line to supply the southeastern Georgia area should be of a lesser size than the 12¾ inch O.D. pipeline which Southern proposes to build. Affirmative evidence in support of the contention was introduced by Carolina, including flow diagrams based upon the smaller pipe size. In summary, Carolina's evidence purports to show (1) that a line extending southeast to Brunswick from near Macon, Georgia, would be adequate to supply the requirements for the southeastern Georgia area if constructed of part 10¾ inch and part 8⅝ inch O.D. pipe and (2) that Southern's proposed 12-inch line is not economically feasible whereas the smaller line might be economically feasible. The Examiner finds, for reasons subsequently stated, that the project would be economically feasible if the proposed 12-inch line were constructed.

The remaining contention, which was also placed in the form of a proposed finding, will now be considered. The 12-inch line would have a capacity of 82,230 Mcf per day when that quantity of gas is available from Southern's main South Line, or some 26,831 Mcf in excess of the third year total daily connected load on the line of 55,399 Mcf. The "total daily connected load" is the sum of Vidalia's third-year peak-day firm requirement of 1,933 Mcf and Atlanta's third-year peak-day firm requirement of 28,000 Mcf and the estimated interruptible requirement of 25,466 Mcf. This latter requirement is derived from Atlanta's estimate of third-year peak-day curtailments of interruptible customers.[30] The full 82,230 Mcf of capacity would not be required for 10 or 11 years. The problem, therefore, is to ascertain on the basis of the evidence of record what size pipeline would be adequate to deliver the volumes of gas which must be supplied to the southeastern Georgia area in order for the project to be economically feasible. Obviously, if the smaller line proposed by Carolina were adequate, it should be built in lieu of the 12-inch line.

1. *The Third-Year Requirement of 55,399 Mcf Per Day*

As subsequently shown, the finding that the southeastern Georgia extension is economically feasible on an incremental basis is predicated upon it producing operating revenues of at least $3,154,090 in the third year. To realize this sum, Southern must sell to Atlanta 8,809,319 Mcf of natural gas in the third year. In addition, the Examiner's prior finding that Atlanta's project is economically feasible is based upon third-year annual sales of 8,824,434 Mcf, consisting of 8,809,319 Mcf of natural gas and 15,115 Mcf of liquefied petroleum gas. Accordingly, the Examiner finds that in order for the pipe size in the southeastern Georgia area to be adequate it must be of a size which will supply at least the 8,809,319 Mcf of gas to Atlanta in the third year. Since transmission pipelines are designed on the basis of supplying a certain quantity of gas per day, the next question is to ascertain the Mcf per day upon which the pipeline design should be based. Southern's evidence in this respect was presented through its Chief Statistician and Planning Engineer, a man of some 32 years' experience in the involved area. He explained Southern's pipeline design policy as follows:

> Southern has designed lateral lines to have a capacity equal to the connected load so as to enable Southern to operate its system to its maximum capabilities as a whole, thereby achieving the highest possible system

---

[30] Southern's design witness testified, and the Examiner finds, ". . . that the peak day curtailments are the proper measure of the connected load of interruptible industrial customers which the branch line should be built to supply because they represent the daily volumes of gas which the interruptible customers would take if gas were available." (Tr. 2854)

> load factor, which has the effect of keeping unit costs down and decreasing the cost of service to Southern's customers.
>
> The reason for this policy is that by far the largest part of the investment in facilities to deliver gas to market excluding supply facilities consists of the investment in main line facilities. It is important since *Southern has no underground storage* available to it, to operate these main line facilities at the highest possible load factor so as to keep down unit costs. Therefore, we have found it most economical to build into the branch lines a capacity which will permit delivery of full interruptible requirements at all times when gas in excess of firm requirements is available in the main lines. If branch lines were sized to carry less than the full connected load to be served from them, there would be many times during the year when gas in excess of firm requirements would be available at the main line which could not be delivered to customers receiving service from branch lines. [Italics supplied; Tr. 2859–60.]

Based on this policy, it was his view the pipeline should be designed to carry both the firm peak-day contract demand requirements of Atlanta and Vidalia (29,933 Mcf), and the peak-day requirements of interruptible customers (25,466 Mcf), or a total of 55,399 Mcf per day. He further testified, however, that when the temperature is above 50 degrees there is less demand for gas for space heating and, as a result, there then ". . . can be expected to be an adequate supply of gas for all requirements." (Tr. 2855) Accordingly, if the temperature were always above 50 degrees in the area, which is not the case, the full annual quantities of 8,809,319 Mcf could be carried by a pipe line designed for the off-peak capacity of 41,589 Mcf per day.[21] (This off-peak capacity figure, and accompanying flow diagram, was presented by Southern in rebuttal to a somewhat similar exhibit introduced by Carolina. It was based upon one-half of the firm peak-day requirements, including peak shaving of 2,313 Mcf, or 16,123 Mcf plus the connected industrial load of 25,466 Mcf per day.)[22] The fact is, however, that on 65 to 100 days during a year the temperature is below 50 degrees and this would render it necessary to curtail the interruptible customers in some unspecified amount. The full 55,339 Mcf of capacity would not, of course, be needed on all such days. Southern estimates such use on "many days" and contends that the line must be designed to carry the full firm and connected loads (Tr. 3025). This contention is supported by the following testimony of its witness:

> Based upon 32 years of experience in estimating requirements in the southeastern section of the United States, it is my opinion that the daily deliveries in the third year on the Brunswick line will vary between 30,000 Mcf per day and about 56,000 Mcf per day, depending upon availability of gas at the main line, which as Mr. Little [Carolina's design witness] suggests, will be affected by weather on other parts of the system. From my experience, I know that there may be gas available in excess of firm requirements on any part of the system at any time when the temperature is between 20° and 50°. One of the reasons for the availability of gas on cold days in excess of firm requirements is that contract demand customers frequently reduce their takes to 90% of contract demand so as to avoid establishing

---

[21] At page 43 of its brief Staff stated that "[t]he assumption in Exhibit 30 of a daily requirement of 41,589 Mcf for southeastern Georgia for the third year seems reasonable and it has already been demonstrated that Southern has main-line capacity to supply such requirements if they are needed. Therefore, the staff feels that Southern has shown that its proposed 12-inch southeastern Georgia extension should be constructed or else the project should be completely denied."

[22] Exhibit 30 shows peak shaving to be 2,287 Mcf. The difference is *de minimus*.

> higher billing demands. Above 50° there can be expected to be an adequate supply of gas for all requirements. [Tr. 2855.]

Carolina's proposed pipe size is based upon off-peak requirements. It would transport one-half of the firm peak-day requirements, including peak shaving, and the *average* daily requirements for the interruptible customers. As a result of using an average, its peak-day interruptible requirements were estimated at 19,183 Mcf per day. Accordingly, Carolina's Exhibit No. 23 shows that when the temperature is 50 to 55 degrees, its design would meet peak-day requirements of only 35,206 Mcf per day.[38] (The maximum capability of Carolina's design was stated to be 48,000 Mcf. Such quantity, however, was based upon "a uniform percent growth over the entire system" and was "calculated on an average hourly basis." Tr. 2560, 2289–90.) Even if an off-peak design were proper, the use of average daily interruptible requirements as a basis upon which the market requirements of 8,809,319 Mcf annually could be delivered constitutes error. Obviously, as urged by Southern, in order for there to be an average of 19,183 Mcf per day there must be many days in which the required amount would be in excess of the average. Southern's design witness explained the matter as follows:

> The use of average requirements implies that each interruptible industrial customer will purchase the same quantity of gas on each day. This is directly contrary to the basic nature both of interruptible gas service from pipelines and the incurrence of gas requirements by industries. [Carolina's witness stated] that he expected that an industry such as Brunswick Pulp & Paper might run at a "fairly high load factor" of 80%. In my experience, this is an extremely high load factor and not generally to be expected. Many industries do not operate on some days during a month, and few, if any, industries will require exactly the same amount of gas every day on which they do operate. The requirements of many industries for gas vary markedly from month to month and from season to season. This is the rule rather than the exception. Therefore, there can reasonably be expected to be a wide range in daily gas requirements. Additionally, it is necessary for the pipeline company to curtail or interrupt service when sufficient gas is not available to supply the full requirements of both its firm and interruptible customers. Because of the fluctuating nature of interruptible gas service due to both of these factors, that is, the varying daily requirements of the customers and the varying daily quantities of gas available from the pipeline for delivery to them, *it is necessary to have capacity in the Southeast Georgia extension to deliver a maximum daily quantity very substantially in excess of the average daily quantity, if the projected annual quantity is to be delivered. Sound engineering requires that the design of a branch line such as the Southeast Georgia line have capacity to meet the full connected load on days when sufficient gas to supply that load is available from the main line.* [Italics supplied; Tr. 2851–52.]

Southern's design witness is a man with long experience in the natural-gas field. He has been employed by Southern, its predecessor corporation, and subsidiary companies, since October 1930. He served such companies in the capacity of engineer in the design of gas distribution systems in Alabama and Mississippi. Later he served as Chief Engineer and General Superintendent of Mississippi distribution properties and also as Vice President and Chief Operating Officer of properties in Mississippi. He has served as Chief Statistician and Planning Engineer of Southern since 1940. In such capacity he is charged with the responsibility of maintaining statistics on the growth of the system, the nature of the loads of the system, and of making estimates of trend and growth and forecasts of future requirements. He was cross-examined at great length. His answers on cross-examination demonstrated his intimate knowledge of pipeline design and of the present and future needs of the area in question for natural gas.

---

[38] In Exhibit 30 Southern estimated average interruptible requirements as 19,225 Mcf. Also, the total of the above 19,183 Mcf and 16,123 Mcf is 35,306 Mcf instead of the 35,206 Mcf shown above. Such differences are *de minimus*.

Carolina's design witness is, by comparison, relatively inexperienced in the field of pipeline design. Furthermore, he had no substantial knowledge of the present or future natural gas requirements in the area. In fact, he designed the pipeline for only third-year requirements because he had been instructed to do so. In addition, he had no experience concerning the requirements of the proposed interruptible customers in the area.

The opinion of Southern's witness is entitled to substantial weight, as opposed to the opinion of Carolina's witness. The Examiner finds that in order for the annual quantity of 8,809,319 Mcf to be delivered in the third year, the southeastern Georgia line must have sufficient capacity to meet the full firm and connected loads of 55,339 Mcf on days when sufficient gas to supply that load is available from the main line. This finding renders it unnecessary to comment in detail on Carolina's contention that the maximum capability of its design is 48,000 Mcf per day. It should be noted, however, that such contention was based upon an average growth of the communities along the line whereas, as previously shown, the predominant growth will occur in the Brunswick area. It is also unnecessary to discuss the fact that in order for the design as proposed by Carolina to deliver the off-peak quantities of 41,589 Mcf, an additional 21.83 miles of 8-inch pipe would have to be added at a point south from the Alamo tap on the extension (Exhibit 29, p. 4).

2. *Tenth-Year Capacity of 82,230 Mcf Per Day*

As previously shown, the southeastern Georgia extension will have a capacity of 82,230 Mcf of gas per day when gas is available from the main line. This amounts to 26,831 Mcf of capacity in excess of the firm peak-day requirements of 29,933 Mcf and the firm peak-day interruptible requirements of 25,466 Mcf. (The sum of the latter two figures constitutes the full firm and connected load of 55,339 Mcf referred to previously.) Atlanta's witness testified that the 82,230 Mcf capacity would not be used until the tenth or eleventh year. Carolina requests the Examiner to find that this capacity would not be used, or useful.

The fact that the 12-inch line will provide excess capacity of 26,831 Mcf which won't be used until the tenth or eleventh year does not require denial of the application since (1) the 12-inch line as proposed by Southern will be economically feasible based upon the market estimates which the Examiner has found to be reasonable, and (2) the alternative design proposed by Carolina (a) does not provide the capacity to serve the full firm and connected load in the third year of 55,339 Mcf and (b) cannot be made to do so in the third year at any saving to Southern.

The facilities designed by Carolina's witness could be constructed at a total cost of $6,707,059, as compared with Southern's cost estimate of $8,076,991 for its proposed facilities, a difference of $1,369,932. This difference is to be compared with the amount Southern would have to expend in the third year in order to serve the probable increased requirements in southeastern Georgia.

Southern's design engineer presented flow diagrams to show what facilities would be required to make Carolina's 10 and 8-inch line equivalent in capacity to the 12-inch line proposed by Southern. This could be done in either of three ways: (1) installing two compressor stations of 2,420 horsepower and 1,540 horsepower, respectively, plus 84.667 miles of 10-inch loop, all at an additional cost of $3,098,238 over the cost of the 12-inch line; (2) installing one compressor station of 2,420 horsepower and 110.241 miles of 10-inch loop, at an additional cost of $3,450,168 over the cost of the 12-inch line; and (3) looping the entire length of the 12-inch line with 140.196 miles of 10-inch loop and 33.254 miles of 8-inch loop, at an additional cost over the 12-inch line of $4,699,778. Since it would require a third-year investment of at least $4,468,170 by Southern to bring the capacity of the southeastern Georgia line up to the capacity of Southern's proposed 12-inch line, Carolina's proposal is unacceptable.

There remains for consideration the interest of competing fuel producers. The Coal Interests contend that a major part of such excess capacity would be used to supply future direct interruptible industrial customers of Southern where much of it will be wasted on inferior usages.[24] Since no direct sales are proposed herein, it would be sheer speculation to consider whether or not such sales, if proposed, would be for inferior usages. They also contend, in effect, that the issuance of a certificate in this case would have an adverse effect upon (1) competing fuel, transportation and related labor interests, and (2) the conservation of natural gas, citing *National Coal Ass'n. v. Federal Power Commission*, 191 F. 2d 462 (CADC). In particular, the Coal Interests contend at page 21 of their brief that:

> * * * if Southern is allowed to build this uneconomic pipeline with considerable excess capacity, large industries now using coal, such as Plant McManus at Brunswick, would be prime targets for dump sales at distress prices.

As previously shown, the extension will be economically feasible without any direct sales. Furthermore, there is no evidence upon which a finding can be based that Southern will make "dump sales at distress prices." Also, Southern would have to receive permission from this Commission before transporting gas for sale to any direct-interruptible customers. At that time the Commission would have ample opportunity to consider the competitive and conservation matters alluded to by the Coal Interests. In this connection, it could consider the fact that Southern and Atlanta recently lost sales to three plants of the Georgia Power Company as the result of competition from coal. Furthermore, the McManus plant at Brunswick, also a unit of the Georgia Power Company, recently converted from the use of oil to coal as a result of the competitive price of coal. The Examiner finds that the Coal Interests' contentions are not supported by the substantial evidence of record.

Southern Propane, as a competitor of Southern, takes the following position:

> * * * that it would be contrary to the basic requirements of the Natural Gas Act to permit extension of service into a new area, disrupting existing fuels and causing loss of markets where, on the face of it, the project proposed is clearly infeasible. More particularly, Propane Co. does not believe it to be in the public interest to authorize Southern to build a large pipeline into the southeast Georgia area in the absence of a showing that there is a market for the gas sought to be so transported and sold.

The Examiner has found that the project proposed herein is economically feasible. He has found further that there is a market for the gas sought to be transported and sold, and accordingly finds that the proposal would be in the public interest and is or will be required by the public convenience and necessity.

---

[24] They cite *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

V. *Financing*

The estimated costs of all of the facilities to be constructed pursuant to Southern's application, as adjusted at the hearing, is $23,213,853. Southern intends to finance the construction in two steps. The first is to obtain short-term bank loans for the entire amount of funds required, less such portion of the sum as is available from funds on hand or from current operations during 1963. The second step is to obtain permanent financing to the extent of $16,000,000 when the proposed construction is completed, which Southern assumes to be in January 1964. Such sum would be provided from the proceeds of sale of an equivalent principal amount of first-mortgage bonds on the plan and additions thereto. The proceeds from the sale of the bonds would be used to pay off part of the bank loans. The balance of such loans, about $7,000,000, is expected to be paid off through ordinary cash-flow company funds. It is expected that $3,000,000 of the $7,000,000 of bank loans remaining after the issuance of the $16,000,000 first-mortgage bonds will be retired by 1966. Long-term bank loans would be arranged for the remaining $4,000,000.

No consent of any security holder is necessary to permit the issuance of the bonds. Southern must, however, meet the restrictions and conditions found in (1) the provisions of its 1948 First Mortgage Indenture, as supplemented, under which the bonds would be issued, and (2) the terms of an Indenture dated July 1, 1958, providing for the issuance of its 4½ percent Sinking Fund Debentures. The uncontroverted testimony shows that Southern's proposed plan of financing meets all such restrictions and conditions, and the Examiner so finds.

The bonds would bear 4¾ percent coupons. They would be offered to the public at a premium price. The premium is expected to reimburse Southern for its expenses connected with such financing. As a result, the bonds would be sold to the public at an effective interest rate of 4.64 percent.

The availability of the bank loans discussed herein is predicated upon informal verbal commitments from the principal banks with which Southern does business. This is the regular way that Southern arranges for its loans.

Upon consummation of the entire plan of financing in January 1964, and giving effect to (1) retirement of outstanding debt, other than convertible debentures, by sinking fund installments and serial maturities due in 1963, (2) conversion of all of the 4½ percent Convertible Debentures ($820,100 principal amount outstanding at December 31, 1962), and (3) the issuance of the $16,000,000 principal amount of First Mortgage Bonds and the obtaining of $7,000,000 of bank loans, Southern's resulting capitalization would be as follows:

	Principal amount	Percent of total
Long-term debt:		
First mortgage bonds	$126, 398, 000	47. 32
4½ percent sinking fund debentures	24, 750, 000	9. 27
Bank loans	7, 000, 000	2. 62
Unsecured obligations due serially	200, 000	. 07
Total long-term debt	158, 348, 000	59. 28
Common stock (5,003,185 shares of $7.50 par value) and surplus	108, 786, 972	40. 72
Total capitalization, exclusive of any change in earned surplus at Dec. 31, 1962	267, 134, 972	100. 00

At the end of the third full year of operation of all of the proposed facilities the equity and debt ratios, and average corporate interest rate on long term debt, for the system as fully expanded are expected to be:

Debt-Equity Ratio

Total proprietary capital	$118,740,000
Total long-term debt	128,525,000
Total capitalization	247,265,000
Equity ratio	48.02%
Debt ratio	51.98%

Interest Rate on Long-Term Debt

Long-term debt	$128,525,000
Interest on long-term debt (includes interest at 4¾ percent on the new securities)	5,855,000
Average corporate interest rate	4.56%

No party has questioned the feasibility or appropriateness of Southern's plan of financing. It is found that Southern has adequate financial resources to construct the facilities proposed and that the proposed financing will not render unsound its corporate financial structure.

VI. *Economic Feasibility*

A. *In General*

In Opinion No. 379 the Commission fixed 6.24 percent as a just and reasonable rate of return for Southern.[28] Carolina, Staff, the Coal Interests and Southern Propane contend that the estimated third-year operating results attributable to the new facilities, and separately to the southeastern Georgia extension, indicate that each standing alone would return less than 6.24 percent. They then conclude that the project would be economically infeasible. The rate of return from the entire system, however, after construction of all proposed facilities is estimated by Staff to be 7.05 percent, and by Southern as 7.1 percent, at the end of the third year of operation. Staff estimates that the third-year system-wide revenues will exceed by $2,676,000 Southern's cost of service computed at 6.24 percent. As a result, Staff considers the project economically feasible, even though it reached a different result by use of the incremental approach. It relied upon *Northern Natural Gas Company, et al.*, Opinion No. 324, 22 FPC 164, 171, rehearing denied, 22 FPC 523, affirmed in *Minneapolis Gas Company* v. *Federal Power Commission*, 278 F. 2d 870 (CADC), certiorari denied, 364 U.S. 891.

According to Carolina, approval of the project as recommended by Staff would result in the following burden on existing customers:

> Existing customers are none the less burdened by paying for uneconomic capacity through failure to receive the full measure of a justified reduction in rates, as they would be in paying increased rates because of uneconomic capacity. [Carolina Reply Brief, p. 4.]

Whether or not the rate of return expected at the end of the third year of system operation would call for a "justified reduction in rates" cannot be decided on the basis of this record. Even if such a reduction would be warranted, the substantial evidence of record does not support a finding that the burden referred to by Carolina would be an undue burden. Indeed, there is no specific contention to that effect by any party. Furthermore, it is a well-defined principle of law that some burden to existing customers is permitted. This is because the "various parts of a public utility's system need not and cannot be equally profitable." *Minneapolis Gas Company* v. *Federal Power Commission*, *supra*, at p. 871. This principle was enunciated after the court had considered the primary complaint before it, which, as here, was that the proposed new service would ". . . tend to keep up the rates which petitioners pay to [the pipeline company]." (278 F. 2d at 871)

---

[28] *Southern Natural Gas Company*, 29 FPC 323, rehearing denied, April 19, 1963, 29 FPC 779.

Clearly, the proposed project is economically feasible on a system-wide basis. Carolina, however, contends that "it would be error to ignore the various incremental cost of service studies, where available, in favor of an overall study of the expanded system alone." (Carolina Reply Brief, p. 3) It cites *Northern Natural Gas Company*, 25 FPC 1234 (1961), in support of its position. The Examiner has considered all such incremental studies very carefully and, for the detailed reasons set forth herein, finds (1) that the project is economically feasible when considered on the incremental bases used by Staff and Southern, and (2) that the incremental studies developed by Carolina are entitled to no weight in this case.

Southern proposes to finance the $23,213,853 project by $20,000,000 of debt financing. The income tax statutes encourage such debt financing by treating interest payments, but not dividends on stock, as deductible from gross income. In incremental cost of service studies, therefore, increased interest deductions result in lower income taxes, higher net revenues, and higher rates of return. The foregoing was reflected in Southern's incremental studies. By allocating the full interest deduction attributable (1) to the project, and (2) to the southeastern Georgia extension separately, Southern shows incremental rates of return of 7.26 and 6.9 percent, respectively. Staff, however, allocated to the project, and the southeastern Georgia extension separately, interest deductions computed on the basis of the third-year, system-wide, debt-equity ratio of 51.98 percent.[36] This resulted in respective third-year rates of return of 6.13 and 5.76 percent, and respective deficiencies in failing to recover the authorized 6.24 percent rate of return of $48,730 and $75,578.

Carolina's method had the effect of computing interest deductions on the basis of a debt-equity ratio of 45.01 percent. It submitted several computations and related findings and conclusions based upon its method. As subsequently shown, the Examiner finds that there is no substantial basis for the low interest deduction used by Carolina, the inclusion of main line and gas-supply costs, or the fuel costs as computed by it. Furthermore, Carolina's method is essentially the same as that disapproved by the Commission in *Kansas Nebraska Natural Gas Company, Inc.*, Docket No. CP62-215, Opinion No. 389, 29 FPC 1058, issued May 27, 1963. The requested findings and conclusions are denied.

In this case it is not necessary to decide between the method used by Southern in computing interest deductions and that used by Staff. Southern's incremental approach equals its authorized rate of return and provides some excess for use towards main line cost associated with the project. Staff's method results in a small deficiency. It would, however, make some contribution toward main line and gas-supply cost in the form of the interest deductions which were not allocated by it to the project on an incremental basis. The record does not support a finding that the small deficiency would constitute an undue burden.

---

[36] Southern's debt-equity ratio at the end of the period of construction will be 59.28 percent debt and 40.72 percent equity. At the end of the third year of operation the ratio would be 51.98 percent debt and 48.02 percent equity. These are within the range considered by the Commission to be reasonable. *Midwestern Gas Transmission Co., et al.*, 21 FPC 653, 656.

As previously shown, the only alleged burden to existing customers from approval of the project on a system-wide basis was the contention that the proposed new service would tend to keep up the rates which the existing customers now pay. The burden from Staff's incremental approach would be only $75,587 in the third year of operation. On the other hand, the southeastern Georgia extension will bring service to a new area. It will satisfy a public need without which the public will be inconvenienced. See *Kansas Pipe Line & Gas Company, et al.*, 2 FPC 29, 56. A balancing of the interests of the new and existing customers shows that the need by the public in the involved area outweighs any burden which might result to existing customers by approval of the instant application. For the foregoing reasons, as set forth in detail hereinbelow, and based upon the reliable, probative and substantial evidence of record, the Examiner finds that the new service is or will be required by the public convenience and necessity.

As an alternative to its first recommendation of approval, Staff stated that it would ". . . have no objections if the Examiner or the Commission, or both, conclude that cash contributions should be made by Atlanta Gas and Vidalia . . . ." (Staff Brief, p. 55) Such contributions would be in lieu of denial of service to the area or requiring the construction of Carolina's proposed 10- and 8-inch pipeline extension. This second recommendation was based upon the formula in *Kansas Nebraska Natural Gas Company, Inc., supra.* In its brief, Staff quoted that part of the case in which the Commission expressed a policy concerning contributions toward lateral construction. Staff set forth computations, which the Examiner finds are correct arithmetically, based upon the formula adopted by the Commission. They show that the total contribution to be made by Atlanta Gas and Vidalia, that is the total cost of the southeastern Georgia extension minus Southern's appropriate investment therein, would be $2,935,873. The allocation of such contribution as between Atlanta Gas and Vidalia would be as follows:

	Total revenues	Percent of total	Contribution to be made
Atlanta Gas Light Co.	$3,074,430	97.48	$2,861,889
City of Vidalia	79,630	2.52	73,984
Total	3,153,060	100.00	2,935,873

In the *Kansas-Nebraska* case the Commission upheld the applicant's insistence, over Staff's objections, that the cities contribute to the cost of the lateral construction. In the instant case Southern has not requested any such contribution and has arranged a feasible plan to finance the entire project. Furthermore, the estimated system rate of return is substantially in excess of Southern's authorized rate of return, contrary to the situation in the *Kansas-Nebraska* case. These are important distinctions.

Carolina's economic feasibility study concerning the southeastern Georgia extension takes the same form as that used by the Examiner in the *Kansas-Nebraska* case. Such presentation resulted in about the same total contribution but with different amounts for each city. It was not adopted by the Commission. In addition to the above distinctions, the subsequent comparison of the various economic feasibility studies shows that Carolina's method allocates interest deductions to the extension that are materially lower than those based upon the third-year system debt-equity ratio of 51.98 percent debt and 48.02 percent equity.

The Examiner finds that the formula expressed by the Commission in the *Kansas-Nebraska* case and the method used by Carolina are not applicable to Southern's project.

Southern and Staff presented 12 different rate of return computations using two different purchased gas costs.

They pertained to (1) the system-wide approach, (2) all the proposed facilities as a separate unit, and (3) the southeastern Georgia extension as a separate unit. Carolina's studies were in a different form and concerned the southeastern Georgia extension only. Southern's and Staff's computations are as follows:

System Gas Operations After Construction of the Proposed Facilities in 1966

	22.32¢ gas		20.9¢ gas	
	Southern	Staff	Southern	Staff
Operating revenues	$148,236,000	$148,236,000	$148,236,000	$148,236,000
Federal income taxes	6,024,000	6,126,000	9,153,000	9,254,000
Net operating revenues	13,135,000	13,033,000	15,886,000	15,785,000
Rate base	223,886,000	223,886,000	223,886,000	223,886,000
Rate of return	5.87%	5.82%	7.1%	7.05%

Attributable to Operation of the Proposed Facilities Only

	22.32¢ gas		20.9¢ gas	
	Southern	Staff	Southern	Staff
Operating revenues	$11,368,000	$11,368,000	$11,368,000	$11,368,000
Federal income taxes	(69,000)	168,660	212,410	450,620
Net operating revenues	1,289,000	1,051,340	1,537,590	1,299,380
Rate base	21,189,000	21,189,000	21,189,000	21,189,000
Rate of return	6.08%	4.96%	7.26%	6.13%

Attributable to Operation of the "Southeast Georgia Extension" Only

	22.32¢ gas		20.9¢ gas	
	Southern	Staff	Southern	Staff
Operating revenues	$3,154,060	$3,154,060	$3,154,060	$3,154,060
Federal income taxes	92,830	176,112	162,980	246,260
Net operating revenues	446,410	363,128	508,120	424,840
Rate base	7,375,131	7,375,131	7,375,131	7,375,131
Rate of return	6.1%	4.92%	6.9%	5.76%

The prior findings of economic feasibility were based upon the studies by Staff and Southern which used the 1963 average purchased gas cost of 20.9 cents per Mcf. Such gas cost would be 22.32 cents per Mcf in 1966 if all increases in gas purchase prices provided for by Southern's gas purchase contracts were filed as changes in rates by Southern's suppliers. Southern in its direct case used 22.32 cents per Mcf in its computations, in order to present the most unfavorable possible picture of the economics of the proposed project. Carolina in its affirmative case used the 20.9 cents per Mcf figure. Southern in its rebuttal case also used the lower figure. Staff advocates the use of the 20.9 cents per Mcf figure in calculating economic feasibility because, among other things, "even if Southern's cost of purchased gas does increase, this is a cost which Southern is entitled to recover regardless of whether it expands its system or retains the exact facilities it has today." (Staff Brief, p. 49)

The substantial evidence of record shows that under its existing contracts the 1966 average cost of purchased gas would be 22.32 cents. The producers with whom Southern has contracted have a right to file for such increases and for them to be effective after five months' suspension. To say that some future action of the Commission, such as an order in an area rate case, may result in a lower third year cost is to engage in speculation. The important fact is that if the producers file for rate increases Southern also would be entitled to file for rate increases, which increases also would be effective after five months' suspension. The Examiner finds that the average purchased gas cost of 20.9 cents per Mcf should be used in deciding whether the project is economically feasible.

The revenues, deductions, expenses and other figures used in this discussion of economic feasibility were presented through witnesses who were competent to, and did, withstand cross-examination concerning such matters. The record was developed fully and no party contends that any particular figure, except as shown subsequently herein, was in error.

B. *Economic Feasibility: Southeastern Georgia Extension Separately*

The contentions among the parties concerning the use of cost of service studies, and studies in the nature of cost of service studies, result from their respective interpretations of certain decisions of this Commission. The decisions concerned the necessity for customers' contribution toward the cost of constructing lateral facilities and the method to be used in ascertaining the amount of such contribution. Primarily, the following cases were discussed: *Northern Natural Gas Company, et al.*, Opinion No. 324, 22 FPC 164; *Northern Natural Gas Company*, Docket No. CP61-1, 25 FPC 540; *Northern Natural Gas Company, et al.*, Opinion No. 345, 25 FPC 1234; and *Michigan Wisconsin Pipe Line Co.*, Opinion No. 346, 24 FPC 177. However, none of these cases, nor the recent *Northern Natural* case, Opinion No. 404, *supra*, require customer contribution where a pipeline company (a) does not desire contribution, and (b) shows that construction without contribution would result in a substantially greater over-all rate of return than that allowed in its last rate case.

Carolina's Position

Carolina's basic position is that the southeastern Georgia extension is economically infeasible unless it "meet[s] the revenue required of it . . . to earn a return and pay taxes commensurate with the rest of Southern's system."[27] In support of such position it cites *Trunkline Gas Company*, 21 FPC 704 (1959), affirmed in *Battle Creek Gas Company* v. *Federal Power Commission*, 281 F. 2d 42 (CADC), and *Northern Natural Gas Company*, 25 FPC 1234 (1960). This view would require the denial of the proposed southeastern Georgia extension unless (1) the third year net revenues were equal to 6.24 percent of the net investment after income taxes, or (2) some condition were imposed to prevent the "new construction from *burdening* existing customers . . ."[28] (Underscoring supplied) Stated differently, Carolina contends that it and other existing customers are entitled to assurance that they will not have to bear any part of the cost of the proposed southeastern Georgia extension.

---

[27] Carolina's Initial Brief, p. 19.

[28] *Id*, at p. 47.

This view is not sanctioned by general public utility concepts. In fact, ". . . it would be impossible to regulate a utility or for a utility to engage in business if every segment of its business had to earn the same rate of return." *Northern Natural Gas Company*, 22 FPC 164, at 174.

The test is not whether the proposed construction places a "burden" on existing customers,[29] but whether it places on them an "undue burden." *Northern Natural Gas Company, supra*, at 174.

As previously shown, Southern and Staff presented 12 different rate of return figures. Carolina presented four separate studies, each using a 20.9 cents per Mcf figure, designed to show the amount Southern could invest in the southeastern Georgia extension and still earn a 6.24 percent rate of return. They are set forth in Appendix C to this decision in four columns. The respective columns purport to show the "warranted investment" by Southern in:

(1) The southeastern Georgia extension, *as proposed by Southern*, if the 1966 revenue from such extension is *not* required to carry any fixed charges in the new investment in main line and gas supply facilities;

(2) The alternate southeastern Georgia extension submitted by *Carolina Pipeline* if the 1966 revenue from such extension is *not* required to carry any fixed charges in the new investment in the main line and gas supply facilities;

(3) The southeastern Georgia extension, *as proposed by Southern*, if the 1966 revenues from such extension are required to carry a pro rata share of the fixed charges on the new investment in the main line and gas supply facilities; and

(4) *The alternate southeastern Georgia extension submitted by Carolina Pipeline*, if the 1966 revenue from such extension is required to carry a pro rata share of the fixed charges in the new investment in main line and gas supply facilities.

Carolina also submitted eight proposed findings and conclusions. The first two concerned pipe size and have been denied previously. The remainder relate to the above studies and suggested certificate conditions. They have been carefully considered and are denied for the reasons herein stated.

Staff prepared comprehensive cost of service studies concerning the economic feasibility of Southern's proposals in this proceeding and attached them as appendices to its brief. They have been previously summarized herein at pages 843-844 supra. Computations in several of the appendices utilized data which were in working papers furnished to the Staff by Southern and which are not part of the record in this proceeding. No party has objected to the use of such data by Staff.

Southern's feasibility studies were described as "revenue, expense, income and rate of return" studies, as distinguished from cost of service studies. It is contended, however, that they are in accordance with the decision of this Commission in *Northern Natural Gas Company*, Opinion No. 324, *supra*, because they set forth a statement of costs associated with the extension "together with the average cost of gas purchased and so-called 'out of pocket' main line costs which to [it] means the cost of compressor fuel gas, company use gas, and unaccounted-for gas." (Tr. 2885.) In its rebuttal case Southern introduced exhibits designed to show the differences between Carolina's study and Southern's position. Further studies based upon figures in the record were contained in its reply brief.

A discussion of the principal issues raised by the various studies follows a table prepared by the Examiner which compares the cost of service and related methods employed by Southern, Carolina, and Staff in regard to the southeastern

---

[29] *Id.* at p. 48.

Georgia extension only. The purpose of the comparison is to demonstrate that the basic difference in the studies prepared by all the parties relates to the Federal income tax figure. Each of the three methods shown is designed to secure a 6.24 percent rate of return and is based upon a purchased gas cost of 20.9 cents per Mcf. As previously stated, Carolina contends that the extension should carry a portion of the fixed charges of the new investment in main line and gas supply facilities. None is included in the comparison.

SOUTHERN NATURAL GAS CO., CP63-26

Comparison of Cost of Service Methods Employed by (1) Southern Natural Gas Co., (2) Carolina Pipeline Co., and (3) Staff, to Secure a 6.24 Percent Return (considering the southeastern Georgia extension only)

	(1) Southern Natural Gas exhibit 33, sheet 1	(2) Carolina exhibit 25, sheet 4	(3) Staff Branch—application "C" schedule 4, sheet 1
Operating revenues	$3,154,060	$3,154,045	$3,154,060
Cost of service:			
Cost of gas	1,875,150	1,875,148	1,875,150
Fuel	65,630	[1] 161,496	65,630
Measurement—O&M	25,830	25,830	25,830
Pipeline—O&M	104,950	104,950	104,950
Administrative and general expenses	48,390	48,390	48,390
Depreciation	282,240	282,240	282,240
Taxes—Other	80,770	80,770	80,770
Taxes—Income	108,511	351,056	286,470
Return at 6.24 percent	460,208	460,208	460,208
Total	3,051,679	3,390,088	3,229,638
Revenue excess	102,381	(236,043)	(75,578)
Taxes plus return	568,719	811,265	746,675
Percent of net investment	7.71	11.00	10.12
Net investment	$7,375,131	$7,375,131	$7,375,131
Income deductions:			
Interest	331,360	151,383	174,812
Excess of tax depreciation	33,390		33,390
Total	364,750	151,383	208,202
Effective debt ratio percent	98.53	45.01	51.98

[1] Called "other variable costs" by Carolina.

Interest Deductions and Federal Income Tax

In the foregoing tabulation the Examiner used the income tax figure of $286,470 as computed by the Staff. The income tax figures for Southern and Carolina of $108,511 and $351,056, respectively, were computed by the Examiner on the basis of securing a 6.24 percent rate of return. As a result of such computations, Southern shows a revenue excess of $102,381. Carolina's method as recomputed shows a revenue deficiency of $236,043. Staff's method shows a revenue deficiency in the amount of $75,578.

In computing income tax, Southern took as a deduction all of the interest on the bonds in the third year, namely, $331,360. The difference between tax and book depreciation of $33,390 was added to this interest to arrive at a total income deduction for Southern of $364,750.

Staff first computed the debt-equity ratio in the third year for Southern as 51.98 percent. Staff then took 51.98 percent of the net cost of facilities, multiplied that figure by the average interest rate, arriving at a deduction of $174,812. To this figure it added the depreciation difference of $33,390, thus arriving at a total deduction of $208,202.

In its computations, Carolina used 11 percent of net investment for return and income tax. In arriving at this figure it estimated fixed charges as 15.5 percent, which was the same percentage used by Southern in estimating fixed costs associated with the new peaking service. Carolina then separated the 15.5 percent figure into 3.5 percent for depreciation, one percent for taxes other than income taxes, and 11 percent for income taxes and return. Based upon a 6.24 percent rate of return, the tax amounts to $351,056. The interest deduction was computed by use of the formula shown in the footnote and amounts to $151,384.[30] This has the effect of raising the amount of taxes resulting in the large revenue deficiency. In other words, Carolina uses the deduction of $151,384, Southern uses $364,750, and Staff uses $208,202. The method used by Carolina results in an effective debt ratio lower than Southern's system-wide experience and obviously cannot be supported. As previously discussed, it is unnecessary in this decision to decide which of the other two interest deduction methods is correct. Carolina's error in including main line cost in its computations will now be shown.

Main-Line Costs

Carolina contends that Southern erred in failing to give effect to a pro rata portion of the fixed charges in investment on new facilities to be constructed on the existing main line.

Southern contends that all the main line system expansion proposed by it would be necessary even if the southeastern Georgia extension were not installed. It admitted, however, that if only the southeastern Georgia extension were to be constructed, and no provision made for the increased requirements of its other customers, it would need some main line facilities. Accordingly, some unspecified amount for main line facilities should be allocated to the southeastern Georgia extension.

Southern's system is an integrated system. No part of the proposed main line and gas supply facilities may be used solely to serve one customer or one particular group of customers. Accordingly, the cost associated with the addition to the gas supply and main line facilities of the integrated system cannot be regarded as being for the exclusive benefit of any one customer or one particular group of customers. The total cost of the integrated system, insofar as main line costs are concerned, should be borne by all the customers of the system, including the new customers on the southeastern Georgia extension. This view is consistent with the principles found in *Midwestern Gas Transmission Company, et al.*, 22 FPC 775, rehearing denied, 22 FPC 1157 (1959), and the recent *Northern Natural* case, Opinion No. 404, *supra*. In the latter opinion, the Commission stated as follows:

> . . : the cost of the additional compression facilities is an addition to mainline investment which benefits all mainline customers and cannot properly be used to measure the economic feasibility of the branchlines.

Carolina's method of allocating the costs of new main line facilities to the southeastern Georgia extension assumes that the extension will get the sole benefit of about one-third of the new main line facilities.[31] This allocation by

---

[30] .532 (return plus income tax minus deductions) = income tax.

[31] This ⅓ is computed by first arriving at a total figure for the cost of facilities of the south Louisiana supply system ($9,282,344) and additions to the south main line and Rankin compressor stations ($4,331,300) for a total cost of $13,613,644. From this total figure 2½ years depreciation is deducted, leaving a net investment of $12,422,449. Income taxes and return are said to be 11% of the net investment figure amounting to $1,366,469. The southeastern Georgia extension's share of this amount is then computed by multiplying such amount by a fraction with the numerator 30,000 Mcf and the denominator 95,000 Mcf, arriving at an income tax and return figure of $431,517 for the southeastern Georgia extension.

Carolina results in an inequitable share of the new main line facilities being allocated to the southeastern Georgia extension. Granted that the southeastern Georgia extension, along with the other customers of Southern, should bear some part of the cost of the new main line facilities, the computation of such amount would probably be on the basis of the ratio of 30,000 Mcf to the total of the peak-day Mcf requirements for the whole system, including southeastern Georgia. This would probably be a fraction with the numerator 30,000 and the denominator 1,516,000 Mcf. Since Southern's rates are designed, in part, upon the Mcf-mile method, this record does not permit a precise calculation of such costs. Obviously, the figure would be very small and would probably be offset by the factors previously discussed.

Other Variable Costs

Total sales attributable to the southeastern Georgia extension are 8,972,000 Mcf. Carolina multiplied this figure by 1.8 cents to arrive at a figure entitled "Other Variable Costs" of $161,496. The 1.8 figure was taken from Southern's breakdown of its peaking service rate of 15.5 percent for fixed charges. The peaking service rate was designed to recover the fixed charges associated with all the proposed facilities on the theory that insofar as the two-year excess supply of gas was concerned, the purchasers should pay for the gas as if the facilities had been built solely for them.

Carolina stated that it proved its figure of $161,496 by dividing the total cost of gas used for compressor station fuel for all the proposed facilities ($726,000) by the 1966 total pipeline sales attributable to all the proposed facilities, including the southeastern Georgia extension, of 36,299,000 Mcf. This produced a unit cost of two cents per Mcf which, when multipled by the total sales attributable to the southeastern Georgia extension (8,972,000 Mcf) resulted in the comparable figure of $179,445. In effect, therefore, Carolina's method assumes, contrary to fact, that all the compressor stations which necessitate the increased cost of fuel were built solely for the customers producing the new sales volume, including southeastern Georgia, and that the proposal should not be certificated unless such new customers bore all of the cost. As shown hereinabove, the economic feasibility of the southeastern Georgia extension is not predicated upon inclusion of such main line cost.

In the *Northern Natural Gas Company*, Opinion No. 324, *supra*, the Commission stated that an incremental cost study for a proposed extension should include a figure for compressor fuel, company use, and unaccounted-for gas. The largest component of these items is compressor fuel. Southern has computed a figure for compressor fuel and company-use gas on the southeastern Georgia extension by first ascertaining that its system-wide use of gas after the full proposed expansion would be 2.9 percent of annual pipeline sales. It applied this percentage figure to the estimated sales from the southeastern Georgia extension of 8,972,000 Mcf to arrive at a quantity of compressor fuel gas related to that sales figure of 260,188 Mcf. It then multiplied such figure by the average gas cost of 20.9 cents, arriving at the figure of $54,379. It similarly ascertained that unaccounted-for gas would be 0.6 percent of total annual pipeline sales. By similarly computing the charge for unaccounted-for gas and adding it to the cost of company use and compressor fuel gas, it arrived at the figure of $65,630.

Southern therefore has proceeded on the basis that since the compressor stations are all on the main line they will be used for the benefit of all customers and that all customers should bear a share of their cost. The Examiner finds that Southern's computation is proper.

VII. *Gulf and Humble's Joint Sale and Project*

The Producer's applications are based upon contracts with Southern for the onshore sale and delivery of gas produced from the offshore West Delta Block 27 Field, Plaquemines Parish, Louisiana. About 30 percent of the sales may be made from an area claimed to be under the taxing jurisdiction of the Federal Government. Delivery of gas processed to contract specifications will be made at Venice, Louisiana. Southern will construct 27 miles of pipeline in order to connect its present system to the delivery point at Venice.

Gulf's sale is under the terms of a 20-year contract dated June 22, 1962, and Humble's under a similar contract dated June 21, 1962. By letter agreements executed on December 11, 1962, two additional leases in the said field, subsequently acquired and owned jointly by Gulf and Humble, were included. The contracts by their terms will terminate prior to the 20-year term if before then Southern shall have "purchased and taken . . . an aggregate quantity equal to Seller's proportionate part . . . of 1,250,000,000 Mcf of gas . . . ."[32] Both Gulf and Humble request the issuance of a "limited certificate," that is, one which specifically authorizes each of them to make the sale of the described limited volume and "permit and authorize the termination of such sale when such volumes have been sold to Southern."[33] The contracts also provide that on one month's notice either party may cancel the agreement unless certificates as requested herein have been issued within 12 months of the respective contract dates. If, however, either the Producers or Southern are at that time continuing in a bona fide effort to obtain such certificates, no party may cancel the agreement until the expiration of 18 months from the contract dates.

Under the Gulf contract the proposed initial price is 21.25 cents per Mcf, including tax reimbursements of 1.75 cents per Mcf. The initial price under the Humble contract is also 21.25 cents per Mcf, but no provision is made for reimbursement of existing state taxes. The present State of Louisiana tax is 2.3 cents per Mcf. Both contracts provide that Southern must reimburse the Producers to the extent of three-fourths of any future taxes in excess of 2.3 cents per Mcf. If the tax reaches five cents per Mcf, certain protective provisions become operative. The contracts also provide for fixed price escalations of two cents per Mcf at the beginning of each successive four-year contract period.

No application for temporary authority to make any of the sales proposed herein has been filed.

The Examiner has found that Southern has a market for the gas to be purchased from the Producers. The initial price question is the only remaining issue. Gulf and Humble maintain that certificates without a price condition should be issued. Staff recommends that the applications be granted with the condition that Gulf and Humble be required to reduce their initial price to 20 cents per Mcf, inclusive of tax reimbursement. (The amount of tax reimbursement was not separately stated by Staff.) Staff recognizes that there is a dispute in regard to whether some of the sales are within the taxing jurisdiction of the State of Louisiana. Pending the resolution of this dispute, it recommends that the Producers be permitted to collect the full 20.00 cents per Mcf. It does not recommend, in this case, that escrow accounts be established to assure that refund monies would be available in the event it were determined that the contested area is outside of Louisiana's taxing authority.

---

[32] Article 10 of Exhibit B to Item QQ by reference. All gas quantities in this section of the decision are at 15.025 psia, unless otherwise stated.

[33] Item QQ, p. 7.

Long Island Lighting contends that it would be appropriate for the Examiner and the Commission to offer to the Producers their choice of either of two types of certificate conditions: (1) certificates requiring that the initial price be reduced to the "in-line" levels of 20 cents and 18.5 cents per Mcf, but leaving to Gulf and Humble the right to file up to the contract level of 21.25 cents per Mcf; or (2) certificates requiring that the initial price be reduced only to the premium levels of 20.625 cents and 19.0 cents per Mcf provided that Gulf and Humble agree to waive their right to file for any increase until the end of the fifth contract year. Certain settlements have been made recently which included the terms of the latter condition. Since the contracts already meet the southern Louisiana "make-up standard and contain the equivalent of a four-year moratorium," no conditions concerning such matters were suggested by Long Island Lighting. (Brief, p. 3).

The PSC of New York endorses Long Island Lighting's first proposal without reservation. It does not object to the second proposal but, on the other hand, does not affirmatively support such disposition. .

The Examiner, for the reasons subsequently stated, finds that the southern Louisiana "in-line" price at the time the contracts in question were executed was 20 cents per Mcf, inclusive of 1.5 cents per Mcf state tax reimbursement, and 18.5 cents per Mcf where the sale is not subject to state taxes. In addition, the Examiner finds that the present or future public convenience and necessity requires that to such "in-line" price there shall be added no more than the sum of one cent per Mcf for reimbursement to the Producers for the premium features in the contracts.

A. *The West Delta Block 27 Field*

The West Delta Block 27 Field is expected to develop into one of the country's major gas fields. It is about 65 to 70 miles southeast of the City of New Orleans, offshore Plaquemines Parish, Louisiana, on the west side of the Mississippi River Delta. The field is in lands submerged by the open waters of the Gulf of Mexico, the water ranging in depth from 20 to 30 feet, with an average depth of about 25 feet. It was formerly known as the West Delta Block 24 Field. The name was changed by the State of Louisiana to simplify its records and now includes all wells drilled in former Blocks 23, 24, 27, and 28.

Appendix D, attached hereto and incorporated herein by reference, is a copy of a map, introduced as Exhibit 11. It shows the field from which the gas covered by the Producers' amended contracts with Southern will be produced. It also shows the general location of the field with reference to land, the leases from which the gas will be produced, well locations, platform locations, and the approximate route of the separate condensate and gas lines from the platforms to the onshore delivery point near Venice, Louisiana. These matters are set forth in detail in the subsequent discussion of the premium, onshore delivery feature.

Approximately 70 percent of the field, as presently defined, is within the interim 3-mile limit, referred to as Zone 1. It is subject to the taxing jurisdiction of the State of Louisiana. The remaining part of the field is in Zone 2. It extends out into the Gulf of Mexico beyond the interim 3-mile limit and is part of the Outer Continental Shelf area (O.C.S.). It is one of the critical areas in dispute between the State and Federal government. Louisiana taxing jurisdiction may be extended to include it. In fact, if the seaward boundary of Louisiana is based upon the shoreline as it existed at West Delta in 1830 (the State's historic boundary), all of the existing wells in the field will be within the taxing jurisdiction of the State of Louisiana. The Producers are obligated to pay severance taxes to the State on gas produced from all or any part of the Zone 2 leases which are ultimately determined to be within the seaward limits of the State.

As shown on Appendix D, most of the leases are from the State of Louisiana and are located in Zone 1 waters. Three Zone 2 leases from the United States are included. It is presently contemplated that production necessary to fulfill contract commitments to Southern will come from wells located on State leases in Zone 1. However, if field unitization is not completed prior to the time deliveries of gas from the field commence, two or three Zone 2 wells will also be connected.

The leases within the field cover 14,588 gross acres and all are owned by Gulf and Humble. Of the nine separate tracts covered by the leases each of the Producers own 100 percent of the working interest in one tract, two tracts are owned 75 percent by Gulf and 25 percent by Humble, and the remaining five tracts are owned 50 percent by each. Gulf is the operator of the jointly-owned properties.

The initial test well drilled in the field was on State Lease No. 2,869, Well No. A–1, which was completed on June 20, 1957, at a total depth of 15,450 feet. At the time Southern's direct case was prepared, which was prior to March 11, 1963, there were 20 gas-well completions in the field and 17 sands or reservoirs had been proven productive at various depths ranging from 8,200 feet to 16,000 feet. The majority of the gas reserves are located at depths of 14,000 feet or below, with the largest reservoirs being found below 15,000 feet. Since Southern's preparation of its reserves Exhibit, another large and deeper sand has been discovered, the K–6–A Sand at 16,500 feet. Several more wells have been drilled.

The uncontradicted evidence establishes that the West Delta Block 27 Field reserves of Gulf and Humble are far in excess of those needed to deliver to Southern the total of the contract quantities of 1.25 trillion cubic feet. Although only that quantity is covered by the two contracts, Southern is given priority in purchases over all others to whom gas from the Field may be sold. Exhibit 2 and related testimony shows, on the basis of data and information furnished to Southern by Gulf, that reserves as of the time the exhibit was prepared were estimated to be 2,433,464 MMcf at 14.73 psia. Since it was not necessary to prove reserves exceeding the contract quantity, and because of pending lease sales for additional acreage, the Producers did not make available to Southern certain data showing even larger reserves. At the time of the hearing, Gulf's estimates showed that the field reserves now exceed five trillion cubic feet, and may prove to be far in excess of that amount after additional drilling is completed.

B. *The Contracts*

Negotiations for the sale of all the gas from the field were begun by Gulf in the fall of 1960 and by Humble in 1961. It was not until February 1962, however, that Gulf and Humble began the negotiations with Southern which culminated in the present contracts to sell a specific volume. These negotiations continued through the spring of 1962. As previously shown, the contracts and amendments thereto were executed in June and December 1962, respectively.

The Examiner finds that there is no corporate affiliation between Southern and either Gulf or Humble; that the separate contracts were arrived at as the result of arm's-length negotiations between Gulf and Humble on the one hand, and Southern on the other.

The volume of gas which each Producer will sell to Southern will be based upon its proportionate part of the total reserves in the field. The proportionate parts are to be initially determined at least 60 days before first deliveries under the contracts here involved are made. The contracts recognize that the Producers' reserves in the field exceed 1.25 trillion cubic feet and that the Producers are not agreeing to sell, and Southern does not intend or desire to purchase, more gas than that amount. They further recognize that the Producers anticipate making sales of gas to others, which gas is to be produced from their reserves in the field in excess of that necessary to meet their obligations to Southern. In addition, Southern agrees to such additional sales subject to the Producers' commitment to it as provided in the contracts.

The gas will be delivered at high pressures up to 1,100 psig and will be pipeline quality gas. Provisions concerning delivery to Southern are set forth in the discussion of the premium features contained in the contracts. The Examiner finds that Gulf and Humble are willing and able to make their proposed sales.

There are no favored-nation or price redetermination clauses in the contracts. The Examiner finds that payment of the contract price of 21.25 cents per Mcf would not trigger any favored-nation clauses or affect redetermination clauses in any contracts of Gulf, Humble or Southern.

The Producers contend that the contracts contain several unusual and significant features which will be beneficial to Southern and, ultimately, to its customers. Such features are (1) provisions for the sale of a fixed volume, (2) a deferred or slow build-up in deliveries to full contract quantities with wide swings in gas takes, (3) a 10-year make-up period for any volumes paid for but not taken, and (4) delivery to the purchaser onshore. Since these features have an important bearing upon the decision herein, they will be discussed in detail following a determination of the "in-line" price in June 1962 for southern Louisiana contracts. Before that determination may be made, however, certain contentions by the Producers must be considered.

C. *Producers' Contentions*

Gulf and Humble jointly contend (1) that the evidence demonstrates that the initial price of 21.25 cents per Mcf is not only the price required by the present and future public convenience and necessity, but is also "in line" when appropriate consideration is given to various matters, and (2) that the certificates issued to them should be limited to the combined total sale under both contracts of 1.25 trillion cubic feet of natural gas. No party has contested the request for a limited certificate. The Producers assert that the proposed initial price is the same price which the Commission has held to be in the "public interest" and the "in line" price for sales from the southern Louisiana area.[34] They also state that the evidence of historic trends and price, current market price, and the certificated sales in the area show that the proposed price is not only "in line" but well below the "in line" level of prices for other sales in the area. In addition, they allege that the special features previously listed are not ordinarily found in contracts in the area and that this emphasizes that the proposed sales are required by the present and future public convenience and necessity at the initial contract price.

The Producers also urge the Examiner to reconsider his ruling excluding Exhibit 13 and related testimony, and to admit such evidence into the record.

---

[34] *Statement of General Policy No. 61–1,* as amended (18 CFR, Chapter I, Part 2, Section 2.56), hereinafter sometimes referred to as the *Policy Statement.* Particular reference is made to the *Fourth Amendment to the Policy Statement,* October 31, 1961, 25 FPC 661.

The proffered evidenced related to underlying economic trends, changes in the underlying economic forces, and the supply, demand, drilling costs, and exploration activity in the area. Since the Examiner's ruling, the Commission has clearly stated that such material is of no value in this type proceeding. *Placid Oil Company, et al.*, Docket No. G-13183, *et al.*, Opinion No. 398, 30 FPC 283, issued July 17, 1963, rehearing denied, Opinion No. 398-A, issued September 11, 1963; *United Gas Pipe Line Company, et al.*, Docket No. CP60-36, *et al.*, Opinion No. 399, 30 FPC 329, issued July 17, 1963.

In support of their general position, the Producers, in addition to commenting on Staff's evidence and the Interveners' position, make several specific contentions in discussing the public convenience and necessity standard found in Section 7(e) of the Act. First, they contend that it is only in the event the evidence does not permit certifications at the proposed price that a different price level or "in line" price determination is to be reached. They state the matter as follows:

> There is no jurisdictional requirement that certificates can be issued *only* at "in line" prices. Certificates may be issued at the proposed price if supported by *all* factors affecting the public interest regardless of whether they are found to be "in line." The "in line" issue comes into play *only* if it is first determined that the public interest does not permit certification at the proposed price. [Underscoring in original; Initial Brief, p. 17.]

It is contended that *Atlantic Rfg. Co.* v. *Pub. Ser. Comm'n.*, 360 U.S. 378 (1959), the *CATCO* case, requires this order of determination. In the Examiner's view the interpretation placed upon the *CATCO* case by the court in *United Gas Improvement Company* v. *Federal Power Commission*, footnote 5, *supra*, controls the matter. In that case the court stated as follows:

> In the case before us the certificates were ordered to be issued in permanent form and without price conditions. In the light of Catco this was warranted insofar as prices are concerned only if the Commission found on substantial evidence (1) that the proposed initial rates were not "out of line" as the Supreme Court used those words, or that if "out of line" the public convenience and necessity of certifying at those rates had been established, and (2) that their approval would not result in a "triggering" of general price rises or an increase of the applicant's existing rates. [283 F. 2d at 821.]

The Producers next contend that in the Fourth Amendment to the Policy Statement the Commission found the area price of 21.25 cents per Mcf to be "in-line" and in the "public interest" and that, as a result, they were entitled to, and did, rely upon the said area price in agreeing to their contracts.[25] The Commission has never held that reliance on the *Policy Statement* would be a factor in determining the appropriate initial price. In *Skelly Oil Co. et al.*, 28 FPC 401, rehearing denied, 28 FPC 1065, decided after the execution of the instant contracts, the Commission expressed a caveat concerning such matter.

The evidence supports the finding, as contended by the Producers, that they entered into their contracts due to, among other things, reliance upon the price set forth in the *Fourth Amendment to the Policy Statement*. As a result of such reliance, they allege that they "agreed to sell an extremely large and valuable supply under disadvantageous and expensive conditions at a price much lower than that which has been paid and certificated for smaller, less valuable sales." (Initial Brief, p. 19)

---

[25] The Producers incorrectly state (Initial Brief, p. 17) that the Commission by the Fourth Amendment to the Policy Statement has determined the "in-line" price to be 21.25 cents per Mcf. That Amendment only announced that effective October 31, 1961, the Policy Statement "ceiling price level," not the "in-line" price, for initial sales in southern Louisiana, inclusive of state taxes, would be 21.25 cents per Mcf at 15.025 psia. Furthermore, the Commission has often stated that the ceiling prices in the Policy Statement are guideline price levels only. See, among others, *Texaco Seaboard, Inc., et al.*, Docket No. CI61-118, *et al.*, Opinion No. 383-A, 30 FPC 613, issued August 27, 1963; and *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, order issued April 2, 1963, 29 FPC 697.

The question of what detriment, if any, resulted to the Producers from such reliance is not an issue in this case.[36] The issue is whether or not the Fourth Amendment to the Policy Statement established a price which, in the absence of other evidence, was to be binding on the Commission and the public in contested cases. The reliance contention is, in effect, (1) a contention that the Policy Statement constitutes a prior determination by the Commission of the "in-line" price in the area, and (2) that such determination constitutes reliable, probative and substantial evidence which, in the absence of controlling evidence to the contrary, requires a similar determination and finding by the Examiner.

The evidence of record, and that available by official notice, shows that the Policy Statement, and amendments thereto, were issued without notice, hearing, or record. If the rule were as intended by the Producers, the Commission could by its *ex parte* action give legal sanction, with accompanying evidentiary weight, to prices which would affect parties without their consent or opportunity to be heard. To state the proposition is to demonstrate its fallacy. The Examiner finds that the ceiling prices in the Statement of General Policy and amendments thereto do not constitute reliable, probative and substantial evidence in this case.

The next question is whether or not the proposed initial price is "in-line" with other prices in the area. The Producers contend that the proposed initial price is "in-line" and that "insofar as there may be a price issue in this certificate proceeding" its price should be evaluated in the perspective of the historic pattern of market prices in southern Louisiana. (Initial Brief, p. 23) The Examiner will first determine the "in-line" price in the southern Louisiana area as of the date of the contracts and then will ascertain the amount in excess of such price which the parties should be permitted to recover, in accordance with this Commission's decision in the *Medina* case,[37] for premium features.

D. *Limited Certificate*

Section 7 (b) of the Act provides as follows:

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

As previously shown, the Producers desire a certificate which will authorize each of them to make the sale of the described limited volume and authorize the termination of such sale when such volumes have been sold. No party has objected to this request. It may be approved if legal, physical, financial or other factors are shown to exist upon which a finding can be based that the present or future public convenience or necessity permit the abandonment. *Sunray Mid-Continent Oil Co.* v. *Federal Power Com'n.*, 239 F. 2d 97 (CA10), reversed on other grounds, 353 U.S. 944. In another *Sunray* case the Supreme

---

[36] In this connection it is observed that at this time the gas reserves in question have not been dedicated in interstate commerce.

[37] *Medina Gathering Corporation, et al.*, Docket No. CP62–194, *et al.*, Opinion No. 397, 30 FPC 227, issued July 16, 1963.

Court concurred in this view. *Sunray Oil Co.* v. *F.P.C.*, 364 U.S. 137, 157.[38] The above factors are present in this case.

Gulf and Humble presented unchallenged testimony which set forth the reasons why they decided to sell Southern a specific volume of gas from the entire West Delta Block 27 Field, rather than confine the sales to gas reserves in some leases, or producing reservoirs, carved out of the field, and also why they desire certificates conditioned as to time. The reasons are compelling and require a finding, which is hereby made, that the present and future public convenience and necessity permit the issuance of certificates conditioned as to time. The reasons are summarized as follows: (1) the reserves in the field far exceed the 1.25 trillion cubic feet being purchased, (2) Southern did not desire to purchase more than 1.25 trillion cubic feet of gas from both Gulf and Humble, (3) Gulf and Humble desire to make additional sales of the excess reserves and need assurance that this may be done and that subsequent purchasers can be assured that the reserves in excess of the volumes sold to Southern are available to them, and (4) there was no practical way to carve out the specific volumes of gas needed by Southern by committing separate reservoirs or leases to the contracts. A satisfactory solution to the problems encountered could not be found because of several complicating factors. These factors included the variation in interest ownership of Gulf and Humble under the several separate leases in the field, variations in the location and extent of the many productive reservoirs in the field, and the fact that the lessor and royalty owner under five of the leases is the State of Louisiana and under three of the leases is the United States of America.

In each instance, where an attempt was made to confine the sale to Southern from particular leases, or particular reservoirs, one or more of the following difficulties were encountered: having too little or too much reserves, impairment of orderly development of the field, unjustifiable expenditures for drilling unnecessary and very expensive additional wells, possible reservoir damage, the risk of lease termination controversies and possible claims for payment of compensatory royalties. The matter of unnecessary drilling requires further comment. As a result of the necessity to drill wells in order to obviate rental payments, the Producers have already drilled wells in the fields at a high cost and could not, therefore, justify the failure to produce them. Also, committing to the contract only one or two reservoirs would have required unnecessary drilling of expensive wells. Existing wells vary in producing depths from 8,000 feet to over 16,000 feet and have cost from $200,000 to $1,542,000 to drill. Similar problems were encountered in considering whether gas reserves in certain of the leases, as distinguished from reservoirs, might be carved out and committed to the Southern contract. Drilling of additional wells on just a few leases necessary to develop contract deliverability thereon not only would have required additional expenditures, but would also have impaired the orderly development of the field from a conservation standpoint.

E. *In-line Price*

The Court of Appeals for the District of Columbia Circuit recently has defined the "line" as used in the *CATCO* case, *supra*.[39] At page 7 of its slip opinion it stated that "the line means the price at which similar sales, not suspect, were made under similar circumstances from the same area about the same time."

---

[38] For Commission cases see: *Humble Oil & Refining Co. et al.*, 19 FPC 89, 90; *Natural Gas Pipeline Company of America et al.*, 24 FPC 222, 229–230.

[39] *Atlantic Refining Company* v. *F.P.C.*, 316 F. 2d 677 (CADC), No. 17166, decided March 21, 1963.

The Commission recently issued two opinions concerning the "in-line" price in Southern Louisiana.[40] The contracts in the *United* case were dated December 22 and 28, 1959, and involved the sale of gas by Gulf Oil Corporation and Tidewater Oil Corporation from the Bastian Bay Field. It, like the West Delta Block 27 Field herein, is in Plaquemines Parish, Louisiana. The contracts in the *Placid* case were entered into during 1957 and 1958, and also involved the sale of gas, by various companies, from the Bastian Bay Field, albeit several parishes removed.

Since the two contracts in this case also involve the sale of gas from the southern Louisiana area, the opinions in the *United* and *Placid* cases are particularly relevant. At page 289 of the opinion in the latter case the Commission, in determining the 1957 and 1958 "in-line" price, stated as follows:

> In Opinion No. 351, we recognized that in the years from 1957 through 1959 a number of contracts were executed in the range between 20 and 23 cents, although observing that "even in those years there were many contracts around 18 cents and below and a scattering below 15 cents." It must also be noted, however, that many of the contracts referred to in that Opinion as having initial prices of 20 cents or more are the very same sales which are involved in the instant proceeding. In formulating the price line applicable here, the producers would have us rely upon a presentation which, to a large extent, not only incorporates the complete number of contracts originally involved in this proceeding, but likewise includes the *CATCO* contracts, and all at the original contract prices. The decision of the Ninth Circuit remanding one of the dockets involved in this proceeding,[1] which was followed by other courts in setting aside other orders of the Commission granting certificates for sales from Southern Louisiana at prices of 21.4 cents and above,[2] has made it clear that sales which are under Commission or court review are not legally relevant for purposes of determining an in-line price. *The same decision also makes plain that like prices in the same area, even though themselves not under review, are equally suspect and "ought not to be relied upon in fixing a line except upon evidence and findings to the effect that they are not subject to the same infirmities which are under test in the pending proceedings."*[3] We agree with the finding by the examiner that the record does not show that the 1957–1958 "suspect like prices" at levels above 18.5 cents were not subject to the same infirmities which produced the *CATCO* reversal. It is our opinion, therefore, that the post-*CATCO* field price statistics relied upon by the producers to support their contract prices provide no valid basis for determination of a proper price line in the Southern Louisiana area. For the reasons set out herein and in the initial decision, we conclude that 18.5 cents per Mcf, exclusive of tax reimbursement, is the proper public interest initial price applicable to the instant sales. [Italic supplied.]
>
> [1] *U.G.I. v. F.P.C.*, 283 F. 2d 817, *re* The Superior Oil Company, Docket No. G–16388.
>
> [2] *P.S.C. of New York v. F.P.C.*, 287 F. 2d 146 (CADC, 1960), cert. denied, 365 U.S. 880 (1961); *U.G.I. v. F.P.C.*, 287 F. 2d 159 (CA10, 1961); *U.G.I. v. F.P.C.*, 290 F. 2d 147 (CA5, 1961), cert. denied, 366 U.S. 956 (1961).
>
> [3] 283 F. 2d 824–825.

In making an "in-line" determination as of December 1959, the Commission in the *United* case made the following pertinent comments at page 333 of its opinion:

---

[40] *United Gas Pipe Line Company, et al.*, Docket No. CP60–36, *et al.*, Opinion No. 399, 30 FPC 329, issued July 17, 1963; and *Placid Oil Company, et al.*, Docket No. G–13183, *et al.*, Opinion No. 398, 30 FPC 283, issued July 17, 1963, rehearing denied, Opinion No. 398–A, issued September 11, 1963, 30 FPC 682.

While our determination does not involve much of the material apparently considered by the examiner, our ultimate conclusion is the same, namely that the permanent certificates issued to Gulf and Tidewater should be conditioned to a base initial price of 18.5 cents per Mcf. Exhibit No. 19, and the testimony of the introducing witness clearly and convincingly establishes that the contract "in-line" price during 1958 and 1959 in the southern Louisiana area, considering all applicable contracts not containing suspect prices within the criterion initially spelled out in *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824 and implemented by us in our *Skelly* and *Placid* decisions, was 18.5 cents per Mcf exclusive of tax reimbursement. We shall, therefore, require that the rate schedules filed by Gulf and Tidewater be amended to substitute this price in place of the 22.5-cent price provided in the contracts. In conformity with our decisions in *CATCO* and *Placid*, we shall permit Gulf and Tidewater to collect an additional 1.5 cents per Mcf for partial reimbursement of the Louisiana severance tax.[41]

Staff Exhibit No. 22, Schedule 2–G through 2–I, as summarized in Schedule 2 of the Producers' Exhibit No. 28, shows the distribution of the initial rates for sales under contracts dated in 1960–62 which have been permanently certificated as of January 21, 1963. Such sales are as follows:

Initial rate adjusted for current tax reimbursement (a)	Initial base rate (b)	Number of sales (c)	1961 sales volume (Mcf) (d)	Percent of total volume (e)
(Cents per Mcf at 15.025)				
10.5	9.00	1	186,000	0.67
10.75	9.00	1	960,000	3.44
12.5	12.50	1	684,534	2.45
14.25	12.50	1	257,297	.92
15.8007	14.0807	5	953,975	3.41
16.25	14.5	2	425,403	1.52
18.0	16.5	1	28,800	.10
18.3	16.8	1	91,972	.33
18.5	17.0	1	409,428	1.47
18.75	17.00	4	1,752,478	6.27
19.5	18.0	12	2,474,897	8.86
19.75	18.25	4	800,014	2.86
19.9	18.4	5	2,027,246	7.26
20.375	18.5	4	487,739	1.75
20.75	19.0	1	135,156	.48
21.75	20.0	2	1,499,282	5.37
23.25	21.5	2	14,763,907	52.85
Total		48	27,938,218	100.00

The two sales at the initial base rate of 21.5 cents per Mcf, which account for 52.85 percent of the total volume during the period in question, were entered into pursuant to contracts dated January 22 and 27, 1960. They were certificated by the Commission in *Trunkline Gas Company, et al.*, 24 FPC 1020 (1960).

Since the contracts entered into through 1959 have been held to be affected by the erroneous *CATCO* price of 21.4 cents per Mcf, and since this record shows that no pertinent fact occurred during the 30 days between the contract dates in the *United* case and those in the *Trunkline* case, the permissible inference is that the *Trunkline* contracts were also affected by the *CATCO* price. Insofar as shown on this record, they are subject to the same infirmities which were under test and ultimately proved fatal in the *CATCO* litigation. The Examiner finds that they must be regarded as suspect, and may not be used to establish a proper price line in the area. Of the remaining sales, the total of those at 18.4 and 18.5 cents constitute the greatest volume moving in interstate commerce. Based upon the foregoing, and the evidence of record in this case, the Examiner finds that the proper price line in the southern Louisiana area in June 1962 was 18.5 cents per Mcf, adjusted to 20 cents where tax reimbursements are applicable.

---

[41] The *Skelly* case referred to is *Skelly Oil Company*, 28 FPC 401, rehearing denied, 28 FPC 1065.

In this case, however, the "in-line" price is not the price required by the public convenience and necessity. This is because the subject contracts have special features not found in the contracts which were used to establish the foregoing "in-line" price.

As previously shown, the instant contracts contain four special features, namely, (1) large and specific volume of gas supply, (2) ten year make-up provision, (3) slow build-up in contract quantities, and (4) on-shore delivery to Southern. Only the last two are objectively measurable. They show that a total of one cent per Mcf should be added to the "in-line" price of 18.5 cents per Mcf.

F. *Premium Features*

Staff "feels that the advantages to [Southern] are no greater than the advantages to Gulf and Humble and therefore [it] is not willing to grant that Gulf and Humble are entitled to any more money per Mcf for gas sold under the contracts in this proceeding than other producers are entitled to receive in southern Louisiana." (Staff Brief, p. 66) After referring to various matters, which will be described subsequently, Staff states as follows:

> The staff does not point out these facts to discount that a ten-year make-up period is desirable or to imply that it is not helpful to the pipeline to be able to schedule taking large volumes of gas over a four-year period. These facts are only mentioned to show that there are some beneficial aspects to the contracts to be enjoyed by Gulf and Humble as well as Southern. [Staff Brief, p. 66.]

In considering the respective advantages and disadvantages to the Producers and Southern, the contracts must be compared with the contracts in the southern Louisiana area which have been used to find the "in-line" price of 18.5 cents per Mcf. When so considered it is the Examiner's view, for the reasons stated hereinbelow, that the contract provisions here are more advantageous to Southern and its customers, the ratepayers, in an "objectively measurable" amount. *Medina Gathering Corporation, supra*, footnote 37. In that case the Commission provided for consideration of special features in a contract.[43]

---

[43] At pages 231 and 232 of its opinion it stated as follows:

> Moreover, we need also to consider certain claims by the producers that their contracts give Medina the benefit of certain premium features. We agree entirely with the Examiner that the alleged option of Medina to acquire storage rights in the wells upon cessation of production does not justify a bonus above the "in line" price since the prevailing practice in the area is to include an option to acquire storage rights as part of the contract package. * * * The Examiner was of the view that it was unnecessary to resolve this and other questions surrounding the alleged premium feature since the claim could more appropriately be raised in defense of the justness and reasonableness of any increased rate that the producers might file. We believe, however, that a consistent application of the "in line" comparison requires that we give consideration at the stage of certification to any additional feature of the proposed sale which is of objectively measurable value. In this case we think it is sufficient to say that permitting the producers to maintain the existing contract escalations will, in our judgment, more than amply provide for whatever additional market value the six-months peaking feature gives these contracts over and above the prevailing forms of contract in the area.

1. *Large and Specific Volume of Gas Supplies*

The contracts herein commit for delivery and sale to Southern the extremely large volume of 1.25 trillion cubic feet of natural gas over the contract periods. They also provide for Southern to take-or-pay-for the following minimum volumes until it has purchased the total fixed volume of 1.25 trillion cubic feet:

Minimum take (Mcf/Day)	Period involved	Days	Billion cubic feet
40,000	11-1-63—12-1-64	395	15.8 (1st yr.)
60,000	12-1-64—12-1-65	365	21.9 (2d yr.)
100,000	12-1-65—12-1-66	365	36.5 (3d yr.)
Totals		1,125	74.2
171,025 *	12-1-66 and thereafter		

* $\frac{1,250-74.2}{8,000-1,125}=\frac{11,758}{6,875}=$171,025 Mcf per day, as computed pursuant to Article 4, Section 1, of the contracts.

The Producers contend that acquiring large volumes at one point will save Southern an undetermined sum in present investment and future expense in connecting the gas, compared to the cost of acquiring a similar gas supply from several smaller sources. The provision for the commitment of a fixed quantity of gas is unusual. Most southern Louisiana sales commit to the contracts all of the gas which may underlie the leases subject to the contracts and provide for a daily contract quantity in terms of a ratio to reserves. In such cases ultimate development and additional discoveries may increase or decrease the purchaser's daily take obligations. In this case, however, it is probable that ultimate development would, under the usual type contract, increase Southern's daily take obligations. As a consequence, the Producers contend that contracts here are advantageous to Southern because (1) its minimum and maximum take obligations are fixed throughout the contract life, and (2) it is provided assurance that supplies in the specified quantities will be available but that it will not have to take more than the specified quantities.

Staff agrees that Southern is benefited by obtaining a large and specific supply of gas on the two contracts. It also agrees that Southern is benefited by the slow build-up provisions subsequently discussed. It contends, however, that such benefits are offset by the fact that the Producers have an immediate sale for the gas and thereby eliminate lease-rental fees. Staff states the point as follows:

> For example, the Producers stress the fact that they are obligated to be actively drilling wells on each of the leases involved in order to keep from paying annual rental fees of up to $1,515,500 and that they have already drilled more wells in West Delta Block 27 Field than are required to make deliveries to Southern just to avoid paying these rentals (Tr. 312-313; 453-454). Thus, the gradual buildup in volumes [as shown above] is preferable to paying large rental fees. [Staff Brief, pp. 64-65.]

Producers contend, and the Examiner finds, that the evidence as to large delay rental payments was presented to show, among other things, why it was necessary to drill the initial well on each lease the first year of the term, and does not mean that once production is established by a successful well, such rental payments continue. Royalties, however, must be paid. It is not clear from this record whether or not the royalties would have to equal the rentals (Tr. 1579).

Long Island Lighting states that the large and specific volume feature of the contract provides no basis for a premium price. It contends that the large volume feature is already accounted for in the determination of the price line,[43] and that "the specific volumetric dedication is not shown to be an item of special value to the pipeline or special cost to the Producers." (Brief, pp. 16–17)

The Examiner finds that the record supports the following contentions made by the Producers in their Reply Brief at pages 23 and 24:

> By having this total of 1.25 trillion cubic feet available at one point onshore, Southern can take large volumes into its system at low cost with a minimum extension of its existing pipeline (Tr. 73). It is saved substantial investment and expense compared to such costs as would be involved if it were required to build facilities sufficient to obtain a similar supply from several smaller sources (Tr. 304). * * * The evidence also shows that the fixed commitment of the specific quantity of gas (1.25 trillion cubic feet) has the definite advantage to the buyer of providing assurance that supplies in the specified quantities will be available, without risk to the buyer that its minimum and maximum takes may be increased, a risk which exists in the typical contract where the quantity is specified in terms of a ratio to reserves * * *. [Tr. 74, 361–362.]

The undisputed evidence of record shows that in the natural-gas industry large volumes of gas sell for higher prices than smaller volumes of gas. The Examiner finds that the dedication of the large and specific volumes of gas by the Producers results in an advantage to Southern. Some benefit may also result to Gulf and Humble from the fact of early production with the resultant decrease in rental payments. This record, however, does not permit of (1) an objective measurement of the value of either such benefit, or (2) a finding that the benefit to Gulf and Humble is more than the benefit accruing to Southern from the large and specific volumes feature of the contracts.

As subsequently shown, the loss resulting to the Producers from permitting Southern to build up its minimum takes over a three-year period can be objectively measured. The general allegation that this specific loss is also offset by an immediate sale for the gas does not meet the burden of going forward with evidence to show the extent of such offset, if any.

2. *Slow Build-up in Contract Quantities*

As shown in Exhibit 4 and the gas supply section of this decision, Southern probably will be able to make up all its present minimum take deficiencies, which are substantial, by the end of 1965 even though it is purchasing large quantities of gas from the Producers herein.

Exhibit 4, as previously summarized, shows that at the end of the 1965 contract year the cumulative make-up is expected to equal exactly the cumulative deficiency of 16,198 MMcf. The major reason why Southern was able to contract for the specific volume of 1.25 trillion cubic feet, and yet not show a deficiency in takes at the end of 1965, was due to the slow build-up features in the Producers' contracts. Under the slow build-up provisions Southern must still take the full 1.25 trillion cubic feet, but may take the gas in the following quantities: 40,000 Mcf per day through November 1964; 60,000 Mcf per day to December 1, 1965; 100,000 Mcf per day until December 1, 1966; and 171,025 Mcf per day each day thereafter.[44]

---

[43] This contention is based upon the testimony quoted in *United Gas Improvement Co.* v. *Federal Power Commission*, 290 F. 2d 133, at 136 (CA5, 1961), certiorari denied, 368 U.S. 823. It was not made a part of this record and the witness was not available for cross-examination. No weight is accorded such testimony in this proceeding.

[44] The contracts also permit Southern wide swings in takes to meet its varying requirements. The Producers are required to have available a deliverability of 150 percent of the minimum take requirements, or 256,537 Mcf per day the fourth year and thereafter, while Southern may in any particular month make purchases of only 1/24 of the minimum annual take (Tr. 1560).

The minimum take obligations in the first three years would be much greater under the usual type contract. The usual contracts in the southern Louisiana area provide for daily contract quantities based upon a ratio of production to reserves, in cubic feet, of 1-to-7300 for a 20-year period or 1-to-8000 for a 22-year period.[45] If Gulf and Humble had insisted upon the usual type contract, that is, the type of contract upon which the "in-line" price is based, Southern's take-or-pay position at the end of the 1965 contract year would be intolerable. Under a 1-to-8,000 ratio minimum take in each year, Southern would have been required to purchase a minimum of 156,250 Mcf per day in each year until it had taken the full 1.25 trillion cubic feet. In the first year, therefore, it would be taking 116,250 Mcf per day more than the presently required 40,000 Mcf; in the second year 96,250 Mcf more; and in the third year 56,250 Mcf per day more. (In each year after the third year it would be taking 14,775 Mcf less than the present contract quantities.)[46] The additional first, second, and third year annual excess quantities which Southern would be required to take would be, respectively, 42,431,250 Mcf, 35,131,250 Mcf, and 20,531,250 Mcf. On a cumulative basis such annual quantities would be 42,431,250 Mcf, 77,562,500 Mcf, and 98,093,750 Mcf, respectively. At 18.5 cents per Mcf, the prepayments in each of the years would be, respectively, $7,849,781, $6,499,281, and $3,798,281, for a total of $18,147,343. Obviously, Southern could not place itself in such a minimum-take position. A different arrangement was required. The new method results in a benefit to Southern's customers and a detriment to the Producers.

In computing the benefit to Southern from the slow build-up provisions it must be remembered that the usual southern Louisana contracts contain a make-up period for less than the 10-year period in the instant contracts. Under the usual type contract, therefore, and in view of its 1962 deficiency in takes of 12,091 MMcf at 14.73 psia, Southern probably would lose its right to take a large part of the gas previously paid for.[47] The consumers would bear the full burden of such loss. Since Southern might be able to cut back in takes from some of the fields, the precise amount of the loss cannot be estimated. This record, however, supports a finding that the benefit to the consumers by not having such loss is at least as great as the detriment to the Producers, which will now be computed.

The effect of granting to Southern the right to take substantially less gas during the first three years, compared to what it would have to take under constant deliveries at a 1-to-8000 rate throughout the contract period, will be to decrease the present worth of future revenues under the contracts, at a 10 and 12 percent discount rate, by $9,500,000 and $10,400,000, respectively. These amounts are based on the contract gas price, including escalations, and are equivalent to approximately 0.8 cent per Mcf over the life of the contracts. If no price escalations are considered, the present worth of future gross revenues, at the same discount rates, would be decreased $10,700,000 and $11,300,000, respectively, or approximately 0.9 cent per Mcf. Using identical contract prices, the cumulative gross revenues under the contracts herein would not equal those received under ordinary take provisions until the nineteenth year, assuming price escalations, and not until the twenty-second year, assuming no escalation.

The "present worth of future money" theory has been recognized as a valid proposition by the United States Supreme Court. In *Ches. Ohio Ry.* v. *Kelly*,

---

[45] The contract is drafted to provide a theoretical depletion time of 22 years (Tr. 1581).

[46] The effect of Southern's being required to take more than the usual contract quantity after the third year will be discussed subsequently herein.

[47] In computing its minimum take position at the end of the contract year 1965, Southern has given consideration to its own production. For each field from which it has production, either 100 percent owned or otherwise, it set aside a minimum take in each year in order not to suffer drainage or loss to the other producer-owner in the field.

241 U.S. 485, 489, it succinctly stated the matter as follows: "It is self-evident that a given sum of money in hand is worth more than a like sum of money payable in the future."

Although the *Kelly* case involved the payment of money to an individual, in the Examiner's view the proposition is equally applicable to the payment of money to a corporation. In this case, the "present worth of future money" theory is based upon the proposition that if the Producers had sold to Southern the 1.25 trillion cubic feet of gas in accordance with the usual contract terms in southern Louisana, the minimum take per day to Southern would be about 156,250 Mcf. At the request of Southern, the Producers did not do this. Instead, they agreed that Southern could take the 1.25 trillion cubic feet of gas in the manner previously stated. As a result, the Producers will have to hold available in the first three years 42,431,250 Mcf, 35,131,250 Mcf, and 20,531,250 Mcf of gas, respectively.[48] During the first three years, therefore, the Producers will receive less money than they would have received for the gas if they had insisted upon Southern's agreeing to the usual contract terms.

The failure to receive money in the first three years results, as previously shown, in a loss of approximately 0.8 cent per Mcf over the life of the contracts. The discount factors used in the arithmetical computation were 10 and 12 percent. The 10 percent figure is the return on common equity, as distinguished from the overall rate of return, which the Examiner allowed in Gulf's recent rate case.[49] The 12 percent was a similar return allowed in the *Phillips* case.[50] A return on equity is proper because the operation "can be considered as being financed entirely from equity capital." (Tr. 1646) The foregoing computation of the present worth of future revenues has not been challenged by any party insofar as the arithmetical computation, or the use of allowances for return on equity, is concerned.

The Examiner knows of no certificate case where the discount factor has been utilized by the Commission. In the *CATCO* case, however, it refused to permit the use of the discount factor where it was applied to a sum which had been arrived at by the use of speculative evidence. Also see the Examiner's decision in *Cities Service Company, et al.*, Docket No. G–16563, *et al.*, adopted by the commission in *Jake L. Hamon, et al.*, Docket No. G–16747, *et al.*, order issued June 11, 1963. The figures here, however, are not based upon the speculative evidence.

Certain subsidiary contentions concerning the slow build-up feature remain to be considered.

Staff contends that the gradual build-up in volumes previously indicated is preferable to paying large rental fees. This contention has been discussed and disposed of previously in connection with the advantage to Southern of large and specific volumes.

Long Island Lighting makes the following contentions at pages 15 and 16 of its brief:

> As to the slow build-up, it is, of course, not unusual under the ordinary contract for volumes to increase substantially after the first few years

---

[48] Article 2, Section 2 of the respective contracts makes it clear that the Producers must hold such gas available for Southern. It cannot, therefore, sell such gas and then in the years subsequent to the third year replace it from other reserves or sources. This point was not raised by any of the parties. Staff, however, in another context, stated that "there is nothing that Gulf and Humble can do with this [1.25 trillion cubic feet of] gas but hold it in reserve for Southern until such time as Southern can use it." (Staff Brief, p. 66).

[49] *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, Initial Decision (not in bound volume), issued September 24, 1962, at pp. 58 and 59 and Settlement Order issued April 25, 1963, 29 FPC 837.

[50] *Phillips Petroleum Company*, 24 FPC 537.

under the reserve-redetermination provisions as reserves are proven up; the producers brief (p. 8) forthrightly concedes as much. Hence, the slow-build-up with the definite commitments does little more than make certain what usually happens under the normal contract provisions. Moreover, the 0.8¢ reduction contemplated by the witness Henry, employing at 10% discount factor, represents approximately the same reduction in value that would accrue if deliveries were delayed eight months beyond the contemplated initial date (*i.e.*, all deliveries pushed back eight months); since the in-line level includes the impact of sales to "paper pipelines" (Proposed new pipelines not in operation at the time the contracts are executed), it already includes a delay factor of probably more than eight months (see Tr. 1648). Finally, if a premium based on a discount factor of 10% is to be added to the in-line price for slow build-up, then this "special" feature is of no value whatsoever—it would be better for the pipeline and its customers if the pipeline were required to "take or pay" at the normal levels and were to include the volumes paid for but not taken as prepayments at a 6% return.

These three contentions will be considered seriatim.

The decision herein must be based upon a comparison of the instant contracts with the normal-type contracts in the area. Under the latter-type contracts the minimum-take formula (1-to-8000 or 1-to-7300) is applied initially to the quantity of reserves the parties estimate to be in the field committed under the contracts. Producers are paid on the basis of such quantities until reserve-redeterminations are made, usually several years later. Such redeterminations do not retroactively affect the sum of money received by the Producers in the first few years. *In comparison*, the Producers in this case have agreed to sell gas in accordance with the desires of the buyer, as distinguished from the usual formula. The results flowing from this difference have been previously set out.

The position of Long Island Lighting that the .8 cent per Mcf reduction in present worth represents approximately the same reduction in value that would accrue if deliveries were delayed eight months beyond the contemplated initial date, overlooks the fact that the revenue used as a basis to compute the present worth figure is not considered until after deliveries start. This is succinctly illustrated by the following colloquy between counsel for Long Island Lighting and the witness for Gulf:

> Q. Are you aware, also that there have been time lags between date of initial delivery caused by delays due to contested hearings over the initial price issue?
>
> A. Yes, I am aware that there has [*sic*] been delays between the date of contract and the date of initial delivery, but now that is not what we are talking about here.
>
> Q. I appreciate that. [Tr. 1648.]

Long Island Lighting's last contention was that it would be better for the pipeline and its customers if the pipeline were required to "take-or-pay" at the normal levels and were to include the volumes paid for but not taken as prepayments at a 6 percent return in its next rate case. As applied to the instant situation, the contention means that Southern should have contracted to take the same daily quantity per day[81] for each of the first three years even though it could only use a small portion of such quantity; to pay for such gas; and then include such prepayments in its rate base in its next rate case.

---

[81] If the contract had provided for the usual 1-to-8,000 ratio minimum-take in each year, Southern would have been required to purchase a minimum of 156,250 Mcf per day in each contract year. Thus, in the first year it would be taking 116,250 Mcf per day more than the presently required 40,000 Mcf; in the second year 96,250 Mcf per day more; in the third year 56,250 Mcf per day more; and in each year thereafter 14,775 Mcf per day less.

Long Island Lighting did not support this contention by any reference to evidence in this case. Furthermore, it overlooks the fact that the usual contracts have only a two or three year make-up period. Southern, therefore, might not be able to take the gas for which it had previously paid.

As shown in footnote 51, *supra*, Southern will be taking less than the average minimum takes in the first three years and more than such average in later years. This fact was the subject of cross-examination of a Producer witness. An attempt was made to show that the high rate of minimum takes over the last 17 years of the contract would help compensate the Producers for the slow build-up in the first three years. The Examiner finds that such increased takes in the later years of the contract will not compensate Gulf and Humble for the slow build-up in the first three years.

Staff makes the further point that the slow build-up does not warrant special consideration because there is nothing Gulf and Humble can do with this volume of gas but hold it until such time as Southern can use it. This contention is not supported by the evidence. It is true that the Producers must reserve for Southern 1.25 trillion cubic feet of gas. However, by permitting Southern to take the gas in smaller quantities during the first three years, and larger quantities in the last 17 years, the Producers have deviated from the general type contract in the area to the advantage of Southern. This deviation will reduce the present worth of contract revenues by 9.5 million dollars.

The Examiner finds (1) that by the lower initial delivery rate discussed hereinabove the Producers' revenues and return on their large investment in these properties will be minimized and delayed, (2) that the resultant detriment is approximately .8 cents per Mcf, (3) that such detriment would not result under the southern Louisiana contracts which have been used to establish the "in-line" price in the area, and (4) that the public convenience and necessity requires that approximately .8 cents per Mcf be added to the "in-line" price of 18.5 cents per Mcf for this specific premium feature.

3. *Ten-Year Make-up Provision and Take-Or-Pay-For Obligations*

Southern has been granted a ten-year period in which it may take or "make-up" gas which it may have paid for but not taken. This provision does not act to extend the term of the contract. It is unusually favorable to the purchaser because most recent southern Louisiana contracts provide for only one, two, or three years.[53] Very few southern Louisiana sales agreements include provisions which are equally favorable to the buyer. Considered together, the practical effect of the slow build-up and ten-year make-up provisions is to provide Southern with a supply tailored to its near future supply requirements and to permit it probably to cure any minimum take deficiencies, which it may have elsewhere on its system, by the end of 1965.

The undisputed evidence shows, and the Examiner finds, that even with the purchase of the West Delta Block 27 Field gas from Gulf and Humble, and the increase in purchases from United shown in the Gas Supply section of this decision, Southern will probably be able to make up all of its minimum take deficiencies by the end of 1965. Exhibit No. 4, sponsored by Southern's Superintendent of Gas Control, reflects this in detail. It is summarized as follows at 14.73 psia:

---

[53] A number of recent contracts, as a result of settlements in certificate proceedings, have been amended to provide extensions in the make-up periods to four years.

	Contract year ending					
	1960	1961	1962	1963	1964	1965
Cumulative deficiency	372	4,546	16,164	16,198	16,198	16,198
Less cumulative makeup			3,418	9,011	15,891	16,198
Net deficiency	372	4,546	12,746	7,187	307	0

The 12,746 MMcf deficiency shown for the contract year ending in 1962 was in part, estimated. Southern's Annual Report for 1962 shows that at the end of the calendar year 1962 it had made $2,502,901 in prepayments for 12,090,886 Mcf, at 14.73 psia, deficiencies in gas takes. The Report also shows that of the 19 fields where deficiencies exist, all but three of the pertinent contracts require that the deficiencies be made up by December 1964.

Among other things, Exhibit 4 shows that by the end of 1964 Southern will have made up all but 307 MMcf of the minimum take deficiencies theretofore incurred. This 307 MMcf would exist at the Montegut Field. However, takes from the said Field scheduled for the calendar year 1965 are 1134 MMcf in excess of the minimum take for the year, thereby making up the 307 MMcf deficiency. As shown in the Facilities Section herein, the ability of Southern to make up its present deficiencies depends, in part, upon the installation of certain proposed compressors.

As previously shown, Southern must begin purchasing 171,025 Mcf per day on December 1, 1966. Due to the many variables involved, Southern made no calculations designed to determine its take-or-pay position after such date. Although the record does not permit of a finding concerning such position, the following factors should materially assist Southern in maintaining a favorable take-or-pay position after 1965: (1) it may use its own production to minimize deficiencies, (2) the ten-year make-up period, (3) fixed minimum and maximum take obligations throughout the term of the contract, and (4) the wide swings in takes.

Staff's contention that the benefit to Southern from the ten-year make-up period is more than offset by the fact that in the fourth year Southern has to take-or-pay-for a minimum volume of 171,125 Mcf per day has been discussed previously. It is not supported by the record.

It is undisputed that the ten-year make-up provision in the contract will be of benefit to Southern. The record, however, does not permit of an objective measurement of such benefit by itself.

4. *Onshore Delivery to Southern*

The contracts provide that at their expense the Producers are to deliver pipeline quality gas at a central onshore delivery point. As a result, Southern will thus not be required, as is customarily the case with offshore production, to build gathering lines to the offshore platforms.[58] The Examiner finds that the provisions for onshore delivery represent a significant saving to the buyer, which inures to the consumer. The facts concerning the physical arrangement will now be set forth.

The map attached hereto as Appendix D shows, among other things, the West Delta Block 27 Field, its general location with reference to land, and the contract delivery point. The area included within the hatchmarks are the leases in the field. The location of the various leases included in the area, the ownership therein, and the completed and uncompleted wells are identified. The wells in SL-3528 and SL-3529, which are shown as wells not yet drilled, were being completed at the time of the hearing.

---

[58] In the *CATCO* case, *supra,* the pipeline buyer was required by the terms of the agreement to build a line to the offshore platform. A study of the contracts entered into since then shows that in most of them the buyer is to build the pipeline. There is no substantial contention to the contrary.

The map shows the location of the two platforms which will be installed by Gulf, at the expense of Humble and Gulf, to meet contract delivery requirements to Southern. It also shows the approximate route of the separate condensate and gas lines from the platform to the Venice facilities, which facilities will be installed at the delivery point of gas to Southern. These lines and facilities will be constructed, maintained and operated at the Producers' expense. The two platforms will be permanent installations. One will accommodate the hazardous equipment that contains fires. The other will connect to the wells and will contain the production and dehydration facilities. The platforms will be about 150 to 200 feet apart and are sized so that additional production equipment can be installed in order to accommodate the total ultimate volumes to be delivered under Southern's contracts. Prior to commencing deliveries to any other purchaser, additional platforms will have to be installed. Individual flow lines will be laid from each well completion to the production platform, at which point separation of any liquid hydrocarbons will be done at a pressure of 1400 psig. The gas will be dehydrated to contract specifications at this point and will enter the 20-inch pipeline going to the Venice facilities. The liquid condensate, also called liquefied gas, will move through a separate 12-inch line to the same facilities.[54] Certain oil wells are now producing. The oil is carried to shore by a small pipeline. It does not go to Venice.

The gas pipeline from the production platform to the delivery facilities at Venice will be constructed out of 20-inch O.D. x .406 wall thickness, 85.01# per foot, grade x-52 line pipe. It will be approximately 11.15 miles long and will have an inlet pressure of 1400 psig and an outlet pressure of 1150 psig. Delivery to Southern will be at pressures up to 1100 psig. The pipe will be coated and wrapped, and a concrete sheath will be used to give further protection and additional weight to the line, which will be buried approximately 10 feet below the water bottom. Cathodic protection will be provided. Automatic line control equipment will also be provided. It is estimated that this gas line will cost approximately $1,700,000 and will have a capacity of approximately 500,000 Mcf per day at 15.025 psia. For the fourth year Southern will have use of 256,537 Mcf per day, or about 54 percent of the line's capacity. An additional 20-inch gas line probably will be installed when sales are made from this field in excess of the line's capacity to other buyers.

Initially, the plant at Venice will have a 10,000-barrel tank for the storage of the liquid condensate. It will also have automatic custody transfer facilities, separators, and flash vessels, along with heaters and a condensate stabilizer.

The separators are vessels that will be installed on the 20-inch line for removal of any hydrocarbons that may condense out in the line between the platform and the shore installation. The transfer facilities and flash vessels are associated with the 12-inch line.

The transfer facilities are the automatic custody transfer facilities that are utilized to transfer liquids from a storage tank to a pipeline automatically and meter the volume of liquids automatically. The flash vessels will be incorporated with the condensate stabilization equipment which will allow the condensate to be flashed from, for practical purposes, around 1400 pounds to atmospheric pressure. The hydrocarbon vapors made available by this process will then be taken and compressed and delivered to Southern after being dehydrated and further treated.

---

[54] No claim is made for any expense associated with the 12-inch line.

The Venice plant site will cover approximately 50 acres. The facilities discussed herein will occupy about 15 acres and will cost about $150,000. A gas processing plant for removal of liquefiable hydrocarbons from the gas stream is presently being designed and will be installed at this site. To permit deliveries to commence prior to this installation, a separator will be installed between the gas line from offshore and Southern's facilities.

The cost of the operation of the facilities which the Producers will furnish in making deliveries of gas to Southern as aforesaid was expressed as a range of costs because of several variables. Annual operating and maintenance expense for the 20-inch gas line, that is, actual out-of-pocket costs, has been estimated at from $115,000 to $155,000. The major reason for this difference is due to the cost assigned for major repairs. In addition, the unit costs will vary depending on the volumes of gas delivered. Here there will not be a build-up to full contract quantities under the Southern contract until the fourth year. Subsequently, there will be excess capacity in the 20-inch line over that needed to meet a maximum deliverability of 256,000 Mcf per day to Southern. The cost will also vary depending on the provision for return on the investment.

The costs were expressed in three main divisions.

I.

The first assumes that only Southern gas will be delivered during the first four years. It allocates all operation and maintenance expenses, and the full return, to Southern's operations. Such costs are estimated to be:

Return	First 4 years	Life of contract
0	.58¢ to .69¢ [1]	(Not applicable.)
12 percent	1.13¢ to 1.25	

[1] The first figure (.58¢) results from use of the lower operating and maintenance cost of $115,000. The second figure (.69¢) results from the use of the $150,000 figure.

II.

The second division assumes that no gas other than that being sold to Southern flows through the line. It allocates all the operation and maintenance expense to Southern. Depreciation and return on investment, however, are allocated on the basis of the ratio of maximum Southern deliverability requirements of 256,000 Mcf per day to total capacity of 500,000 Mcf per day. As so allocated, the estimated per Mcf cost would be:

Return	First 4 years	Life of contract
0	.46¢ to .58¢.	.27¢ to .34¢.
12 percent	.75¢ to .87¢.	.37¢ to .44¢.

III.

The third division assumes that additional sales are being made through the line so that it is delivering at capacity. It allocates investment, depreciation, and operating and maintenance costs on the basis of capacity. Under this method, the estimated per Mcf cost for the Southern deliveries would be:

Return	First 4 years	Life of contract
0	.16¢ to .19¢	.16¢ to .19¢.
12 percent	.31¢ to .35¢	.25¢ to .28¢.

The above cost estimates include only the costs of the 20-inch gas line to the Venice facilities delivery point. Specifically, they do not include the cost of flow lines to the platforms, platform costs, or any of the costs of the Venice facilities. In short, no gathering costs are included. *Cf. Standard Oil Company of California, et al.*, 27 FPC 1153, rehearing denied, 28 FPC 292, affirmed *sub. nom. California Oil Company, Western Div. v. Federal Power Commission*, 315 F. 2d 652 (CA 10).

The costs, as expressed arithmetically by the Producers, were not challenged by any party.

Staff makes the following contentions at page 65 of its brief:

> Even when Southern is taking the maximum amount it is permitted to purchase under its contracts, Southern will not utilize more than 54 percent of the capacity of the 20-inch line. Consequently, the producers will have to enter into additional contracts with other pipelines before the entire capacity of the 20-inch line can be used (Tr. 1623). Furthermore, while Gulf and Humble will receive gross revenues from the liquids they extract from the gas [at the Venice plant], Southern's witnesses testified that Southern's revenues would be reduced by about $133,000 in the third year after Southern begins to purchase gas from Gulf and Humble because of the extraction of liquids from the gas stream prior to delivery of gas to Southern. [Tr. 1015; Exh. 6, Schedule 8, Sheet 1.]

The gas which is to be delivered by the Producers will have a Btu content of not less than 1000 per cubic foot. After delivery, Southern will commingle such gas with gas purchased from other suppliers having a higher Btu content. As a result, the commingled gas would be diluted "to such an extent that it wouldn't be feasible for [Southern] to process the total quantity of gas that we would have to remove the liquids." (Tr. 598) This accounts for the reduction in revenues referred to by Staff. Furthermore, the said reduction in revenues would probably be offset because the liquids remaining in the gas will be sold by Southern as additional Btu. This is clearly stated by Southern's witness at page 596 of the transcript, as follows:

> There would be less gas processed, that is true, but in turn there would be a reduction in the liquids recovered, but the liquids which we are recovering now will remain in the gas as Btu and go on to the market, and [we] will probably get just as much money or more out of them there than if we had extracted them as Btu.

Long Island Lighting and the PSC of New York make the following contentions:

> The most important of these [special contract] features is the onshore delivery, which at a 6% return represents a cost of between 0.20¢ and 0.24¢ per Mcf (Tr. 326, lines 15–16). It is by no means clear, however, that this cost to Gulf and Humble represents a saving to Southern, which would be the only basis for permitting a premium price. Southern's system map [Appendix A hereof] indicates that the line from the Block 27 platform to the Venice delivery point runs not *toward* Southern's existing

> facilities but *away* from them in an easterly direction, and that it will be necessary for Southern to construct $3.4 million of line in a southeasterly direction in order to pick up the gas at Venice. No explanation is offered in the record for this strange state of affairs (see, e.g., Tr. 1645–46); indeed, the record is entirely consistent with the theory that the gas is being transported from the Block 27 platform to Venice largely, if not exclusively, for the benefit of the producers rather than for the benefit of Southern. (Underscoring in original) (Long Island Lighting Brief, pp. 14–15)

Aside from the use of six or 12 percent return, the above contention is, in effect, a contention that some point closer to Southern's existing facilities should have been chosen for the onshore delivery point. There is no substantial evidence in this record which will permit of such a finding. In fact, the evidence is to the contrary. Gulf's witness on this subject was asked on cross-examination whether the Venice delivery point was "the nearest point to the platform that would be suitable for this type of a facility." (Tr. 1646) He answered "Yes, I believe it would be." (Tr. 1646)

The six percent return figure apparently was derived by averaging the amounts shown hereinabove. By similarly averaging the figures the Examiner finds a cost of between 0.205 cent and 0.235 cent per Mcf. Since Gulf's return on equity has been shown to be ten percent, and since Humble's return on equity was not shown, the Examiner will use the ten percent figure even though the Commission allowed a 12 percent return in the *Phillips* case. Such a return represents a cost of between 0.235 cent to 0.265 cent per Mcf under the third allocation division hereinabove. The average of these two figures is 0.25 cent per Mcf.

The Examiner finds (1) that the cost to the Producers, over the life of the contract, for deliverying the gas to Southern probably will be about 0.25 cent per Mcf, (2) that it would cost Southern at least this much to provide other arrangements to accept delivery of the gas, and (3) that the public convenience and necessity requires that about 0.25 cent per Mcf be added to the "in-line" price of 18.5 cents per Mcf for this specific premium feature.

G. *Tax Reimbursement*

Gulf's proposed initial price of 21.25 cents per Mcf is stated to include tax reimbursement of 1.75 cents per Mcf on all sales to Southern. Humble's proposed initial price is the same as Gulf's. Its contract did not, however, provide that a portion of such sum was for tax reimbursement. Both contracts have been considered as "equivalent" by the parties (Tr. 358), and will be so considered by the Examiner. As previously shown, each Producer shall be entitled to charge a total of 19.5 cents per Mcf. Two questions remain: (1) the tax reimbursement which each Producer will be permitted to charge, and (2) the matter of tax reimbursement from the disputed area.

In the *CATCO* case, *supra*, the Commission concluded that the "in-line" price for 1956 contracts would be not in excess of 18.5 cents per Mcf, where State severance tax did not apply, and 20 cents per Mcf where such tax did apply. In the *Placid* and *United* cases, *supra*, the Commission found that a tax reimbursement of 1.5 cents per Mcf should be permitted for contracts executed through 1959. The Examiner finds that the evidence in this record fails to establish that a tax reimbursement greater than 1.5 cents per Mcf is warranted.

As previously stated, approximately 70 percent of the West Delta Block 27 Field, as now defined, is within the interim three-mile limit and therefore subject to the tax jurisdiction of the State of Louisiana. The remaining part of the field extends out into the Gulf of Mexico beyond the interim three-mile limit into what is called the Outer Continental Shelf. The pertinent area is known as Zone 2. It is one of the critical areas in dispute between the State and Federal Government, and Louisiana jurisdiction may be extended to include it. The Producers are obliged to pay severance taxes to the State on gas produced from all or any part of the Zone 2 leases which are ultimately determined to be within the seaward limits of the State.

Staff makes the following recommendations in regard to tax reimbursement at page 73 of its brief:

> Those sales of gas from the Zone 2 leases in the West Delta Block 27 Field[10] should be expressly conditioned so that it should ultimately be determined that the Louisiana state tax is inapplicable to that area, then the producers shall refund to Southern that part of the total revenues which represents the applicable tax portion of the initial sale price.
>
> [10] As Gulf and Humble point out, there is a dispute whether some sales from Zone 2 are within the taxing jurisdiction of the State of Louisiana. Pending the resolution of this dispute, it is recommended that the producers be permitted to collect the full 20.00 cents per Mcf. It would not appear necessary, in this case, that escrow accounts be established to assure that refund monies would be available in the event it were determined that the contested area is outside of Louisiana's taxing authority.

The Examiner finds that by agreement with the State of Louisiana the Producers must make retroactive payments of severence tax to the extent that any part of the production from Zone 2 is ultimately determined to be subject to Louisiana's taxing jurisdiction. In this case the establishment of an elaborate escrow plan to meet these retroactive obligations is not warranted. *Cf. Socony Mobil Oil Company, Inc., et al.*, 28 FPC 357. However, since the Producers will have the use of this money they should be required to pay interest at seven percent per annum on any amounts refunded pursuant to the attached Order.

Additional Findings and Conclusions

Upon consideration of the whole record, and as supported by and in accordance with the reliable, probative and substantial evidence, it is further found and concluded that:

(1) Southern is a natural-gas company within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order, among others, issued October 6, 1942, *In the Matter of Southern Natural Gas Company*, Docket No. G-296, 3 FPC 822.

(2) The facilities which Southern proposes to construct and operate, as described in its application in Docket No. CP63-26, as amended and supplemented, will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The facilities referred to in paragraph (2) are adequate and appropriate to render the service which Southern proposes, and which Southern is hereinafter authorized to provide.

(4) Southern is able and willing properly to do the acts and to make the sales and to perform the services proposed by it in Docket No. CP63-26, as amended and supplemented, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the facilities, the sales in interstate commerce for resale, and the permanent acquisition of the 2,500 horsepower

packaged gas turbine centrifugal compressor unit, as proposed by Southern in its application, as amended and supplemented, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Each of the Producer applicants, Gulf Oil Corporation, a Pennsylvania corporation, and Humble Oil & Refining Company, a Delaware corporation, in their proposed sales will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and, therefore, each will be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of the service proposed in their respective applications, as amended and supplemented.

(7) The sales of natural gas by the Producer applicants to Southern hereinbefore described, as more fully described in their respective applications and amendments thereto, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Producer applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(8) The respective Producer applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) The sales of natural gas by the respective Producer applicants to Southern, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(10) The public convenience and necessity requires that certificates issued to the respective Producer applicants should be conditioned to limit their sales to those specific volumes of natural gas which they have contracted to sell to Southern as more fully set forth in their respective applications, as amended and supplemented.

(11) It is necessary and appropriate in the administration of the Natural Gas Act (a) that the initial price charged by the respective Producer applicants for the sales proposed in their certificate applications in this proceeding be not greater than a base price of 18.5 cents per Mcf at 15.025 psia, plus no more than 1.0 cents for the premium features in the contracts, and also plus 1.5 cents for state-tax reimbursement on all sales, including the sales from areas where both the State of Louisiana and the Federal government claim to have tax jurisdiction, and (b) that the respective Producer applicants be required to refund to Southern, with interest at seven (7) percent per annum, the state-tax portion collected from each sale from any area which is adjudicated finally not to be subject to the taxing authority of the State of Louisiana.

(12) Warrior River is a municipal entity organized under the laws of the State of Alabama and is legally authorized to construct, own and operate a natural gas distribution system in the communities of Oakman and Parish, Alabama.

(13) Warrior River has failed to prove that it is necessary and desirable in the public interest that the Commission, by order, direct Southern to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Warrior River, and to sell and deliver natural gas to Warrior River for resale and distribution in the communities of Oakman and Parrish, Alabama.

(14) The conditions hereinafter ordered are required by the public convenience and necessity.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity be, and hereby is, issued in Docket No. CP63-26 to Southern Natural Gas Company to construct and operate the facilities, to make the sales in interstate commerce for resale, and to acquire permanently the 2,500 H.P. packaged gas turbine centrifugal compressor unit authorized on an experimental basis in Docket No. CP62-191, all as hereinbefore set forth and as more fully described in its application as amended and supplemented, and its exhibits and record herein, for the transportation and sale of natural gas for resale as therein set forth, upon conditions hereinafter ordered.

(B) Certificates of public convenience and necessity be, and hereby are, issued in Docket No. CI63-123 to Gulf Oil Corporation, and in Docket No. CI63-129 to Humble Oil & Refining Company, upon the terms and conditions of this order, authorizing the sales by the respective Producer applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinabove set forth and as more fully described in their respective applications, as amended and supplemented.

(C) The application of Warrior River Natural Gas District in Docket No. CP63-70 be, and the same is, hereby denied, without prejudice.

(D) The respective certificates granted in paragraph (B) above are hereby conditioned to limit the sales to Southern of natural gas by each applicant to such applicant's proportionate part of 1,250,000,000 Mcf of natural gas at 15.025 psia, based upon each applicant's proportionate part of the total gas reserves in the West Delta Block 27 Field, offshore Plaquemines Parish, Louisiana, as provided in each Producer applicant's gas sales agreement with Southern; and each Producer applicant's respective certificate shall terminate and further sales to Southern by such applicant shall cease when such applicant shall have sold to Southern the volumes herein authorized to be sold.

(E) The respective certificates granted in paragraph (B) above are hereby further conditioned so that the base price under each of the contracts involved in such applications from the date of initial service thereunder, shall be, until lawfully changed in the manner provided by the Natural Gas Act, not greater than 18.5 cents per Mcf, at 15.025 psia, except that the applicants are authorized to make the following additional charges: (1) no more than 1.0 cents per Mcf for the premium features in the respective contracts, as described in the text of this Initial Decision, and (2) no more than 1.5 cents per Mcf for reimbursement for (a) existing State taxes, and (b) those contingent upon the outcome of the described dispute between the Federal government and the State of Louisiana, on gas produced from any part of the West Delta Block 27 Field, *provided however*, that if it is adjudicated finally that all or any portion of such Field is not subject to the taxing authority of the State of Louisiana, the respective Producer applicants shall refund to the pipeline purchaser, with interest at seven (7) percent per annum all sums previously collected from such purchaser for reimbursement for State taxes, the payment of which by the Producers was contingent upon a final adjudication that the area was subject to the taxing authority of the State of Louisiana.

(F) The certificates issued herein, as conditioned, are not transferable and shall be effective only so long as the respective applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) Each of the certificates issued herein shall be deemed accepted and in full force and effect unless refused in writing, and under oath, by the respective applicants within 30 days of the effective date of the final Order herein.

(H) The facilities authorized herein shall be constructed and placed in actual operation within one year from the effective date of the final Order herein.

(I) The grant of the certificates issued herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the service hereunder (18 CFR 154), and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective applicants. Further, the action taken in these proceedings shall not foreclose or prejudice any further proceedings relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(J) The general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d), and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.20) shall attach to the certificate issued to Southern and to the exercise of the rights granted thereunder.

DYER JUSTICE TAYLOR,
Presiding Examiner

APPENDIX B

Southern Natural Gas Co., et al., Docket No. CP63-26, et al.

FACILITIES FOR WHICH SOUTHERN SEEKS CERTIFICATE AUTHORIZATION (ITEM F)

A. Southeastern Georgia Extension

Pipelines (all sizes are "O.D.")	*Estimated cost*
Construct 7.5 miles of 16-inch line east of Ocmulgee Station to Highway 129 Gate	$439, 230
Construct 173.35 miles of 12¾-inch line in southeastern direction toward Brunswick	7, 343, 670
Construct two Ocmulgee River crossings near Macon, each about 600 feet long	134, 410
Construct two Ocmulgee River crossings near Hazlehurst, each about 1,500 feet long	155, 960
(Less reduction in cost of pipe, Tr. 152)	−271, 800
Total pipelines	7, 801, 470

Measuring Facilities

Southeast Georgia check station	20, 273
Jeffersonville	13, 641
Eastman lateral	23, 787
Alamo lateral	26, 599
Hazlehurst lateral	16, 436
Baxley lateral	23, 771
Jessup-Waycross lateral	27, 046
Brunswick and Darien	45, 957
Vidalia	20, 611
Danville, Dexter, Montrose, Dudley, and Odum (Tr. 154; 950)	57, 400
Total measuring facilities	275, 521
Total cost of southeastern Georgia extension	8, 076, 991

PC

r)

cost

30

70

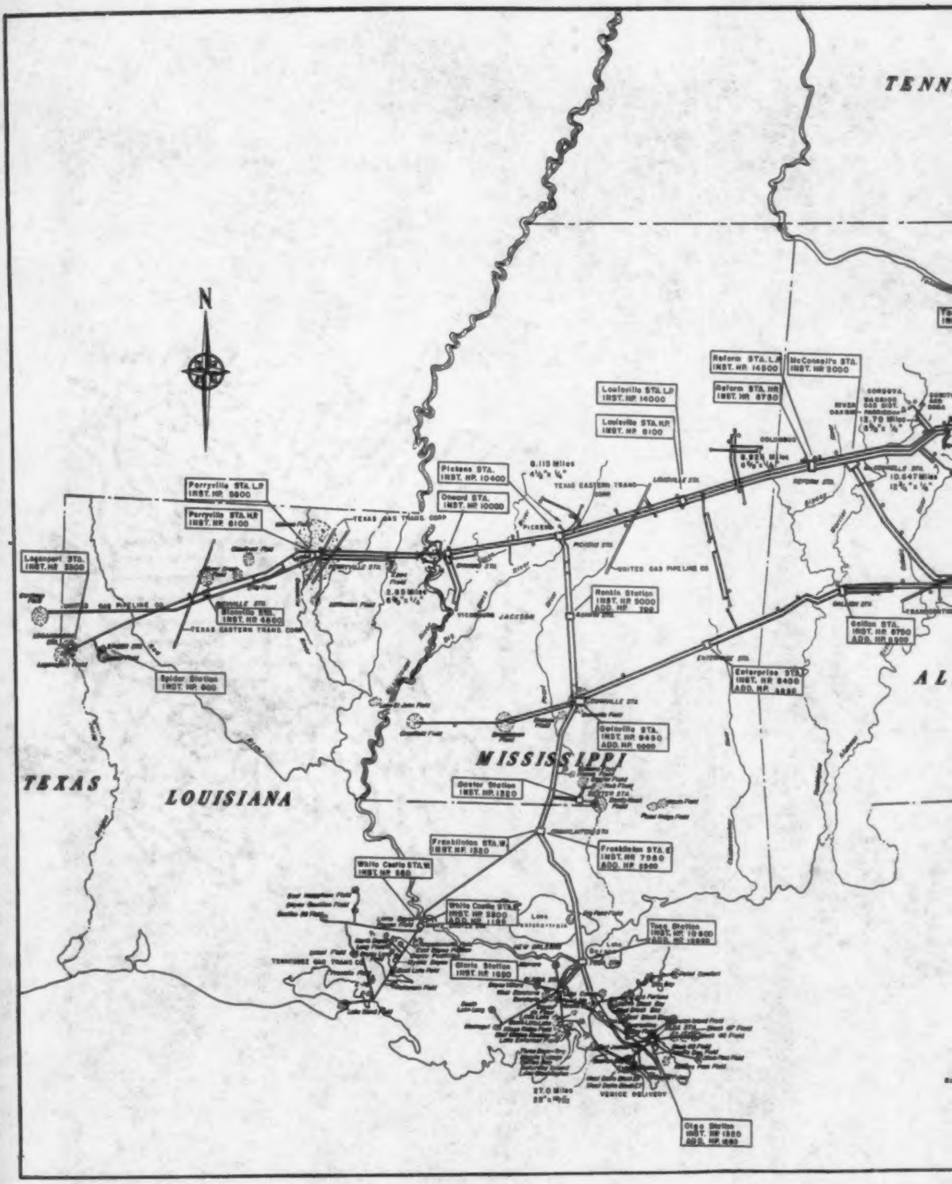
10

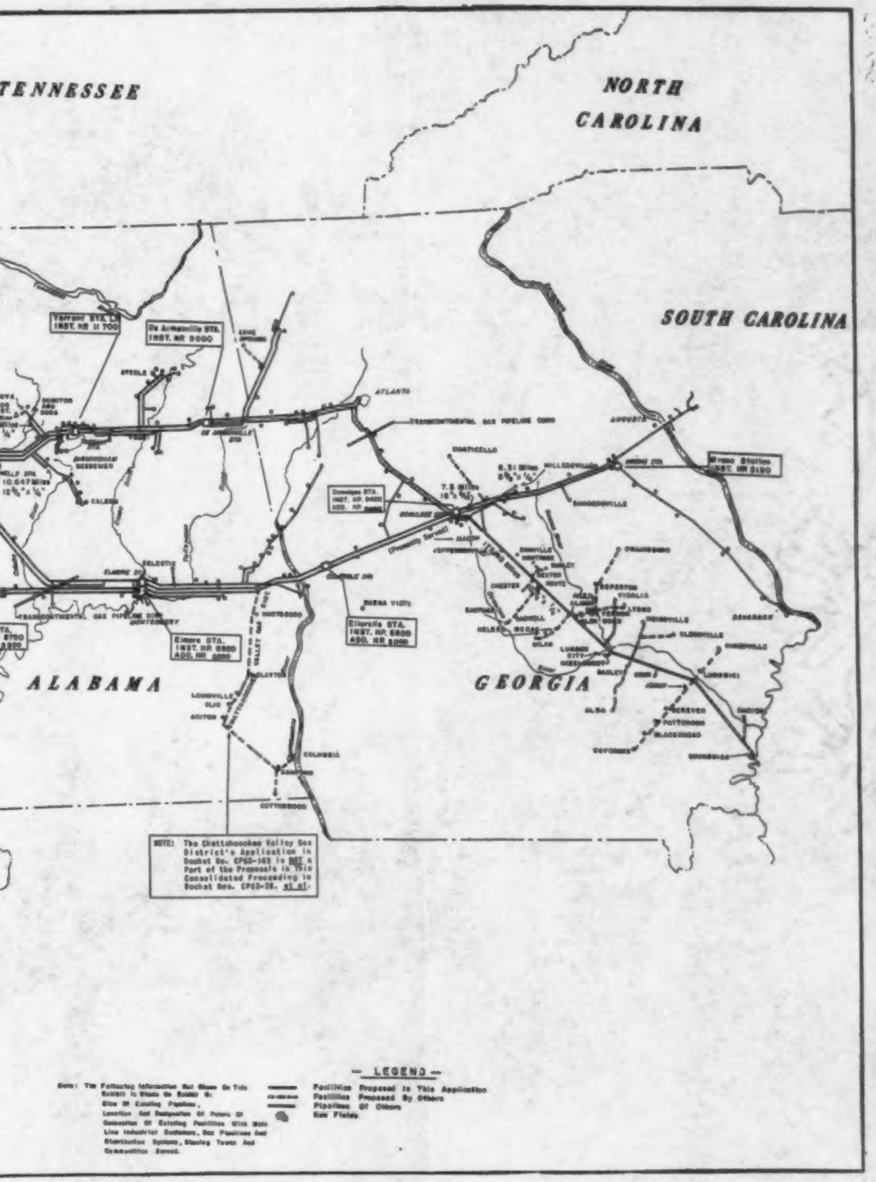
60
00

70

73
41
87
99
36
71
46
57
11
00

21
91


N
TENN
TEXAS
LOUISIANA
MISSISSIPPI
AL
Perryville STA. L.P.
INST. HP. 5800
Perryville STA. H.P.
INST. HP. 6100
TEXAS GAS TRANS. CORP.
Logansport STA.
INST. HP. 3300
UNITED GAS PIPELINE CO.
Bienville STA.
INST. HP. 4800
TEXAS EASTERN TRANS. CORP.
Spider Station
INST. HP. 900
2.65 Miles
Pickens STA.
INST. HP. 10400
Oneard STA.
INST. HP. 10000
6.113 Miles
TEXAS EASTERN TRANS. CORP.
PICKENS
PICKENS STA.
UNITED GAS PIPELINE CO.
VICKSBURG
JACKSON
Louisville STA. L.P.
INST. HP. 14000
Louisville STA. H.P.
INST. HP. 6100
LOUISVILLE STA.
Reform STA. L.P.
INST. HP. 14500
Reform STA. H.P.
INST. HP. 6750
REFORM STA.
McConnell's STA.
INST. HP. 2000
COLUMBUS
CORDOVA
12.79 Miles
10.647 Miles
Rankin Station
INST. HP. 5000
ADD. HP. 700
Gallion STA.
INST. HP. 6750
Enterprise STA.
INST. HP. 8400
ENTERPRISE STA.
Gwinville STA.
INST. HP. 9450
Baxter Station
INST. HP. 1320
Franklinton STA. W.
INST. HP. 1320
Franklinton STA. E.
INST. HP. 7980
White Castle STA. W.
INST. HP. 960
White Castle STA. E.
INST. HP. 3800
Lake Pontchartrain
NEW ORLEANS
Toca Station
INST. HP. 10800
Lake Borgne
Clovis Station
INST. HP. 1680
TENNESSEE GAS TRANS. CO.
27.0 Miles
VENICE DELIVERY
Olga Station
INST. HP. 1380


TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
GEORGIA
Tarrant STA.
INST. HP 11 700
De Armanville STA.
INST. HP 9000
STEELE
CALERA
10.647 Miles
ATLANTA
TRANSCONTINENTAL GAS PIPELINE CORP.
MONTICELLO
MILLEDGEVILLE
7.5 Miles
MACON
Ellerslie STA.
INST. HP 6800
ADD. HP 2000
BUENA VISTA
AUGUSTA
SANDERSVILLE
VIDALIA
LYONS
REIDSVILLE
CLAXTON
LUMBER CITY
HAZLEHURST
BAXLEY
JESUP
ALMA
SCREVEN
PATTERSON
BLACKSHEAR
WAYCROSS
ECLECTIC
ELMORE
TRANSCONTINENTAL GAS PIPELINE CORP.
MONTGOMERY
Elmore STA.
INST. HP 6800
ADD. HP 2000
CLAYTON
LOUISVILLE
CLIO
ARITON
COLUMBIA
COTTONWOOD

NOTE: The Chattahoochee Valley Gas District's Application in Docket No. CP63-163 is NOT a Part of the Proposals in this Consolidated Proceeding in Docket Nos. CP63-26, et al.

— LEGEND —

Note: The Following Information Not Shown On This Exhibit Is Shown On Exhibit G:
Size Of Existing Pipelines,
Location And Designation Of Points Of Connection Of Existing Facilities With Main Line Industrial Customers, Gas Pipelines And Distribution Systems, Showing Towns And Communities Served.

▬	Facilities Proposed In This Application
▭	Facilities Proposed By Others
═	Pipelines Of Others
●	Gas Fields

B. Compressor Horsepower Required to Increase Main Line Capacity by 95,000 Mcf Per Day (All except Rankin are on the "South Line")

	Total horsepower	*Estimated cost*
*Enterprise, Miss., station, install 2,500 horsepower[1] and add 3,360 horsepower by turbocharging six existing engines	5, 860	$759, 200
*Gallion, Ala., station, install 2,500 horsepower and add 2,800 horsepower by turbocharging five existing engines	5, 300	878, 500
*Elmore, Ala., station, install 5,000 horsepower	5, 000	798, 400
*Ellerslie, Ga., station, install 5,000 horsepower	5, 000	825, 200
*Ocmulgee, Ga., station, install 3,600 horsepower	3, 600	835, 000
Rankin, Miss., station, add 700 horsepower by supercharging and changing cylinders on two engines (this station is located on an interconnection between Southern's "North Line" and its "South Line")	700	235, 000
Total additional compression proposed to increase main-line capacity by 95,000 Mcf	25, 460	4, 331, 300

C. Facilities Required to Increase Capacity of South Louisiana Supply System

Pipelines and Measuring Facilities

	Estimated cost
Construct 27 miles of 22-inch line from the southern terminus of its main line system connecting the Lake Washington Field, to a point near Venice, La., to enable it to connect the West Delta Block 27 Field gas which it has contracted to purchase from Gulf and Humble	$3, 406, 250
Venice receiving station measuring facility	75, 594

Incremental Compressor Horsepower Required

	Total horsepower	
Olga, La., station install 1,650 horsepower	1, 650	$829, 900
*Toca, La., station install 10,000 horsepower	10, 000	3, 360, 900
White Castle, La., station install 1,100 horsepower	1, 100	332, 900
*Franklinton, La., station install 2,500 horsepower	2, 500	438, 000
*Gwinville, Miss., station install 5,000 horsepower	5, 000	838, 800
Total additional compression proposed to increase capacity of South Louisiana Supply System	20, 250	5, 800, 500
Total estimated cost of increasing capacity of South Louisiana Supply System		9, 282, 344

---

[1] Southern now requests permanent authorization of this 2,500 horsepower gas turbine unit which was previously authorized July 9, 1962, on an experimental basis only in Docket No. CP62-191 (Item VV; Tr. 838).

*An "asterisk" before an item indicates that Southern has received temporary authority to construct the facility. (See letter-order dated August 5, 1963, in Docket No. CP63-26.)

D. Facilities Proposed for Reinforcement of Six Lateral Lines (all pipe size in "O.D.")

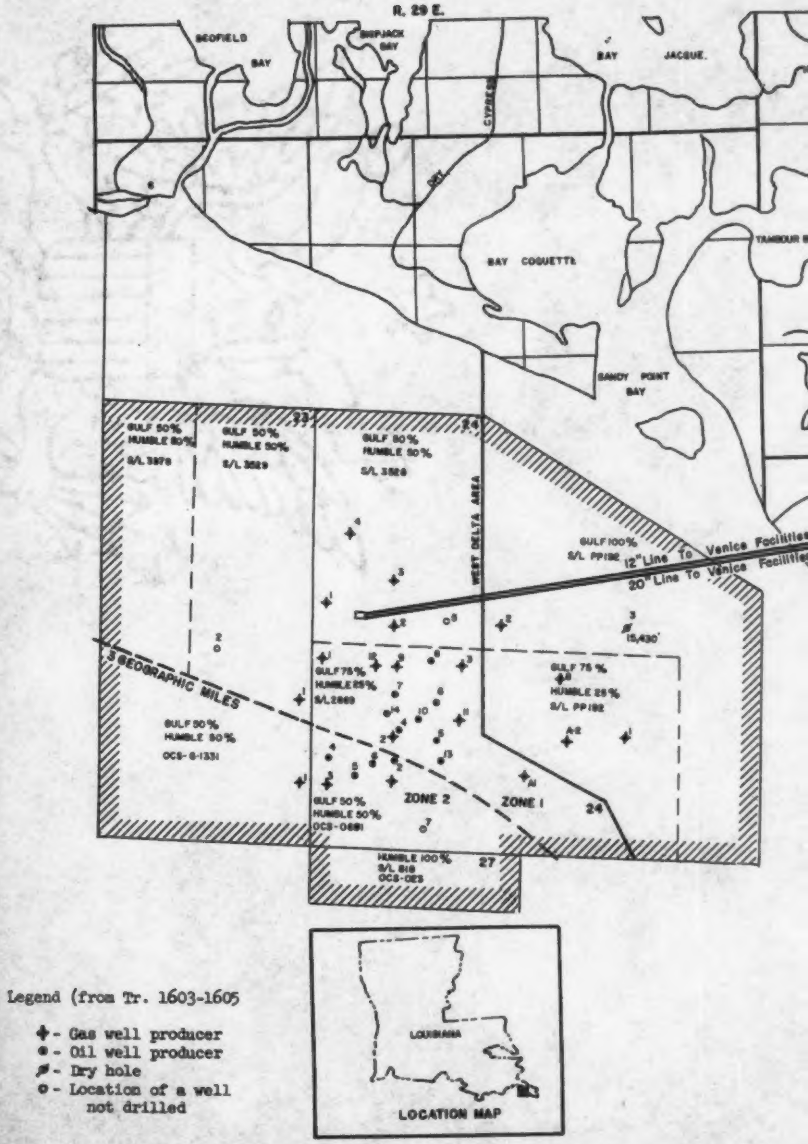
	Estimated cost
*Vicksburg, Miss., lateral construct 2.85 miles of 6⅝-inch loop	$78, 430
*Pickens, Miss., lateral construct 8.115 miles of 4½-inch loop	149, 700
*Columbus, Miss., lateral construct 8.926 miles of 6⅝-inch loop	212, 230
Calera, Ala., lateral construct 10.646 miles of 12¾-inch loop	415, 030
Cordova, Ala., lateral construct 12.79 miles of 6⅝-inch loop and two Warrior River crossings on the Cordova lateral, each about 940 feet long	360, 560
*Milledgeville, Ga., lateral construct 6.31 miles of 8⅝-inch loop	180, 370
(Less reduction in cost of pipe, Tr. 152)	−35, 900
Total cost of lateral pipeline reinforcement	1, 360, 420

E. Measuring Facilities and Line Taps Required to Serve Applicants Pursuant to Section 7 (a) of the Natural Gas Act

	Estimated Cost
Chattahoochee Valley Gas District	$21, 962
Dora and Sumiton, Ala	11, 319
Steele, Ala	9, 548
Warrior River Natural Gas District	11, 309
Monticello, Ga	17, 360
Noxapater, Mississippi, and Temple and Whitesburg, Ga. (Tr. 154)	91, 300
Total cost of measuring facilities and line taps for applicants pursuant to section 7 (a)	162, 798
Estimated total cost of all facilities for which Southern seeks a certificate in Docket No. CP63–26	[2] 23, 213, 853

---

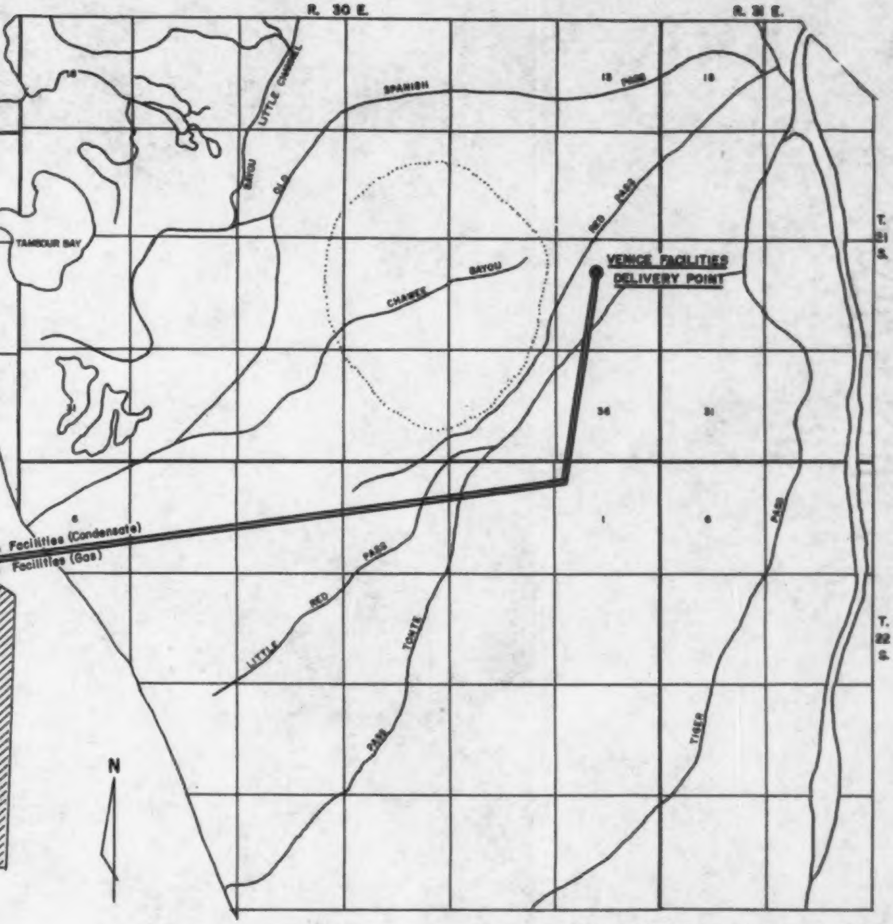
[2] Southern states on page 4 of its brief that the "* * * Total estimated cost of the entire project is $23,156,453. (Tr. 154)." This figure is incorrect in the amount of $57,400 because of the failure of Southern to add the cost of four additional measuring stations to be constructed on the southeastern Georgia extension. (See Tr. 950, lines 6 through 18.)


R. 29 E.
SCOFIELD BAY
SKIPJACK BAY
CYPRESS
BAY JACQUE
BAY COQUETTE
SANDY POINT BAY
TAMBOUR B
23
24
GULF 50%
HUMBLE 50%
S/L 3878
GULF 50%
HUMBLE 50%
S/L 3029
GULF 50%
HUMBLE 50%
S/L 3028
WEST DELTA AREA
GULF 100%
S/L PP192
12" Line To Venice Facilities
20" Line To Venice Facilities
15,430'
3 GEOGRAPHIC MILES
GULF 75%
HUMBLE 25%
S/L 2869
GULF 75%
HUMBLE 25%
S/L PP192
GULF 50%
HUMBLE 50%
OCS-0-1331
GULF 50%
HUMBLE 50%
OCS-0881
ZONE 2
ZONE 1
24
HUMBLE 100%
S/L 818
OCS-023
27
LOUISIANA
LOCATION MAP

Legend (from Tr. 1603-1605

- ✦ - Gas well producer
- ● - Oil well producer
- ⌀ - Dry hole
- ○ - Location of a well not drilled

APPENDIX D


R. 30 E.
R. 31 E.
18
13
18
SPANISH
PASS
LITTLE CHANNEL
BAYOU
OLD
TAMBOUR BAY
RED
PASS
VENICE FACILITIES
DELIVERY POINT
CHAWEE
BAYOU
T. 21 S.
31
36
31
6
1
6
Facilities (Condensate)
Facilities (Gas)
PASS
LITTLE
RED
PASS
TONTE
PASS
T. 22 S.
TIGER
N

GULF OIL CORPORATION ET AL

DOCKET NO. CI 63-123 ET AL

EXHIBIT NO. ________

MAP OF WEST DELTA BLOCK 27 FIELD

PLAQUIMINES PARISH, LOUISIANA

SCALE 1" = 1 MILE

FEBRUARY 1963

Co

C
C

APPENDIX C

COMPUTATIONS BY CAROLINA OF WARRANTED INVESTMENT BY SOUTHERN IN SOUTHEASTERN GEORGIA EXTENSION

	(1) Using Southern's pipe size (Ex. 25 Sch. 4)	(2) Using Carolina's pipe size (Ex. 25 Sch. 6)	Using pro-rata main line and supply expense	
			(3) Using Southern's pipe size (Ex. 25 Sch. 1)	(4) Using Carolina's pipe size (Ex. 25 Sch. 5)
Operating revenue	$3,154,045	$3,154,045	$3,154,045	$3,154,045
Operating revenue deductions:				
Main line and gas supply system:				
Cost of gas	1,875,148	1,875,148	1,875,148	1,875,148
Other variable costs	161,496	161,496	161,496	[1] 161,496
Depreciation			150,467	150,467
Taxes—other than income			42,990	42,990
Income taxes and return			431,517	[2] 431,517
Southeast Georgia extension:				
Measurement operation and maintenance	25,830	25,830	25,830	25,830
Pipeline operation and maintenance	104,950	104,950	104,950	104,950
Administration and general	48,390	48,390	48,390	48,390
Depreciation at 3½ percent	282,240	234,292	282,240	234,292
Taxes—other than income	80,770	67,071	80,770	67,071
Subtotal	2,578,824	2,517,177	3,203,798	3,142,151
Balance of revenue available for income taxes and return on Southeast Georgia extension	575,221	636,868	(49,753)	11,894
1966 net investment of Southern on which 11 percent can be earned for income taxes and return	5,229,282	5,789,709		108,127
Plus 2½ years' depreciation on gross investment in Southeast Georgia extension	705,600	585,730		585,730
Warranted investment by Southern in Southeast Georgia extension	5,934,882	6,375,439		693,857
Excess of cost of facilities over warranted investment	2,142,109	331,620	8,076,991	6,013,202
Total cost of facilities	8,076,991	6,707,059	8,076,991	6,707,059

---

[1] For this figure Staff and Southern showed $65,630 and called it "compressor fuel company use and unaccounted for."

[2] 11 percent of third year net investment in main line and gas supply system costs allocated to the Southeastern Georgia Extension.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-148

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 6, 1964)

On December 26, 1963, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64-148 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline tap valves and the sale and delivery of natural gas to Great Plains Gas Company (Great Plains) at points on Applicant's existing pipeline system in Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Moore, Hutchinson and Hemphill Counties, Texas, all as more fully set forth in the application.

The application shows that Great Plains will resell the subject gas to approximately 180 right-of-way customers in the vicinity of Applicant's pipeline system in the above-mentioned Texas counties. The customers to be served by Great Plains are unconnected grantors of easements and rights-of-way for Applicant's system who have reserved gas service rights from Applicant and such other consumers in said above-mentioned Texas counties as Applicant and Great Plains may from time to time agree to serve. The application shows further that the gas sold to customers will be for irrigational and domestic use.

Applicant will sell to Great Plains pursuant to a service agreement, dated November 4, 1963.

The estimated cost of the taps to be installed is as follows:

Size Tap	*Total cost*
1 inch	$350
2 inch	750
3 inch	870
4 inch	1,025

Applicant states that Great Plains will reimburse it for all necessary material and installation costs.

The third year estimated annual and maximum daily deliveries to Great Plains are 611,602 Mcf and 1,675 Mcf, respectively.

By letter, dated February 7, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 2, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale

of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) Annual reports should be filed by Applicant giving the total number of taps installed and a description of the tap as to size, cost and annual volumes delivered at each tap.

(7) The volume of gas delivered and sold to Great Plains by Applicant should be limited to maximum daily and annual volumes of 1,675 Mcf and 612,000 Mcf, respectively.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(C) Annual reports shall be filed by Applicant giving the total number of taps installed and a description of the tap as to size, cost and annual volumes delivered at each tap.

(D) The volume of gas delivered and sold to Great Plains by Applicant is hereby limited to maximum daily and annual volumes of 1,675 Mcf and 612,000 Mcf, respectively.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NOS. G-2451 AND G-5475

ORDER ACCEPTING PROPOSED SERVICE AGREEMENTS AND TERMINATING PROCEEDING

(Issued April 6, 1964)

On January 10, 1964, the Columbia Gas System filed a letter in the above-styled proceeding advising the Commission that, as a result of extended negotiations, a subsidiary, Ohio Valley Gas Company (Ohio Valley), has acquired Portsmouth Gas Company (Portsmouth), and has succeeded to the rights and obligations of Portsmouth, including the latter's right to purchase gas from the

United Fuel Gas Company (United Fuel). The letter states that it may be regarded "as authority to consider" as moot the remand of Case No. 15528 in the United States Court of Appeals for the District of Columbia. That case arose from the Commission's issuance of an order on May 11, 1956, in Docket Nos. G-2451 and G-5475, authorizing the use of a contract demand form of rate by United Fuel.

Portsmouth, one of United Fuel's customers, filed a petition in the Court of Appeals seeking review of the order and contesting United Fuel's substitution, pursuant to that order, of a long term contract demand in lieu of the existing annually-ascertained maximum-day demand. The petition resulted in a decision by the Court of Appeals on June 25, 1957, remanding the matter to the Commission to provide a more complete record of fact and background relating to the contract between Portsmouth and United Fuel. Thereafter, extended negotiations and discussions were held seeking to arrive at a stipulation of facts to be presented in the remanded hearing. Those discussions evolved into negotiations for purchase of Portsmouth's facilities and operations by the Columbia Gas System, resulting in the acquisition referred to above. Portsmouth, during the aforementioned negotiations, did not execute a service agreement with United Fuel, but continued its purchases of natural gas from United Fuel under the latter's CD rate schedules.

On January 28, 1964, United Fuel filed a superseding service agreement, which reflects the acquisition of Portsmouth's facilities by Ohio Valley and provides for a contract demand equivalent to the total of the existing demands for both Ohio Valley and Portsmouth. Portsmouth's delivery point is incorporated with Ohio Valley's other delivery points, and the term of the contract is extended to January 1, 1984, with service to be furnished under United Fuel's FPC Gas Rate Schedule CDS-1, presently in effect subject to refund in Docket No. G-20270. The proposed service agreement provides no other changes.

United Fuel requests waiver of the notice requirements under the Commission's Rules of Practice and Procedure in order to permit the filing to become effective on January 1, 1964, the effective date of the acquisition.

The Commission finds:

(1) It is appropriate under the circumstances that United Fuel's proposed superseding agreement with Ohio Valley, filed January 28, 1964, be allowed to become effective on January 1, 1964.

(2) It is further appropriate that the remanded proceedings styled by the Commission as Docket Nos. G-2451 and G-5475 be terminated as moot.

The Commission orders:

(A) United Fuel Gas Company's superseding service agreement with Ohio Valley Gas Company filed January 28, 1964, is hereby accepted for filing to become effective January 1, 1964.

(B) The proceedings in Docket Nos. G-2451 and G-5475 are hereby terminated as moot.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

W. W. HARVEY AND W. C. SOJOURNER, DOCKET NO. CI62-1470

ORDER POSTPONING ACTION ON REQUEST FOR PARTIAL WITHDRAWAL OF APPLICATION

(Issued April 7, 1964)

On June 7, 1962, W. W. Harvey and W. C. Sojourner (Applicants) filed an application in Docket No. CI62-1470 for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act, to sell natural gas to Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois) from acreage dedicated under the terms of a contract filed concurrently therewith. Said application was, by Commission order of October 15, 1962, consolidated with sundry other applications in the proceedings in Natural Gas Pipeline Company of America, *et al.*, Docket No. CP62-243, *et al.* Hearings thereon were commenced on February 26, 1963 and concluded October 15, 1963. These applications are now awaiting initial decision by the presiding examiner.

By letter of January 17, 1964, Applicants gave notice to Oklahoma Illinois that they were removing certain leases from under the terms of their contract pursuant to provisions contained therein. On February 24, 1964, Oklahoma Illinois filed, in the Federal District Court in Fort Worth, Texas, a civil action seeking a declaratory judgment determining that the Applicants do not have a right to withdraw committed leases at this time.

On February 24, 1964, Applicants filed, pursuant to the Commission's Rules of Practice and Procedure, Sec. 1.11(d), a notice of partial withdrawal of their application. However, that section specifically provides that where a hearing has commenced, withdrawal of an application can only be had upon express permission of the Commission.

We are fully cognizant of the fact that it is not within our province to determine the legal issues presented in the private controversy between Applicants and Oklahoma Illinois. Postponement of action on Applicants' notice of withdrawal, as we shall hereinafter order, does not reflect any intention on our part to pass upon the merits of the private controversy, or to alter the legal rights of either party to the controversy. On the contrary, it is our purpose not to do so. Although we recognize fully that we cannot require a natural gas producer to seek or accept a certificate of public convenience and necessity, the Applicants have nevertheless not shown that they would be prejudiced in any way if their application were to remain on file as originally filed.

As the United States Court of Appeals for the District of Columbia Circuit has stated: "through their private interest they represent a factor affecting the public interest, even though their private interest considered alone is not for Commission determination." And, with respect to the "private controversy": "The court in determining what relief, if any should be accorded * * * might well be influenced by the Commission's decision respecting" withdrawal of the application. See *Granik* v. *Federal Communications Commission*, 234 F. 2d 682, 684–685 (1956). Also cited in *American Louisiana Pipe Line Co., et al.*, Docket No. G–10396, *et al.*, 17 FPC 22, 23 (1957).

The Commission finds:

It is appropriate and in the public interest that no action be taken at this time on the request for partial withdrawal of the application in Docket No. CI62–1470.

The Commission orders:

Action on the request for partial withdrawal filed by the Applicants in Docket No. CI62–1470 is hereby postponed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MURCHISON BROS. & DENIUS, DOCKET NO. G-17355

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued April 7, 1964)

On February 7, 1964, Murchison Bros. & Denius (Murchison) submitted an offer of settlement in the proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Murchison. The offer relates to sales made under Supplement No. 6 to Murchison's FPC Gas Rate Schedule No. 1 in Victoria County, Texas (Texas R.R. Com. District #2). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective by Murchison on July 10, 1959.

Under the terms of the offer, Murchison proposed to eliminate the favored-nation and price redetermination provisions from the rate schedule and to establish a 14.6¢ per Mcf rate for the subject sale with future periodic price escalations consistent with the Second Amendment. Murchison's annual revenues will be decreased about $1,406 from the presently effective rates. No protests or objections have been filed to the offer.

Murchison, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $7,433, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's *Statement of General Policy No. 61-1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Murchison's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future periodic rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Murchison's rate and rate schedue.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Murchison on February 7, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Murchison on February 7, 1964, is hereby approved in accordance with the provisions of this order.

(B) Murchison shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 14.6¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1 eliminating the favored-nation, and price redetermination provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Murchison shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest at 6% per annum and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Murchison has complied with the terms and conditions of the order, the rate and charge of 14.6¢ per Mcf at 14.65 psia, specified in its offer of settlement, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Murchison's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Murchison, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

RIO BRAVO OIL COMPANY, DOCKET NOS. G-20060 AND RI60-330

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued April 7, 1964)

On February 10, 1964, Rio Bravo Oil Company (Rio) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Rio. The offer relates to sales made under Supplement Nos. 3 and 4 to Rio's FPC Gas Rate Schedule No. 2 in Hidalgo County, Texas (Texas R.R. Com. District #4). Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Rio on April 15 and October 15, 1960.

Under the terms of the offer, Rio proposes to eliminate the favored-nation and price redetermination provisions from the rate schedule and to establish a 14.6¢ per Mcf rate for the subject sale. Rio's annual revenues will be decreased about $740 from the presently effective rates. No protests or objections have been filed to the offer.

Rio, in its offer, proposed to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $2,740, exclusive of interest.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61-1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Rio's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future periodic rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Rio's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Rio on February 10, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Rio February 10, 1964, is hereby approved in accordance with the provisions of this order.

(B) Rio shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 14.6¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 4 eliminating the favored-nation and price redetermination provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Rio shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest at the rate of 6% per annum, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Rio has complied with the terms and conditions of the order, the rate and charge of 14.6¢ per Mcf at 14.65 psia, specified in its offer of settlement, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Rio's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Rio, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY, STATE OF LOUISIANA, PROJECT NO. 2305

ORDER APPROVING PERIOD OF CONTRACT FOR SALE OF POWER AFTER EXPIRATION OF LICENSE

(Issued April 7, 1964)

On March 13, 1964, the Sabine River Authority of Texas and the Sabine River Authority, State of Louisiana (Applicants), joint licensees for the Toledo Bend project, Project No. 2305, on the Sabine River, filed application for approval, under Section 22 of the Federal Power Act (16 U.S.C. 815), of the period of a proposed contract to sell project power beyond the period of the license. The Commission gave public notice of the application on March 16, 1964. No protests or petitions to intervene were received.

Applicants propose to execute a contract to sell all power produced at the Toledo Bend project to the Gulf States Utilities Company, Central Louisiana Electric Company, Inc., and Louisiana Power and Light Company. The proposed contract shall terminate on the fiftieth anniversary of the beginning of production of full power or on April 30, 2018, whichever is first. The license for the Toledo Bend project, issued on October 14, 1963, 30 FPC 1009, effective from October 1, 1963, is for a period of fifty years, expiring on September 30, 2013. Thus, Applicants request approval of a period of a contract for sale of power for a maximum of about four and a half years beyond the termination of the license. Applicants state that since it is not expected that full power production will be achieved before May 1, 1968, the contract in all probability will not terminate until the maximum period.

The estimated cost of the Toledo Bend project is $60,000,000. Half of this sum is to be advanced in equal amounts by the States of Texas and Louisiana. The remaining half is to be raised by the sale of revenue bonds. The financing of the Toledo Bend project substantially depends upon the execution of the proposed fifty-year hydroelectric power sales agreement.

Since Applicants are agencies of the States of Texas and Louisiana, the Toledo Bend project, according to section 3 of the Act of August 15, 1953, as amended on July 31, 1959 (16 U.S.C. 828), may not be taken over by the United States under the provisions of Section 14 of the Federal Power Act upon expiration of its license.

The Commission finds:

It is appropriate and in the public interest in administering the Federal Power Act that the Commission approve the period of a contract between the Sabine River Authority of Texas and the Sabine River Authority, State of Louisiana, on the one hand and the Gulf States Utilities Company, Central Louisiana Electric Company, Inc., and Louisiana Power and Light Company on the other for sale of power from the Toledo Bend project, Project No. 2305, from September 30, 2013, when the license expires, until the fiftieth anniversary of the beginning of production of full power or April 30, 2018, whichever occurs first.

The Commission orders:

(A) The period of the proposed contract between the Sabine River Authority of Texas and the Sabine River Authority, State of Louisiana, on the one hand

and the Gulf States Utilities Company, Central Louisiana Electric Company, Inc., and Louisiana Power and Light Company on the other for sale of power from the Toledo Bend project, Project No. 2305, from September 30, 2013, when the license expires, until the fiftieth anniversary of the beginning of production of full power or April 30, 2018, whichever occurs first, is hereby approved.

(B) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates service accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; CONTINENTAL OIL COMPANY (OPERATOR), ET AL., DOCKET NO. CI61-586

ORDER GRANTING MOTION TO FILE SUPPLEMENTAL EXCEPTIONS AND DENYING MOTION TO STRIKE ERRATA NOTICE IN PART

(Issued April 7, 1964)

On March 13, 1964, the presiding examiner issued an errata notice to the initial decision which had been issued on January 14, 1964, 32 FPC 254 at p. 279, in the above-captioned matters.

The effect of one of the corrections was to change the initial price allowed by the presiding examiner in Docket No. CI61-586, in Appendix I to his decision, from 19.9¢ per Mcf to 18.7¢ per Mcf.

On March 19, 1964, after the time for filing exceptions and replies thereto had expired, Continental Oil Company (Continental) filed (1) a motion to strike the errata notice insofar as it applied to Docket No. CI61-586, contending that the change was not of a formal or mechanical nature, and (2) a motion to file supplemental exceptions, contending that the errata notice was the first indication of a price condition. The supplemental exceptions accompanied the motion to file them.

The presiding examiner apparently was of the view that the change was of a formal or mechanical nature because in the body of this very complex decision he had stated that the certificate to be issued in Docket No. CI61-586 would be conditioned to an initial price of 18.7¢ per Mcf (*supra*, p. 313). Under the circumstances, the correction of the Appendix by way of errata notice was proper, and the motion to strike it will be denied.

As noted above, Continental was on notice by the examiner's decision that his intention was to condition the certificate in Docket No. CI61-586 as he did by way of the errata notice, in view of the conflict between the body of the decision and the Appendices. However, since no party will be prejudiced, we shall grant the motion to file supplemental exceptions and accept them for filing at this time. We point out that we are not herein passing on the merits of the examiner's decision or Continental's supplemental exceptions thereto.

The Commission orders:

(A) The motion to strike errata notice in part, filed in the above-captioned matters on March 19, 1964, by Continental Oil Company is hereby denied.

(B) The motion to file supplemental exceptions filed in the above-captioned matters on March 19, 1964, by Continental Oil Company is hereby granted and the supplemental exceptions which accompanied said motion are hereby accepted for filing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

VERMONT ELECTRIC COOPERATIVE, INC., PROJECT NO. 2152; CENTRAL VERMONT PUBLIC SERVICE CORPORATION, PROJECT NO. 2205

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR PROJECT NO. 2152

(Issued April 7, 1964)

By Commission order issued January 20, 1964, the matters involved and issues presented by conflicting applications for license by Vermont Electric Cooperative, Inc. (Cooperative) and Central Vermont Public Service Corporation (Corporation) were consolidated for hearing. At a prehearing conference held on February 4, 1964, pursuant to the above order, the Cooperative stated its intention to request withdrawal of its application and its intervention with respect to the Corporation's application.

On February 28, 1964, the Cooperative filed a notice of withdrawal of its application for license for Project No. 2152 and its intervention in respect to the Corporation's application for license for Project No. 2205. In view of the availability of power at lower cost, the Cooperative requested that the Commission approve the withdrawal.

The Commission orders:

Permission for withdrawal of the application for license for Project No. 2152 and the aforesaid intervention in respect to Project No. 2205 is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.; AREA RATE PROCEEDING, ET AL., AR64-2, ET AL.; UNION PRODUCING COMPANY (OPERATOR), ET AL., G-18354, ET AL.

ORDER SEVERING AND CONSOLIDATING PROCEEDINGS

(Issued April 8, 1964)

By Opinion No. 414-A, issued on March 6, 1964, 31 FPC 503, we held that the rates for all sales of natural gas by Union Producing Company (Union) to its pipeline affiliate, United Gas Pipe Line Company (United) would be in issue in the Section 5(a) proceeding in Docket No. G-18354 which by Opinion No. 414 we remanded for further hearing on limited issues. We also held that Union's rates for sales to non-affiliated pipeline purchasers would be determined in the appropriate area rate proceedings.

There are presently consolidated with the proceedings in Docket Nos. AR61-2 and AR64-2 certain Section 4(e) proceedings involving certain sales by Union to United. It is appropriate that these proceedings be severed from the area proceedings and consolidated with Union's Section 5(a) proceeding in Docket No. G-18354 together with other Section 4(e) proceedings for sales to United not now consolidated with either proceeding. By the instant severance and consolidation Union's rates for sales to its affiliate, United, will be determined in the Docket No. G-18354 proceeding and its rates for sales to nonaffiliates will be determined in the appropriate area proceeding.

The Commission orders:

The proceeding in Docket No. G-20204 is hereby severed from the proceedings in Docket No. AR61-2, *et al.*, and the proceedings in Docket Nos. RI60-54 and RI63-85 are hereby severed from the proceedings in Docket No. AR64-2, *et al.*, and together with the proceedings in Docket Nos. G-18689, G-20085, G-20431, RI63-28, RI63-256, RI63-257, RI63-300, and RI64-276, are hereby consolidated with the proceeding in Docket No. G-18354.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL.

ORDER PERMITTING INTERVENTIONS

(Issued April 8, 1964)

Pursuant to the Commission's order instituting these proceedings, 30 FPC 1354, issued November 27, 1963, timely petitions and notices to intervene were filed on or before January 2, 1964, except where noted, by the persons named in the following intervener categories:

I. The following state commissions filed notices of intervention under Section 1.8 of our Rules of Practice and Procedure:

Public Service Commission of Wisconsin.
Michigan Public Service Commission.
Iowa State Commerce Commission.
State Corporation Commission of the State of Kansas.
The People of the State of California and the Public Utilities Commission of the State of California.
Georgia Public Service Commission.[1]
The Public Utilities Commission of the State of Colorado.[2]

II. State, county, and municipal governmental bodies filing petitions to intervene:

State of Texas.
State of Minnesota.
State of Wisconsin.
City of Minneapolis, Minnesota.
City and County of Denver, Colorado.
Municipal Group of Kansas Cities of Altamont, Atchison, Beloit, Chanute, Cherryvale, Countryside, Downs, Erie, Fairway, Girard, Grenola, Howard, Iola, Kansas City, Leawood, Lenexa, Melvern, Meriden, Mission Woods, Neodesha, Osage City, Perry, Pittsburg, Prairie Village, and Topeka; and

---

[1] The notice of intervention was filed February 14, 1964.
[2] The notice of intervention was filed February 28, 1964.

the Missouri Cities of Aurora, Carl Junction, Carrolton, Carthage, Clinton, Independence, Joplin, Kansas City, Marshall, Monett, Mt. Vernon, Neosho, Nevada, Oranago, Pierce City, Platte City, Springfield, St. Joseph, Waverly, Webb City, Warrensburgh and the City Utilities of Springfield, Missouri.

City of Chicago, Illinois.

City of Waukegan, Illinois.[3]

County of Wayne, Michigan.[4]

City of Saint Paul, Minnesota.[5]

III. Natural gas distribution companies, natural gas distribution company associations, and industrial consumers:

Minneapolis Gas Company.

Philadelphia Gas Works Division of The United Gas Improvement Company.

Western Power & Gas Company.

Iowa Electric Light & Power Company.

Iowa Power and Light Company.

Northern Illinois Gas Company.

Illinois Power Company.

Iowa Public Service Company.

Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Central Natural Gas Company.

Iowa-Illinois Gas & Electric Company.

Central Illinois Light Company,

Central Illinois Public Service Company.

Northwestern Public Service Company.

The Peoples Gas Light and Coke Company.

The East Ohio Gas Company.

Minnesota Valley Natural Gas Company.

Pacific Gas & Electric Company.

Pacific Lighting Gas Supply Company.

Southern California Gas Company.

Southern Counties Gas Company of California.

The Berkshire Gas Company.

Boston Gas Company.

The Bridgeport Gas Company.

Bristol and Warren Gas Company.

Brockton-Taunton Gas Company.

Buzzards Bay Gas Company.

Cambridge Gas Company.

Central Massachusetts Gas Company.

Concord Natural Gas Corporation.

The Connecticut Gas Company.

Fall River Gas Company.

Fitchburg Gas and Electric Light Company.

Gas Service, Inc.

The Greenwich Gas Company.

The Hartford Electric Light Company.

The Hartford Gas Company.

Haverhill Gas Company.

City of Holyoke, Massachusetts, Gas and Electric Department.

---

[3] The petition to intervene was filed on January 22, 1964.

[4] The petition to intervene was filed on February 6, 1964.

[5] The notice of intervention was filed on February 14, 1964.

Lawrence Gas Company.
Lowell Gas Company.
Lynn Gas Company.
Manchester Gas Company.
Mystic Valley Gas Company.
New Bedford Gas and Edison Light Company.
The New Britain Gas Light Company.
New Haven Gas Company.
The Newport Gas Light Company.
North Attleboro Gas Company.
North Shore Gas Company.
Northampton Gas Light Company.
City of Norwich, Department of Public Utilities.
Norwood Gas Company.
The Pequot Gas Company.
Providence Gas Company.
South County Gas Company.
Springfield Gas Light Company.
Tiverton Gas Company.
Valley Gas Company.
Wachusett Gas Company.
City of Westfield Gas and Electric Light Department.
Worcester Gas Light Company.

San Diego Gas & Electric Company.[6]
Northern Indiana Public Service Company.[7]
American Public Gas Association consisting of gas distributors within the States of Alabama, Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Washington.
Midwest Industrial and Commercial Gas Users Association and Sheffield Division, Armco Steel Corporation.
Metropolitan Utilities District of Omaha.

IV. Natural gas pipeline companies.

Colorado Interstate Gas Company.
Northern Natural Gas Company.
Natural Gas Pipeline Company of America.
Michigan Wisconsin Pipe Line Company.[8]
United Fuel Gas Company.
Panhandle Eastern Pipe Line Company.
Cities Service Gas Company.
Kansas-Nebraska Natural Gas Company, Inc.
Lone Star Gas Company.

V. Association of natural gas producers:

Panhandle Producers and Royalty Owners Association.
Independent Petroleum Association of America.
Southwest Kansas Royalty Owners Association.
Texas Independent Producers and Royalty Owners Association.
Oklahoma Independent Petroleum Association.

---

[6] The petition to intervene was filed on January 8, 1964.
[7] The petition to intervene was filed on January 13, 1964.
[8] The petition to intervene was filed on January 3, 1964.

On January 30, 1964, the Secretary of the Commission sent to all respondents a list of the names and addresses of those who had filed notices and petitions of intervention. Concurrently, the Commission issued an order providing for, among other things, the filing of answers to the petitions to intervene. The only answer received, filed by the Sun Oil Company on March 2, 1964, opposes the intervention petitions filed by (1) the Philadelphia Gas Works Division of the United Gas Improvement Company (P.G.W.) and (2) the Berkshire Gas Company, *et al.* (Forty-one New England Distributors).

Basic to Sun's opposition is the circumstance that none of these petitioners receive natural gas produced in the Hugoton-Anadarko area for distribution in their market areas and therefore cannot be aggrieved by any order issuing from these rate proceedings. However, the distributors contend that rates for natural gas produced in one region of the country can have a direct and marked effect upon the demands placed upon that produced in regions from which interstate pipelines serving them draw their natural gas supplies. Therefore, the petitioners assert, the proper scope of ratemaking in these proceedings is not, or should not be, confined to local pricing area considerations, but instead should encompass relevant factors of a nationwide character, *e.g.*, location value of reserves vis-a-vis market, and the impact of rates established for one area upon the rate structures of other areas.

We are satisfied that during the developmental period of area ratemaking the Commission should have available to it all the relevant evidence bearing upon the evolution of principles involved in the establishment of just and reasonable area rates. We shall therefore, in the exercise of our discretion under Section 15(a) of the Natural Gas Act, permit the intervention of P.G.W. and the New England Distributors in these proceedings. We recognize that this disposition may be considered to be inconsistent with our denial of a similar P.G.W. intervention petition, in orders issued in the *Permian Basin* case[9] prior to the commencement of any area rate hearings. Further experience has demonstrated that this determination unnecessarily deprived the Commission of the active participation of groups which, from past performance, can be counted on to make substantial contributions towards solving the complex problems inherent in area ratemaking, and that permitting their intervention should not materially delay the proceeding.

The intervention pleadings that were untimely filed fall into two groups (1) those noticed by the Secretary on January 30, 1964, and (2) those filed after January 30, 1964, and which have not been called to the parties' attention. In the first group we have those of the City of Waukegan, Illinois, San Diego Gas & Electric Company; Northern Indiana Public Service Company, and Michigan Wisconsin Pipe Line Company. Those in the second group include the Georgia Public Service Commission; County of Wayne, Michigan; City of Saint Paul, Minnesota; and The Public Utilities Commission of the State of Colorado.

Except for the Georgia Public Service Commission, all of the petitioners are located in areas served with natural gas produced from the Hugoton-Anadarko area and are affected by rates fixed for such natural gas. None of the pleadings in the first group are opposed and there is no reason to suppose that any of the petitions in the second group would be opposed or that any useful purpose would be achieved by delaying positive action thereon. Accordingly, on the basis of the representations set forth in the intervention pleadings filed in both groups good cause exists to accept these late filings to permit all of petitioners, the Georgia Public Service Commission, and The Public Utilities Commission of the State of Colorado to participate.

---

[9] See *Area Rate Proceeding, et al.*, Docket No. AR61–1, *et al.*, "Order Permitting and Denying Interventions," issued May 31, 1961, and "Order on Rehearing Permitting and Denying Intervention," issued July 26, 1961.

The Commission orders:

Subject to the rules and regulations of the Commission, all the petitioners and State Commissions named hereinabove are permitted to intervene in these consolidated proceedings and to participate on a joint or individual basis. *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth by said petitioners in their petitions and *Provided, further,* that the admission of said petitioners as interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioner: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DELHI-TAYLOR OIL CORPORATION, DOCKET NO. G-20429; MAYFAIR MINERALS, INC., DOCKET NO. G-20430

ORDER ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF CONTRACT AMENDMENTS, AND TERMINATING PROCEEDING

(Issued April 8, 1964)

On February 25, 1964, Delhi-Taylor Oil Corporation and Mayfair Minerals, Inc. (D & M) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Trunkline Gas Company (Trunkline) by D & M. The offer relates to sales made under Supplement No. 6 to D & M's FPC Gas Rate Schedules No. 1 in Hidalgo County, Texas (Texas R.R. Com. District #4). Each of the proposed increased rates of 14.55861¢ per Mcf was suspended by order of the Commission for the statutory period, and was made effective by D & M on June 1, 1960, in the above dockets.

Under the terms of the offer, D & M propose to eliminate the favored-nation and price redetermination provisions from each of the rate schedules and to establish a 14.55861¢[1] per Mcf rate for the subject sales. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61-1,* issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of D & M's offer of settlement shall not be construed as approval of any future rate increases that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving D & M's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by D & M on February 25, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

---

[1] Rate is inclusive of tax reimbursement and 0.25¢ dehydration allowance paid by buyer.

The Commission orders:

(A) The offer of settlement filed with the Commission by D & M February 25, 1964, is hereby approved in accordance with the provisions of this order.

(B) D & M shall file, within 30 days from the date of issuance of this order, executed contractual amendments to each of its FPC Gas Rate Schedules No. 1 eliminating the favored-nation and price redetermination provisions therefrom. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that D & M have each complied with the terms and conditions of the order, the rate and charge of 14.55861¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order, the above-designed proceedings shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(D) The acceptance by the Commission of D & M's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against D & M, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

OLEN F. FEATHERSTONE

ORDER DENYING MOTION FOR PERMISSION TO WITHDRAW RATE FILING

(Issued April 8, 1964)

On November 18, 1963, Olen F. Featherstone (Featherstone) filed a motion requesting that it be permitted to withdraw the notice of change proposing an increased rate of 13.0¢ per Mcf at 15.025 psia, designated as Supplement No. 1 to its FPC Gas Rate Schedule No. 1, for the jurisdictional sale of natural gas to El Paso Natural Gas Company (El Paso) from the Bisti Field, San Juan County, New Mexico (San Juan Basin), which was accepted for filing effective as of December 25, 1961. Featherstone contends that the initial rate for the instant sale was incorrectly established at 12¢ per Mcf when properly it should have been 13¢ per Mcf. Featherstone's motion thus raises the question as to what was the proper rate for sales made by Featherstone during the period from January 8, 1960, the date of initial delivery to December 25, 1961, the date the 13¢ increased rate became effective.

On January 26, 1959, Featherstone filed an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act proposing therein an initial rate of 12.0¢ per Mcf at 15.025 psia.[1] A certificate was issued to Featherstone by order issued June 19, 1959, in Docket No. G–17642 pursuant to the shortened procedure under Section 157.11(b) of the

---

[1] The contract between Featherstone and El Paso, executed on July 21, 1958, provided for an initial rate of 12.0¢ per Mcf with a periodic increase to 13.0¢ per Mcf as of January 1, 1959.

Commission's Rules of Practice and Procedure. On October 23, 1961, Featherstone tendered a rate schedule for the instant sale together with a billing statement purporting to reflect an initial rate of 13.0¢. On November 24, 1961, Featherstone, in response to a request from the Secretary of the Commission, dated November 13, 1961, submitted a notice of change proposing an increase in rate from 12.0¢ to 13.0¢[2] and a revised billing statement reflecting a 12.0¢ initial rate. By letter order issued December 20, 1961, the rate schedule was accepted for filing to be effective on the date of initial delivery (January 8, 1960), and the notice of change to 13.0¢ per Mcf, designated as Supplement No. 1 to Featherstone's FPC Gas Rate Schedule No. 1, was accepted for filing to be effective as of December 25, 1961.

Featherstone's motion represents an untimely attempt to have us reverse the Secretary's action of November 13, 1961, in which he refused to accept the billing statement tendered by Featherstone purporting to show an initial rate of 13.0¢ per Mcf. Featherstone does not assert in his motion any justification for the two year delay in filing the motion. For this reason alone the motion properly would be subject to rejection. In any event, we also think the motion is without merit. Featherstone in its certificate application requested an initial rate of 12.0¢ per Mcf, despite the fact that at the time of filing its application it was entitled contractually to a 13.0¢ rate. Featherstone did not at any time seek to amend its certificate application to request a higher initial rate. It cannot reasonably be argued that the Commission authorized an initial rate higher than the one sought by applicant, even assuming *arguendo* that the Commission had the power to do so if it desired. See *Sunray DX Oil Company*, Docket No. RI63-60, order issued December 5, 1963, 30 FPC 1418. In view of the foregoing, we find that 12.0¢ per Mcf was the proper initial rate. Accordingly, we shall deny Featherstone's motion.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder, to deny Featherstone's motion for permission to withdraw Supplement No. 1 to Featherstone's FPC Gas Rate Schedule No. 1.

The Commission orders:

The motion filed by Featherstone on November 18, 1963, for permission to withdraw Supplement No. 1 to Featherstone's FPC Gas Rate Schedule No. 1 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

FOSTER PETROLEUM CORPORATION, DOCKET NOS. RI64-17 AND RI64-24

ORDER DENYING ALTERNATIVE REQUEST

(Issued April 8, 1964)

On August 12, 1963, Foster Petroleum Corporation (Foster) filed motions for reconsideration of the Commission's suspension orders issued July 12, 1963, in

---

[2] On October 23, 1963, Featherstone tendered for filing a notice of change to 14.0577¢ per Mcf at 15.025 psia. The proposed increased rate, designated as Supplement No. 2 to Featherstone's FPC Gas Rate Schedule No. 1, was suspended by order issued November 20, 1963, in Docket No. RI64-306. The proceeding in Docket No. RI64-306 is not involved here.

Docket Nos. RI64-17 and RI64-24, requesting that the Commission vacate such orders. By order issued herein on September 9, 1963, we denied these motions for the reasons set forth in that order. However, in its motions, Foster suggested, as an alternative plea, that if the Commission did not permit Foster to charge and collect the subject increased rates without suspension, Foster would be willing to file increased rates of 10.0¢ per Mcf for sour gas and 10.5¢ per Mcf for sweet gas, if such rates would be accepted without suspension. No action was taken with respect to the alternative plea in our September 9 order, and it is now before us for our consideration.

The suspension order issued in Docket No. RI64-17 involves proposed increases in rates from 7.2 to 11.0¢ per Mcf for sales of sour gas by Foster to Phillips Petroleum Company (Phillips) from Panhandle Field, Moore County, Texas (Railroad District No. 10). The proposed increased rates[1] were suspended until December 15, 1963, and thereafter until such further time as they are made effective in the manner prescribed in the Natural Gas Act.

The suspension order in Docket No. RI64-24 involves proposed increases in rates from 7.2¢ per Mcf to 10.5¢ per Mcf for sales of sour gas by Foster to Phillips from Panhandle Field, Moore County, Texas (Railroad District No. 10). The proposed increased rates[2] were suspended until July 16, 1963, and thereafter until such further time as they are made effective in the manner prescribed in the Natural Gas Act.

As indicated in our order of September 9, the cost per Mcf to Phillips of gathering and processing Foster's nonpipeline quality gas must be taken into consideration in determining the proper rate level for Foster's sales to Phillips. In view of the fact that Phillips' resale rates are under suspension and appropriate cost evidence has not been submitted, we cannot approve Foster's alternative plea.

The Commission orders:

The alternative pleas set forth in Foster Petroleum Corporation's August 12, 1963 motions for reconsideration of the Commission's orders issued July 12, 1963, in the proceedings in Docket Nos. RI64-17 and RI64-24 are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HOLLANDSWORTH AND TRAVIS (OPERATOR), ET AL., DOCKET NOS. RI61-493 AND RI64-641

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACT AMENDMENTS, AND TERMINATING PROCEEDINGS

(Issued April 8, 1964)

On February 6, 1964, Hollandsworth and Travis (Operator), *et al.* (H&T) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Mississippi River Fuel Corporation (MRF) by H&T. The offer relates to sales made under H&T's FPC

---

[1] The increased rate filings were designated as Supplement Nos. 1 to Foster's FPC Gas Rate Schedule Nos. 1, 5, 6, 8, 9, 10 and 12.

[2] The proposed increased rates were designated as Supplement Nos. 1 to Foster's FPC Gas Rate Schedule Nos. 14 and 15, respectively.

Gas Rate Schedule Nos. 2 and 3 in Harrison County, Texas (Texas R.R. Com. District #6). Proposed increased rates of 14.8892¢ per Mcf for the instant sales were suspended in Docket No. RI61-493, and subsequently made effective subject to refund as of October 23, 1961. Later proposed increased rates of 15.1440¢ per Mcf were suspended by order of the Commission in Docket No. RI64-641 until August 16, 1964.[1]

Under the terms of the offer, H&T proposes to eliminate the favored-nation, redetermination and the present periodic escalation provisions from its rate schedules, and to establish a 15¢ per Mcf rate for the subject sales.[2] No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61-1*, issued December 20, 1960, 24 FPC 1107, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of H&T's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving H&T's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by H&T on February 6, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by H&T February 6, 1964, is hereby approved in accordance with the provisions of this order.

(B) H&T shall file, within 30 days from the date of issuance of this order, notices of change in rate providing for the 15¢ per Mcf rates specified in its offer of settlement, and executed contractual amendments to its FPC Rate Schedule Nos. 2 and 3, eliminating the favored-nation price redetermination, and the present periodic escalation provisions therefrom. The notices of change and contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that H&T has complied with the terms and conditions of this order, the rates and charges of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceedings shall be deemed terminated.

(D) The notice of change filed on March 17, 1964, pertaining to Supplement No. 19 to H&T's FPC Gas Rate Schedule No. 2 is hereby considered withdrawn.

(E) The acceptance by the Commission of H&T's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against H&T including area rate or other similar proceedings.

---

[1] Additionally, H&T filed on March 17, 1964, a notice of change proposing an increased rate of 15.1440¢ applicable to acreage referred to in Supplement No. 19 to its Gas Rate Schedule No. 2.

[2] The 15¢ rate includes a dehydration allowance paid by buyer to seller for delivery of dehydrated gas.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MERCED IRRIGATION DISTRICT, PROJECT NO. 2179

ORDER ISSUING LICENSE (MAJOR)

(Issued April 8, 1964)

Application was filed on August 4, 1958, and amended on February 21, 1963, by Merced Irrigation District (Applicant) of Merced, California, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2179, to be known as the Exchequer Hydro-Electric Development, to be located on Merced River, County of Mariposa, California, and affecting public lands of the United States.

The proposed project, which would consist of an enlargement of Applicant's existing licensed Exchequer Project No. 88 and the Exchequer Afterbay Development, is to be used primarily for irrigation, flood control and power. Applicant proposes to finance Project No. 2179 with a contribution from the United States for flood control benefits to be provided and the issuance of revenue bonds based upon a proposed long-term power sales contract with Pacific Gas & Electric Company (Pacific) which has expressed its willingness to negotiate such a contract. Pacific is currently purchasing the power output from Applicant's Project No. 88.

As proposed in the amended application for license, the existing Exchequer concrete gravity arch dam will be raised 155 feet to a total height of 480 feet by placement of a rolled rock fill with a reinforced concrete facing abutting the downstream side of the existing dam. The total reservoir storage would be increased from 281,200 acre feet to 1,010,000 acre feet and the reservoir area would be increased from 2,600 acre feet to 6,900 acre feet at elevation 865 feet. A middle dyke and a gated spillway will be located on the right abutment about 0.7 miles from the dam. An 18-foot diversion and power tunnel about 1,200 feet long will be in the right abutment. The existing powerhouse of Project No. 88 with a capacity of 25,000 kilowatts will be abandoned and a new powerhouse will be constructed just downstream from the toe of the enlarged dam containing two generating units, each with a turbine capacity of 63,100 horsepower connected to a generator rated at 44,500 kva. The installed capacity will be 80,000 kilowatts. Provision is being made in the powerhouse for a third future unit.

The afterbay development, which will be located about 6 miles downstream from the Exchequer dam, will consist of a dam comprised of a 76-foot high concrete gravity gated spillway section, a power intake section and two rockfill abutment sections; a reservoir with a storage capacity of 8,750 acre feet at normal maximum water surface elevation 400 feet; and a powerhouse integral with the dam containing one generating unit with a turbine capacity of 11,050 horsepower connected to a generator rated at 7,800 kva at 0.9 power factor. The installed capacity will be 7,000 kilowatts.

The annual value of power from the project, both at-site and downstream at Pacific's Project No. 1355, is estimated by Commission staff at $2,400,000 based on alternate steam with private financing. The annual cost of the project is estimated by the staff at $1,953,000 based on 4 percent cost of money to Applicant.

The original plan of development presented by Applicant in its application for license provided for the construction of Bagby development upstream from the Exchequer development the enlargement of the Exchequer development, and the construction of the Snelling development downstream from the Exchequer development. However, as recited above, Applicant now proposes an initial development to comprise the enlargement of the existing Exchequer development and an afterbay development as a temporary substitute for the Snelling development. Applicant advises that its estimate of power value and power output from Bagby and Snelling indicates that income from such power output would not presently support the required expenditure for that ultimate development. We are herein providing that at such time as a more complete development becomes economically feasible, the afterbay development would not preclude a more comprehensive development of the reach of river involved.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have recommended for inclusion in any license for the project, a special condition in the interest of flood control.

The Department of the Interior, in reporting on the application, has recommended for inclusion in any license for the project certain conditions in the interests of the Department.

The Department of Fish and Game, State of California, in reporting on the application, advised it had entered into an agreement with Applicant for the protection of fish and wildlife.

The Commission finds:

(1) Applicant is a "municipality" as defined in the Federal Power Act, and has submitted satisfactory evidence of its compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The proposed project will affect lands of the United States.

(3) Public notice of the filing of the application has been given as required by the Act. There are no protests or conflicting applications before the Commission.

(4) The proposed project will not affect a Government dam.

(5) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which any reservation was created or acquired.

(6) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(7) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) The installed horsepower capacity of the proposed project for the purpose of computing the capacity component of the administrative annual charge is 116,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of lands of the United States by the project shall be determined at a later date as hereinafter provided.

(10) The electrical facilities referred to in paragraph (B) below, which were included in the application for license, are parts of the project within

the meaning of Section 3(11) of the Act and should be included in the license for the project.

(11) The exhibits designated and described in paragraph (B) below, which were filed as part of the application for license, conform to the Commission's rules and regulations, and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Merced Irrigation District (Licensee) of Merced, California, under Section 4(e) of the Act for a period of 50 years, effective as of March 1, 1964, for the construction, operation and maintenance of Project No. 2179 on the Merced River, California, and affecting lands of the United States; subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act; provided, however, that the Licensee shall surrender its license for Project No. 88 within 30 days after such project becomes inoperative during the construction of Project No. 2179.

(B) Project No. 2179 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the amended application for license, and which are designated and described as follows:

Exhibit	FPC No.	Showing	Exhibit	FPC No.	Showing
J	2179-24	General map.	K—Continued	2179-27	Project area.
				2179-28	Do.
K	2179-25	Project area.		2179-29	Do.
	2179-26	Do.		2179-30	Do.

(ii) All project works consisting principally of:

Exchequer Development, an enlargement of applicant's existing Exchequer development (FPC Project No. 88) would consist of: a 480 foot high rock fill dam with reinforced concrete facing abutting the downstream side of the existing concrete dam, with a crest length of 1,200 feet; an auxiliary rock fill dike with crest length of 1,200 feet at elevation 881 feet varying in height to 56 feet about ½ mile north of the dam; a gated spillway about 4,500 feet northwest of the right abutment; a reservoir with storage of 1,010,000 acre-feet and area of 6,900 acres at maximum water surface elevation 865 feet; two 10-foot steel penstocks leading to a powerhouse containing two 63,100-horsepower turbines connected to two 40,000-kilowatt generators with minimum provisions for a future unit; substation; and appurtenant mechanical facilities;

Exchequer Afterbay Development, would be approximately 6 miles downstream from Exchequer, near the headwaters of Merced Falls reservoir owned by Pacific Gas & Electric Company (FPC Project No. 1335) and would be created by a 76 foot high concrete gravity dam with rock fill wing dams at each end; a gated spillway would be located in the concrete gravity section; a reservoir with storage of 8,750 acre-feet at maximum water surface elevation 400 feet; one 22-foot steel penstock leading to a powerhouse containing one 11,050-horsepower turbine connected to a 7,000-kilowatt generator; substation; and appurtenant mechanical and electrical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the amended application and which are designated and described as follows:

Exhibit	FPC No.	Showing	Exhibit	FPC No.	Showing
L................	2179-31	General Plan, Exchequer Development.	L—Continued...	2179-33	General Plan, Afterbay Dam.
	2179-32	Typical Details, Exchequer Development.		2179-34	Typical Details, Afterbay Dam.
	2179-37	Dike & Spillway, Exchequer Development.			

Exhibit M: Comprised of two (2) pages, signed January 29, 1963, describing mechanical and electrical equipment for: "Works Covered by this Amended Application" and "Proposed Ultimate Development on Merced River".

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-2 (Revised February 1, 1964) entitled "Terms and Conditions for Unconstructed Major Project Affecting Lands of the United States" (31 FPC 528), which terms and conditions, designated as Articles 1 through 33, are attached hereto and made a part hereof except for Articles 6, 7, 18, 19 and 20 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 34. The Licensee shall commence construction of the project works within two years after the effective date of the license and shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such works within three years thereafter.

Article 35. The Licensee shall, within one year following completion of the construction of the project file with the Commission revised Exhibits F and K showing final project boundary prepared in accordance with the Commission's rules and regulations.

Article 36. The Licensee shall submit in accordance with the Commission's rules and regulations, revised Exhibit L drawings for the project structures and Licensee shall not begin construction of the project works until the Commission approves the Exhibits.

Article 37. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of the Merced River in which the afterbay development of Project No. 2179 is located.

Article 38. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the

behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete development or his or their successors and assigns that said Licensee, its successors or assigns shall amend its license to eliminate the afterbay development of Project No. 2179 at such time as the afterbay development becomes inoperative by reason of inundation by such more complete development, that said Licensee, its successors or assigns shall not be entitled to any compensation for damages sustained by reason of inundation or destruction of the afterbay development; provided said Licensee, its successors or assigns shall be entitled to receive from said more complete development for the unexpired term of the license for Project No. 2179, an amount of electric capacity and energy equal to that generated by the afterbay development with compensation to the downstream developer in an amount equal to the cost to the licensee if the capacity and energy had been received from the afterbay development. In the event the licensee for Project No. 2179 and the owner of such more complete development should be unable to agree, the amount of capacity and energy which the licensee is entitled to receive, and the amount equal to the cost if it had been generated at the afterbay development, shall be determined by the Commission.

Article 39. **The Licensee shall enter into an agreement with the Department of the Army providing for the operation of the project for flood control in accordance with rules and regulations prescribed by the Secretary of the Army. A conformed copy of the agreement shall be filed with the Commission for its information and records prior to commencement of construction of project works.**

Article 40. **The Licensee shall provide minimum streamflow in the Merced River downstream from the project reservoirs in accordance with the following schedule:**

(a) Downstream from Exchequer Dam, a minimum flow of 25 cubic feet per second at all times.

(b) At Shaffer Bridge downstream from Exchequer Afterbay Dam, a minimum streamflow shall be maintained as follows:

Period	Normal year (c.f.s.)	Dry year [2]
June 1 through Oct. 15	25	15
Oct. 16 through Oct. 31	75	60
Nov. 1 through Dec. 31 [1]	100	75
Jan. 1 through May 31	75	60

[1] If the average streamflow maintained at Shaffer Bridge from November 1 through December 31 is greater than 150 cubic feet per second exclusive of flood spills and emergency releases, then the streamflows from January 1 through March 31 shall be maintained at 100 cubic feet per second or more.

(An emergency is defined as an occurrence usually of short duration, such as flood, mechanical, or operational failure which is beyond the control of the Licensee, and during which the Licensee shall not be required to observe the release schedules contained in the license stipulations.)

[2] A dry year is defined as a year when the forecasted April 1 through July 31 unimpaired runoff, as published in the May 1 bulletin of the California Department of Water Resources for the station, "inflow to Exchequer" is less than 450,000 acre-feet.

Article 41. **The Licensee shall, insofar as possible during the period November 1 through December 31, regulate the Merced River streamflow downstream from the Exchequer afterbay development between 100 and 200 cubic feet per second except during dry years when the streamflow shall be maintained between 75 and 150 cubic feet per second. Streamflow shall be measured at Shaffer Bridge.**

Article 42. **The Licensee shall operate the power plants so as to avoid rapid fluctuation of the Merced River. At Crocker-Huffman diversion, the Licensee shall, insofar as possible, restrict the rate of change of release** during any one-hour period to not more than double nor less than one-half the amount of release at the start of the change. The Licensee shall, during emergency periods, endeavor to make releases in a manner which will not be detrimental to fish.

Article 43. The Licensee shall make all releases at Exchequer Dam during the period, October 16 through December 31, from the outlets at or below elevation 485 feet insofar as physically possible.

Article 44. The Licensee shall maintain the water surface elevation of Exchequer Reservoir as high as possible from April through October and maintain a minimum pool of not less than 115,000 acre-feet in Exchequer Reservoir except for a drawdown as necessary to maintain previously recommended minimum streamflow.

Article 45. The Licensee shall cooperate with the Bureau of Sport Fisheries and Wildlife of the U.S. Fish and Wildlife Service to determine means of providing up to 15,000 acre-feet of project water and return flow waters to the Merced National Wildlife Refuge.

Article 46. The Licensee shall, prior to impounding water, dispose of all temporary structures, unused timber, brush, refuse, or other inflammable material resulting from the clearing of the land or from the construction and maintenance of the project works, and shall clear all lands in the reservoir areas up to normal water levels; except that all lands in the reservoir areas shall be cleared according to a plan to be prescribed by the Commission upon the recommendation of the California Department of Fish and Game and the Bureau of Sport Fisheries and Wildlife. The clearing of the lands and the disposal of the material shall be done with due diligence by Licensee and to the satisfaction of the authorized representative of the Commission.

Article 47. The Licensee shall, within one year from the effective date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 48. The Licensee shall cooperate with the Central California Archeological Foundation, P.O. Box 5595, Sacramento, California, in the possible archeological survey and salvage and shall compensate for the expenses incurred but not to exceed a total of $6,000.

Article 49. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purposes is 116,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be determined hereafter by the Commission.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act. and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. IT-5460

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued April 8, 1964)

Montana-Dakota Utilities Co. (Applicant), incorporated under the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Minnesota, Montana, North Dakota, South Dakota, and Wyoming, with its principal place of business at Minneapolis, Minnesota, on January 29, 1964, filed an application for a supplemental order, pursuant to Section 202(e) of the Federal Power Act, authorizing an increase in the amounts of electric energy which Applicant is presently authorized to transmit from the United States to Canada.

By Commission order issued November 14, 1961, in the above docket (26 FPC 733), Applicant was authorized to transmit electric energy from the United States to Canada as follows:

At North Portal, Saskatchewan, an amount not to exceed 666,000 kilowatt-hours per annum at a maximum transmission rate of 230 kilowatts;

At Northgate, Saskatchewan, an amount not to exceed 60,600 kilowatt-hours per annum at a maximum transmission rate of 20 kilowatts;

At Elmore, Saskatchewan, an amount not to exceed 24,300 kilowatt-hours per annum at a maximum transmission rate of 10 kilowatts; and

At Marienthal, Saskatchewan, an amount not to exceed 28,700 kilowatt-hours per annum at a maximum transmission rate of 12 kilowatts.

Applicant now seeks authorization to transmit electric energy from the United States to Canada in the following amounts and at the following rates of transmission:

At North Portal, up to 800,000 kilowatt-hours per annum at a rate not to exceed 250 kilowatts;

At Northgate, up to 81,000 kilowatt-hours per annum at a rate not to exceed 30 kilowatts;

At Elmore, up to 43,000 kilowatt-hours per anum at a rate not to exceed 20 kilowatts;

At Marienthal, up to 42,000 kilowatt-hours per annum at a rate not to exceed 15 kilowatts.

The amounts of electric energy which Applicant proposes to export, like those amounts presently exported pursuant to the aforementioned authorization, are to be transmitted to Canada from points within the State of North Dakota over four 2.3 kilovolt lines which are covered by a Presidential Permit signed by the President of the United States on May 18, 1942, and released to Applicant concurrently with the issuance of Commission order issued July 21, 1942 (3 FPC 761), all in the above docket.

According to the Applicant, the increased amounts of power and energy will be used by Applicant to meet the expanding electric requirements of its retail customers in Canada.

Written notice of the application has been given to the Railroad and Warehouse Commission of Minnesota, the Board of Railroad Commissioners of Montana, the Public Service Commission of North Dakota, the Public Utilities Commission of South Dakota, and the Public Service Commission of Wyoming and to the Governor of each of those States. Notice of the application was also published in the Federal Register on February 15, 1964 (29 F.R. 2528), stating that any person desiring to be heard or to make any protest with reference to the application should on or before March 2, 1964, file with the Federal Power Commission, Washington, D.C., 20426, a petition or protest. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

The transmission of electric energy from the United States to Canada, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) Applicant is hereby authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Applicant is hereby authorized to transmit from the United States to Canada shall not exceed 800,000 kilowatt-hours per annum at a maximum transmission rate of 250 kilowatts at North Portal, Saskatchewan, 81,000 kilowatt-hours per annum at a maximum transmission rate of 30 kilowatts at Northgate, Saskatchewan, 43,000 kilowatt-hours per annum at a maximum transmission rate of 20 kilowatts at Elmore, Saskatchewan, and 42,000 kilowatt-hours per annum at a maximum transmission rate of 15 kilowatts at Marienthal, Saskatchewan. The energy which Applicant is hereby authorized to export shall be transmitted over the facilities specified in the Presidential Permit signed by the President of the United States on May 18, 1942, and released to Applicant on July 21, 1942, as referred to above.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit referred to in paragraph (B) above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Applicant shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish to the Commission with respect to such transmission of energy, on or before February 15 of each year, reports in triplicate showing the kilowatt-hours delivered at each of the points herein authorized, the maximum kilowatts of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State, State regulatory commission, or the Dominion of Canada for the exercise of any lawful authority vested in such State, State regulatory commission, or the Dominion of Canada over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by Commission order issued November 14, 1961, referred to above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 1962

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued April 8, 1964)

Pacific Gas & Electric Company, Licensee for Project No. 1962[1] filed with the Commission a statement, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from July 1, 1951 through December 31, 1958, a net increase in the original cost of the project in the amount of $522,457.71, consisting of gross additions of $1,159,136.56, gross retirements of $386,758.52, and contributions in aid of construction in the credit amount of $249,920.33, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1958 of $62,237,957.17.[2]

The Commission staff made a field examination of Licensee's books and records and other data for the purpose of ascertaining the correctness of the aforementioned claimed and recorded project cost changes for the period from July 1, 1951 through December 31, 1958.

Following that examination, the staff proposed certain adjustments, agreed to by representatives of Licensee, subject to Commission approval involving a reclassification of project costs in the amount of $801.74 within the project plant accounts, a reduction of $93,431.47, in the project claimed cost for the period, July 1, 1951 through December 31, 1958, and the accounting disposition thereof, with the resulting total actual legitimate original cost of the project as of December 31, 1958, being $62,144,525.70 as shown in the attached schedule.

---

[1] The project, located on the North Fork of Feather River in Butte and Plumas Counties, California, may be described generally as Licensee's Rock Creek-Cresta Project. The license, issued pursuant to Section 4(e) of the Federal Power Act, is for a period of 35 years, effective as of October 1, 1947.

[2] By order issued May 23, 1958 (19 FPC 803), the Commission determined the actual legitimate original cost of the project as of June 30, 1951, to be $61,715,499.46.

The detailed proposed adjustments to claimed costs are as follows:

Adjustment No.	*Description*	*Debit (credit)*
1	Adjust retirement and reinstallation of cranes	($72, 915. 76)
2	Nonproject plant	(4, 599. 60)
3	Adjust Licensee's tentative distributions of cost	(15, 916. 11)
4	Reclassification within project plants and detailed plant accounts	----------
	Total adjustments	(93, 431. 47)

The accounting disposition of the amounts involved in the proposed adjustments are shown by the following composite journal entry:

Account No.	*Title*	*Debit (credit)*
	Adjustments	
101	Electric plant in service—Project No. 1962	($93, 431. 47)
	Accounting Disposition	
101	Electric plant in service:	
	Project No. 619	222. 18
	Project No. 1988	(29, 581. 78)
	Nonproject	(3, 133. 63)
107	Construction work in progress—Electric	2, 051. 76
108	Accumulated provision for depreciation of electric plant in service:	
	Project No. 1962	102, 538. 52
	Nonproject	629. 66
121	Nonutility property	3, 271. 97
401	Operation expense	4, 583. 51
402	Maintenance expense	6, 582. 02
	Total disposition	93, 431. 47

Staff analysis of Licensee's provisions for project depreciation has not been completed and the staff recommends that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties as of December 31, 1958.

Based upon the proposed adjustments, the staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in the actual legitimate original cost of Project No. 1962 for the period from July 1, 1951 through December 31, 1958, to be $429,026.24, comprised of gross additions of $1,154,079.31, gross retirements of $475,132.74 and contributions in aid of construction in the credit amount of $249,920.33; and (2) the actual legitimate original cost of the project as of December 31, 1958, to be $62,144,525.70, classified by primary plant accounts as shown in the attached schedule.

By letter dated August 8, 1963 Licensee confirmed its agreement with respect to the proposed adjustments, accounting disposition, and resulting project costs.

The California Public Utilities Commission by letter of September 3, 1963 advised that it has no objections to the staff recommendations.

The Commission finds:

(1) The acceptance of the staff's recommendations by Licensee and by the California Public Utilities Commission, as set forth above, obviate the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting disposition, as proposed by the staff and agreed to by Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 1962 for the period from July 1, 1951 through December 31, 1958 is $429,026.24, comprised of gross additions of $1,154,079.31, gross retirements of $475,132.74, and contributions in aid of construction in the credit amount of $249,920.33; and the resulting actual legitimate original cost of the project as of December 31, 1958 is $62,144,525.70, classified by plants and by primary plant accounts as shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 1962 as of December 31, 1958 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provision of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting disposition, as proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts for Project No. 1962 showing the debit amount of $429,026.24 as the net increase or change in the actual legitimate original cost of the project for the period from July 1, 1951 through December 31, 1958 and the total debit balance of $62,144,525.70 as the actual legitimate original cost of the project as of December 31, 1958, all as more specifically shown in the attached schedule classified by plants and by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

(D) The matter of Commission determination of accrued depreciation applicable to in-service project properties of Project No. 1962 as of December 31, 1958, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission certified copies of Licensee's adjusting journal entry showing compliance with this order; three copies of the journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

PACIFIC GAS & ELECTRIC CO. PROJECT NO. 1962. (ROCK CREEK-CRESTA)

ACTUAL LEGITIMATE ORIGINAL COST

Account [1]		Allowed cost as of June 30, 1951 [2]	Change from July 1, 1951 through Dec. 31, 1958			Allowed cost as of Dec. 31, 1958
No.	Title		As claimed	Adjustments	As adjusted	
	ROCK CREEK PLANT					
	Hydraulic Production Plants					
320	Land and land rights	$1,839,311.08	($88,182.75)	$69,784.79	($18,397.96)	$1,820,913.12
321	Structures and improvements	2,057,961.80	42,487.04	(1,868.41)	40,618.63	2,098,480.43
322	Reservoirs, dams, and waterways	30,696,389.47	339,172.91	(33,339.78)	305,833.13	31,002,222.60
323	Water wheels, turbines, and generators	3,066,089.08	35,152.55	(76,549.63)	(41,397.08)	3,024,602.00
324	Accessory electric equipment	439,487.00	888.09	7,614.98	8,503.07	447,990.07
325	Miscellaneous powerplant equipment	24,277.51	11,403.13	3,310.28	14,713.41	38,990.92
326	Roads, railroads, and bridges	314,545.56	1,457.35	215.28	1,672.63	316,218.19
	Total hydraulic production plant	38,437,961.50	342,378.32	(30,832.49)	311,545.83	38,749,507.33
	Transmission Plant					
340	Land and land rights	448.70				448.70
341	Clearing land and rights of way	5,484.02				5,484.02
343	Station equipment	1,494,036.83	5,939.70	3,720.79	9,660.49	1,503,697.32
344	Towers and fixtures	28,821.05				28,821.05
345	Poles and fixtures	21,418.09				21,418.09
346	Overhead conductors and devices	25,281.01				25,281.01
349	Roads and trails	9.73				9.73
	Total transmission plant	1,575,499.43	5,939.70	3,720.79	9,660.49	1,585,159.92
	General Plant					
378	Communication equipment	41,202.06	4,272.57	5,107.87	9,380.44	50,582.50
	Total electric plant in service	40,054,662.99	352,590.59	(22,003.83)	330,586.76	40,385,249.75
265.2	Contributions in aid of construction—Federal		(132,071.02)		(132,071.02)	(132,071.02)
	Total Rock Creek Plant	40,054,662.99	220,519.57	(22,003.83)	198,515.74	40,253,178.73
	CRESTA PLANT					
	Hydraulic Production Plant					
320	Land and land rights	1,267,485.44	10,100.47	265,915.20	276,015.67	1,543,501.11
321	Structures and improvements	1,271,157.36	29,098.79	(76,628.37)	(47,529.58)	1,223,627.78
322	Reservoirs, dams, and waterways	14,469,024.00	323,595.57	(223,793.38)	99,802.19	14,568,826.19
323	Water wheels, turbines, and generators	3,052,234.85	28,531.69	(42,660.48)	(14,128.79)	3,038,106.06
324	Accessory electric equipment	454,685.07	3,910.97	4,242.25	8,153.22	462,838.29
325	Miscellaneous powerplant equipment	24,163.03	1,011.00	3,901.42	4,912.42	29,075.45
326	Roads, railroads, and bridges	110,333.83	2,028.40	(1,392.61)	635.79	110,969.62
	Total hydraulic production plant	20,649,083.58	398,276.89	(70,415.97)	327,860.92	20,976,944.50
	Transmission Plant					
340	Land and land rights	825.39				825.39
341	Clearing land and rights of way	10,037.35				10,037.35
343	Station equipment	866,270.68	14,688.98	(5,265.27)	9,423.71	875,694.39
344	Towers and fixtures	43,510.70				43,510.70
345	Poles and fixtures	8,420.82				8,420.82
346	Overhead conductors and devices	19,068.63				19,068.63
	Total transmission plant	948,133.57	14,688.98	(5,265.27)	9,423.71	957,557.28

PACIFIC GAS & ELECTRIC CO. PROJECT NO. 1962. (ROCK CREEK-CRESTA)—Continued

ACTUAL LEGITIMATE ORIGINAL COST

Account[1]		Allowed cost as of June 30, 1951[3]	Change from July 1, 1951 through Dec. 31, 1958			Allowed cost as of Dec. 31, 1958
No.	Title		As claimed	Adjustments	As adjusted	
	CRESTA PLANT—continued *General Plant*					
378	Communication equipment	$63,619.32	$6,821.58	$4,253.60	$11,075.18	$74,694.50
	Total electric plant in service	21,660,836.47	419,787.45	(71,427.64)	348,359.81	22,009,196.28
265.2	Contributions in aid of construction—Federal		(117,849.31)		(117,849.31)	(117,849.31)
	Total Cresta plant	21,660,836.47	301,938.14	(71,427.64)	230,510.50	21,891,346.97
	Total cost of project	61,715,499.46	522,457.71	(93,431.47)	429,026.24	62,144,525.70

( ) Denotes credit.

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

[3] See Commission Order issued May 23, 1958 (19 FPC 803).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TENNECO OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G-13582

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, SEVERING AND TERMINATING PROCEEDING

(Issued April 8, 1964)

On January 9, 1964, Tenneco Oil Company (Tenneco) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to United Gas Pipe Line Company (United) by Tenneco. The offer relates to a sale made under Supplement No. 9 to Tenneco's FPC Gas Rate Schedule No. 2 in San Patricio and Nueces Counties, Texas (Texas R.R. Com. District #4). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective by Tenneco on April 1, 1958.

Under the terms of the offer, Tenneco proposes to eliminate the price redetermination provision from the rate schedule and to establish a 14.6¢ per Mcf rate for the subject sale. Tenneco's annual revenues will be decreased about $5,000 from the presently effective rates. No protests or objections have been filed to the offer.

Tenneco, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to United under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $45,000, exclusive of interest.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61-1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that our action herein shall not be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Tenneco's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Tenneco on January 9, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Tenneco January 9, 1964, is hereby approved in accordance with the provisions of this order.

(B) Tenneco shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 14.6¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 2 eliminating the price redeterminaton provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Tenneco shall refund to United to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest, at 6% per annum, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from United.

(D) Upon notification by the Secretary of the Commission that Tenneco has complied with the terms and conditions of the order, the rate and charge of 14.6¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order, the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Tenneco's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Tenneco, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2105

ORDER AMENDING LICENSE AND TERMINATING PROCEEDINGS

(Issued April 9, 1964)

In the license issued to Pacific Gas & Electric Company for Project No. 2105 on January 24, 1955, provision was made in Article 26 for subsequent determination of water releases for the benefit of fish and recreation through agreement between the Licensee and "interested Federal and State of California agencies" on the basis of joint studies to be conducted by them.

After conclusion of joint studies and negotiations over a considerable period of time the Licensee and the interested Federal and State of California agencies were unable to agree on water releases. Since determination of such releases was necessary in order to complete project designs, and to comply with the construction schedule set forth in the license, on February 27, 1963 the Licensee filed an application for amendment of Article 26 to provide specific water releases.

Notice of the proposed amendment to Article 26 was given on April 3, 1963. By order of October 24, 1963 the matter was set for hearing. During the course of prehearing conferences additional tests, made possible by new construction, were conducted jointly by the Licensee, the Department of Fish and Game of the State of California, the Bureau of Sport Fisheries and Wildlife of the Department of the Interior and the Forestry Service of the Department of Agriculture.

Based upon the results of the additional studies, the Licensee, and the interested agencies were able to agree upon specific water releases, as originally contemplated by Article 26, on other related measures for the benefit of fish and wildlife and recreation. These measures, as agreed upon by the Licensee, and the interested agencies have been incorporated in a proposed revision of Article 26.

By a motion of March 23, 1964 addressed to the Presiding Examiner, Staff Counsel moved that Article 26 be amended according to the proposed revision and that the proceedings be terminated. This motion was joined by the Licensee, and the Department of Fish and Game of the State of California, by their filings of March 30, and April 1, 1964, respectively.

The Presiding Examiner certified this motion to the Commission for final action on March 24, 1964.

The Commission finds:

The agreement of the parties with respect to water releases and related matters is an agreement as contemplated by Article 26, and this Article should be amended as hereinafter provided, and the hearing should be terminated.

The Commission orders:

(A) Article 26 of the license for Project No. 2105 is amended to read as follows:

Article 26.

(a) The Licensee shall make available in North Fork Feather River below Almanor Dam a total of 25,000 acre feet of water each calendar year and, in addition, flushing flow water releases in an annual amount not to exceed 1,000 acre feet subject to cumulation to a total not to exceed 5,000 acre feet. Quantities shall be measured at gaging station NF-2 (Big Meadows Gage, also known as North Fork Feather River near Prattville, U.S.G.S. No. 11-3995) but any water spilled or released at Almanor Dam which exceeds the amount scheduled by more than the amount of the variation permitted in paragraph (c) following shall be excluded in computing the amount of acre feet made available hereunder.

(b) The Licensee shall make available in North Fork Feather River below Belden Diversion Dam a total of 64,000 acre feet of water each calendar year. Quantities shall be measured at gaging station NF-70 (below Belden Diversion Dam) but any water spilled or released at Belden Diversion Dam which exceeds the amount scheduled by more than the amount of the variation permitted in paragraph (c) following shall be excluded in computing the amount of acre feet made available hereunder.

(c) The quantities of water set forth in (a), with the exception of flushing flows, and (b) foregoing shall be made available in accordance with written flow schedules submitted by the California Department of Fish and Game, after consultation with the Bureau of Sport Fisheries and Wildlife and the U.S. Forest Service, to Licensee at least six months in advance and not more often than twice in any calendar year. A variation of 5 per cent for 5 cubic feet per second, whichever is the larger, from the scheduled rates of release shall be permitted to allow for inability to adjust gates precisely, and suitable adjustments within the variations set forth above in subsequent releases during the suceeding two months shall be made to offset the prior variations. In the event of the failure of the Department to provide a schedule for (a) or (b), Licensee shall make approximately uniform releases to provide in the stream the annual amounts specified. Flushing flows as set forth in (a) shall be released as requested upon 30 days notice but shall not be required at a time when the water would be wasted for power purposes because of a downstream plant of Licensee's being out of service.

(d) Licensee shall make available, to the extent requested by the Department, for fishery purposes on the North Fork Feather River between Almanor Dam and its confluence with the East Branch North Fork Feather River, the following:

(1) An amount not to exceed $75,000, or if the Department should elect not to require the construction of the rough fish barrier referred to in paragraph (h) below, an amount not to exceed $90,000, for the design, construction, and evaluation of capital improvements, including, but not limited to improvement of natural spawning areas, construction of artificial spawning channels, and improvement of resting and cover conditions.

(2) The funds made available pursuant to (1) above shall remain available for expenditure for a period not to exceed 15 years after the first year of operation of the project.

(3) Commencing with the completion of construction by the Department of the first of the capital improvements referred to in (1) above and thereafter during the license period, an annual amount not to exceed $500, subject to cumulation if not requested by the Department in whole or in part in any year or years in an amount not to exceed $3,000 for necessary repair and maintenance of the capital improvements referred to in (1) above.

(4) The funds made available pursuant to (1) and (3) above shall be paid to the California Department of Fish and Game within thirty (30) days following the submission of a statement of costs and expenses by said Department to Licensee, subject to audit by Licensee, for any and all costs and expenses incurred by said Department in performing the work for which said funds are available.

(e) Licensee shall, upon acceptance by the Federal Power Commission of article 26 as herein amended, cooperate with the California Department of Fish and Game, the Bureau of Sport Fisheries and Wildlife and the U.S. Forest Service in making preliminary survey plans of the North Fork Feather River from Belden Diversion Dam to Gansner Bar to determine work which can be done to improve the fish habitat and the aesthetic values in this reach of the river during or following construction.

(f) In cooperation with the Department, and during or immediately following construction of the project, Licensee shall confine the flow of water in North Fork Feather River to a single channel at those locations visible from the road between its confluence with the East Branch of the North Fork Feather River and Belden Diversion Dam where the stream presently divides into more than one channel at a flow of 75 cfs. Licensee shall do such other work in said portion of North Fork Feather River as found to be necessary or desirable and as may be mutually agreed upon by Licensee, the California Department of Fish and Game, the Bureau of Sport Fisheries and Wildlife and the U.S. Forest Service and which may include further channelization, relocation of gravels exposed by low flows and such other improvements of stream habitats as are found to be necessary or desirable; provided, however, that Licensee shall not be required to perform work under the provisions of this sentence if the cost thereof, when added to the cost of the work performed under the first sentence of this paragraph, would exceed $10,000.

(g) The Licensee shall cooperate with the California Department of Fish and Game in measures for control of rough fish in that portion of the North Fork Feather River between Almanor Dam and its confluence with the East Branch North Fork Feather River as follows:

(1) Subject to the total quantity limitations of (a) and (b) above, Licensee shall regulate the release of water from Almanor Dam and Belden Diversion Dam into North Fork Feather River as requested upon reasonable notice by the California Department of Fish and Game for the purpose of aiding and facilitating the eradication of rough fish;

(2) Licensee shall, within thirty (30) days following the submission of a statement of costs subject to audit by Licensee, reimburse the California Department of Fish and Game for its cost of chemicals used for such rough fish eradication;

(3) Licensee shall provide one-half of the personnel required to conduct such rough fish eradication. Personnel provided by Licensee shall work under the direction of said Department;

Provided that it shall be the responsibility of the California Department of Fish and Game to (a) direct and control such rough fish eradication operations in compliance with all federal and state legal requirements, and (b) to initiate and implement a rough fish control program in the North Fork Feather River between Belden Dam and its confluence with the East Branch North Fork Feather River and evaluate the effectiveness of said program within a five-year period following completion of the project.

(h) If after the termination of the rough fish control program and evaluation as specified in proviso (b) of (g) above, additional rough fish control measures are deemed necessary by the California Department of Fish and Game and concurred in by the Bureau of Sport Fisheries and Wildlife, and the U.S. Forest Service, Licensee shall design, construct, maintain, and replace in event of destruction a rough fish barrier on the North Fork Feather River between its confluence with the East Branch of the North Fork Feather River and the lower end of Gansner Bar. The barrier shall be of a design mutually acceptable to the Licensee and to the Department, the Bureau of Sport Fisheries and Wildlife and the U.S. Forest Service.

(i) Licensee shall, if requested by the Department and within thirty (30) days following the submission of a statement of costs subject to audit by Licensee, pay for the stocking of 5,000 pounds of trout per calendar year by the Department in the waters of the North Fork Feather River between its confluence with the East Branch North Fork Feather River and the Belden Diversion Dam. The cost to Licensee of such trout shall not exceed the then prevailing average cost to the Department for the production and distribution of 5,000 pounds of catchable trout. The size, numbers and species of trout to be planted, the frequency of planting, and the planting sites shall be as determined by the Department.

(j) Licensee shall permit without charge the use of any land and land rights owned by it in and along the North Fork Feather River between Almanor

Dam and the East Branch confluence, for fishery improvement and management purposes, where such use would not interefere with project purposes.

(B) The hearing set by order issued October 24, 1963 is terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP64–157

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ACCEPTING RELATED TARIFF REVISIONS FOR FILING

(Issued April 13, 1964)

On January 21, 1964, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP64–157 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain connecting, regulating and measuring facilities used to deliver natural gas to The Manufacturers Light & Heat Company, under an exchange agreement, from Applicant's well No. 973 located in Green County, Pennsylvania.

Applicant states that gas production from the above described well, has declined to a point where it is no longer economically feasible to deliver gas from this source.

Applicant will continue to exchange gas at other points of connection with The Manufacturers Light & Heat Company under the terms of their exchange agreement.

No cessation or interruption of service to customers will result from the subject abandonment.

Concurrently with its abandonment application, Applicant filed Third Revised Sheet No. 47 to its FPC Gas Tariff, Original Volume No. 2, reflecting the deletion of the exchange point known as Thomas V. Mount Joy Farm, Cumberland Township, Greene County, Pennsylvania. Manufacturers filed Third Revised Sheet No. 16 to its FPC Gas Tariff, Original Volume No. 2, for the same purpose.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Carnegie Natural Gas Company, a Pennsylvania corporation having its principal place of business in Munhall, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1943, in Docket No. G–263 (3 FPC 1052).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

(4) The respective related tariff revisions should be accepted to become effective on the date of issuance of this order.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Carnegie Natural Gas Company, of the facilities hereinbefore described be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days thereof.

(C) The respective related tariff revisions filed by Applicant and by Manufacturers are hereby accepted to become effective on the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-81

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1964)

On October 1, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP64-81 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of unspecified "budget-type" natural gas facilities to make miscellaneous temporary and permanent direct sales from Applicant's existing pipeline system.

On January 30, 1964, Applicant filed an amendment to the foregoing application in response to the Commission's letter dated January 15, 1964, which letter requested that the original application be supplemented by setting forth the specific proposed facilities for service to specific customers, if known. This amendment covers fourteen specific requests for facilities for rendering direct interruptible natural gas service to new industrial customers, consisting of (a) one line tap on a gathering line and (b) thirteen taps on transmission lines, with meter and regulating facilities for each point, all in Oklahoma, Kansas and Missouri, at an estimated total cost of $18,227.

Applicant sets forth in detail the fourteen specific projects showing the names of the proposed customers, the nature of the uses to which the gas will be put, the average rate per Mcf for each proposed sale, the estimated annual revenue from each sale, and a description and the estimated cost of the facilities proposed for each project. The subject gas will be used generally for irrigation, agricultural and small space heating purposes and will require an estimated total volume of 191,660 Mcf at 14.65 psia annually.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 479).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $18,227.

(7) The authorization hereinafter granted should be expressly conditioned to exclude the use of any of the gas sold pursuant thereto for boiler fuel.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1964 and to operate the proposed facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted by paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $18,227.

(D) The authorization granted by paragraph (A) above is hereby expressly conditioned to exclude the use of any of the gas sold pursuant thereto for boiler fuel.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-205

FINDINGS AND ORDER DISMISSING APPLICATION AND ACCEPTING TARIFF SHEET FOR FILING

(Issued April 13, 1964)

On July 1, 1963, as supplemented on February 20, 1964, El Paso Natural Gas Company (El Paso) filed in Docket No. CP63-205 a motion to dismiss its application for a certificate of public convenience and necessity filed in this proceeding. Said application sought certificate authorization to exchange natural gas with Colorado Interstate Gas Company (Colorado) to enable Colorado to sell natural gas to Cabot Corporation (Cabot) to be used by Cabot in its carbon black operations, Panhandle Field, Texas. Colorado's application was filed in Docket No. CP63-197.

Because of the lean quality of El Paso's gas stream, Cabot was unable to utilize said gas. Consequently, Colorado entered into an alternative exchange arrangement which did not involve El Paso. Accordingly, Colorado amended its application in Docket No. CP63-197 reflecting the alternative arrangement. By Commission order issued December 24, 1963, in Docket No. CP63-197 such alternative arrangement was authorized.

On July 1, 1963, El Paso also filed First Revised Sheet No. 151 to its FPC Gas Tariff, Third Revised Volume No. 2. Said filing cancelled El Paso's Rate Schedule X-13. First Revised Sheet No. 151 supersedes and cancels Original Sheet Nos. 151-157, reserving Sheet Nos. 152-157 for future use.

The Commission finds:

(1) The application for a certificate of public convenience and necessity filed in Docket No. CP63-205 should be dismissed as moot.

(2) El Paso's First Revised Sheet No. 151 to its FPC Gas Tariff, Third Revised Volume No. 2, should be accepted for filing, effective August 1, 1963.

The Commission orders:

(A) The application for a certificate of public convenience and necessity filed in Docket No. CP63-205 be and the same is hereby dismissed as moot.

(B) El Paso's First Revised Sheet No. 151 to its FPC Gas Tariff, Third Revised Volume No. 2, is hereby accepted for filing, effective August 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

IOWA-ILLINOIS GAS & ELECTRIC COMPANY, DOCKET NO. CP64-123

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1964)

On November 29, 1963, as supplemented on January 29, and March 19, 1964, Iowa-Illinois Gas & Electric Company (Applicant) filed in Docket No. CP64-123 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities in Johnson County, Iowa, all as more fully set forth in the application, as supplemented.

Applicant states that it distributes natural gas, among other areas, in the Cedar Rapids and Iowa City areas, Iowa, and that the gas supply for said areas is delivered to Applicant by Natural Gas Pipeline Company of America at a point on the latter's pipeline in Iowa. From this delivery point Applicant transports gas by means of two parallel 10-inch lines and an 11.3-mile 12-inch line partially looping said parallel lines. Applicant proposes herein to construct and operate 22 miles of 16-inch line which will be a continuation of and an extension of the 11.3 miles of loop line. The application indicates that the proposed line will increase the total design capacity of all of these lines from 3,830 Mcf per hour to 5,708 Mcf per hour.

Applicant states that the proposed line is necessary to provide additional peak hour capacity to meet its present requirements and for anticipated increased requirements of the Cedar Rapids and Iowa City areas.

The total cost of the proposed facilities is estimated to be $1,112,400, which cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Iowa-Illinois Gas & Electric Company, an Illinois corporation having its principal place of business in Davenport, Iowa, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 24, 1951, in Docket No. G-303 (10 FPC 691).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Iowa-Illinois Gas & Electric Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64–168

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1964)

On January 27, 1964, The Manufacturers Light & Heat Company (Applicant) filed in Docket No. CP64–168 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 8.14 miles of 26-inch gas transmission pipeline looping its existing 20-inch Line No. 1758 from a connection with its existing Adaline Compressor Station in Liberty District to a point in Cameron District, all in Marshall County, West Virginia, all as more fully described in the application on file herein.

The estimated cost of construction of the proposed facilities is $949,500.00 to be financed through the issuance and sale of promissory notes or common stock to The Columbia Gas System, Inc., Applicant's parent company.

Applicant states that the purpose of the proposed facilities is to meet the winter requirements of the Applicant's market area for the 1964–65 winter service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593 (4 FPC 44).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the installation and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light & Heat Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62-178

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1964)

Northern Natural Gas Company (Northern) filed on January 13, 1964, in Docket No. CP62-178, an application to amend the order of the Commission issued September 30, 1963, in the above docket which granted a certificate of public convenience and necessity to Northern authorizing among other things the installation of 4400 Hp at its Redfield Storage Field Station. Northern now seeks authorization to install three (3) 1000 Hp centrifugal compressor units in lieu of a remaining 2900 Hp authorized by the Commission's order of September 30, 1963, all as more fully set forth in the subject application to amend.

The application to amend shows that Northern initially proposed to turbocharge two existing compressor units so as to provide 1400 Hp, and to install two (2) additional 1500 Hp units. Northern now proposes the installation of smaller increments of horsepower which will permit the use of greater flexibility in meeting varying load conditions required for injection and withdrawal of storage gas.

The estimated cost of installing the three proposed 1000 Hp centrifugal compressor units is $641,000.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 7, 1964 (29 F.R. 3179). No protests or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 30, 1963, in Docket No. CP62–178 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 30, 1963, in Docket No. CP62–178 be and the same is hereby amended so as to authorize Northern Natural Gas Company to install three (3) 1000 Hp centrifugal compressor units at its Redfield Storage Field Station in lieu of the remaining 2900 Hp of 4400 Hp compressor capacity authorized in said order.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–170

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1964)

On January 29, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64–170 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 9.7 miles of 30-inch pipeline looping its present 24-inch Lirette to Napoleonville line in Assumption Parish, Louisiana.

The purpose of the proposed facility is to increase the capacity of the Lirette-Napoleonville line to meet the full requirements of the Napoleonville-Kosciusko line and a portion of the requirements of the South Louisiana-North Louisiana 30-inch line. The addition of the loop will increase the maximum capacity of that portion of the Lirette to Napoleonville line from 604,417 Mcf per day to 711,520 Mcf per day.

The estimated total cost of the proposed facilities is $1,705,320, to be financed from current working funds.

Construction is expected to be completed within twelve months from date of commencement.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company to construct and operate facilities for the transportation and sale of natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER GRANTING PETITION TO CLARIFY DEFINITION OF TEXAS GULF COAST AREA

(Issued April 14, 1964)

On February 27, Shell Oil Company, *et al.*[1] filed a petition requesting the Commission to clarify what area is subject to the Texas Gulf Coast Area Rate Proceeding, or in the alternative to enlarge the area involved to include "all areas, both State and Federal, in the Gulf of Mexico off the shore of Texas".

Shell, *et al.* state that they are uncertain whether the Commission intended to include off-shore areas in its Texas Gulf Coast Area Rate Proceeding. They state that off-shore areas should be included. Shell, *et al.* point out that the Commission expressly included off-shore areas in our South Louisiana Area Rate Proceeding. (25 FPC 942)

We have always considered areas off the shore of Texas to be included in the related Texas Railroad District for rate review purposes, ***Socony Mobil Oil Company, Inc.***, 27 FPC 347; and we fully intended to consider Texas off-shore areas in our Texas Gulf Coast Area Rate Proceeding, although we did not specifically say so in our order of November 27, 1963, instituting the proceeding in Docket No. AR64-2. (30 FPC 1354)

---

[1] Socony Mobil Oil Company, Inc., Continental Oil Company, Texaco, Inc., Sinclair Oil & Gas Company, Gulf Oil Corporation, Atlantic Refining Company.

The Commission orders:

(A) Shell, *et al.'s* petition for clarification is hereby granted.

(B) The Texas Gulf Coast Area proceeding shall include consideration of Texas Railroad Commission District Nos. 2, 3 and 4, including all areas both State and Federal in the Gulf of Mexico off the shore of those Texas Railroad Commission Districts.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TENNECO CORPORATION, DOCKET NO. RI64-250

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDING

(Issued April 14, 1964)

On February 6, 1964, Tenneco Corporation (Tenneco), through its successor in interest, Tenneco Oil Company, submitted pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure an Offer of Settlement in the above-designated proceeding, which relates to the jurisdictional sale of natural gas by Tenneco under its FPC Gas Rate Schedule No. 80 to Texas Eastern Transmission Corporation (Texas Eastern) from McMullen County, Texas (R. R. District No. 1). The increased rate of 13.8733¢ per Mcf at 14.65 psia, which is equivalent to 14.3733¢ per Mcf when the 0.5¢ per Mcf cost for dehydration and central point delivery is taken into consideration, was designated as Supplement No. 12, and was suspended by order issued October 30, 1963, until April 2, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

In its Offer of Settlement Tenneco states that it has deleted from the subject contract (1) the present periodic price escalations, (2) the favored-nation clause, and (3) the price-redetermination provision, and has substituted therefor a provision providing for five-year periodic increases of 0.5¢ per Mcf beginning February 5, 1963.[1] No objection to the proposed settlement has been received from any interested party.

Since the proposed settlement rate is acceptable under the provisions of the ***Seventh Amendment to the Commission's Statement of General Policy No. 61-1*** (18 CFR, Chapter I, Part 2, Section 2.56) issued November 27, 1963, 30 FPC 1370, for the jurisdictional sale of natural gas in Texas Railroad Commission District No. 1, it appears that the public interest will best be served by accepting Tenneco's proposed settlement.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Tenneco or its successor under the periodic escalation provisions and tax reimbursement provision contained in the instant rate schedule, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate or similar proceedings involving Tenneco's rate and rate schedule or those of its successor.

---

[1] As part of Supplement No. 12, Tenneco filed an executed contract amendment negotiated with Texas Eastern providing for such changes.

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Tenneco on February 6, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The proposed Offer of Settlement filed by Tenneco with the Commission on February 6, 1964, is hereby approved in accordance with the provisions of this order.

(B) Supplement No. 12 to Tenneco Corporation FPC Gas Rate Schedule No. 80 is hereby made effective without obligation to refund as of the date of issuance of this order.

(C) The proceeding in Docket No. RI64-250 is hereby terminated.

(D) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against Tenneco, including area rate and other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., ET AL., DOCKET NO. G-15546, ET AL.[1]

ORDER REQUIRING PAYMENT OF REFUNDS[2]

(Issued April 14, 1964)

By order issued February 19, 1964, in the above-entitled proceedings we provided for refunds to Tennessee Gas Transmission Company (Tennessee) by the Respondents involved here of tax reimbursement amounts collected from Tennessee with respect to the additional one cent per Mcf Louisiana gas gathering tax which was declared unconstitutional. In view of the uncertainty whether Tennessee would flow through to its jurisdictional customers their proportionate share of the above refunds, we required the producers to retain the refunds due Tennessee in a separate account pending further order of this Commission.

By letter dated March 6, 1964, in response to the February 19 order, Tennessee informed us of its intention to pass on any refunds received herein to its customers, less out of pocket legal expenses incurred in the prosecution of this case. In view thereof, we believe it appropriate to require the producers to make refunds to Tennessee as hereinafter ordered.

One other matter remains to be disposed of in this case. A few of the producers who filed refund reports as required by paragraph (B) of our February 19 order have computed some interest on such refund amounts. This is not required under the terms of the February 19 order or the agreements and undertakings filed by the producers in these proceedings. The Commission's suspension orders herein provided for refunds if the tax was declared unconstitutional, but did not require the payment of interest thereon, because of the special type of rate increase involved, except to the extent that the producers received interest from the State of Louisiana on any tax amounts paid to the state. Since the producers here did not protest the tax payment to the state they were not entitled under state law to any refund, let alone interest hereon. Accordingly, they need pay no interest to Tennessee.[3]

---

[1] The proceedings involved here are listed in the appendix attached hereto. These proceedings represent only a portion of the approximately 400 proceedings disposed of by the March 5, 1962 order.

[2] This order does not provide for consolidation of the proceedings involved here, nor should it be so construed.

The Commission orders:

For the reasons set forth above, within 30 days of the date of issuance of this order the Respondents listed in the Appendix A attached hereto shall refund to Tennessee all amounts collected subject to refund in the above-entitled proceedings as computed in accordance with paragraph (B) of our February 19, 1964 order. Within 45 days of the date of this order each Respondent shall file with the Commission a copy of a release from Tennessee with respect to its refund.

APPENDIX A

G-15548	Texaco Inc.
G-15551	Shell Oil Company.
G-15563	Cities Service Production Company.
G-15584	E. J. Hudson, *et al.*
G-15586	Tidewater Oil Company.
G-15589	Sohio Petroleum Company (Operator), *et al.*
G-15611	Shell Oil Company
G-15618	John W. Mecom d/b/a Mecom Petroleums.
G-15619	John W. Mecom, Operator, *et al.*
G-15633	Sun Oil Company.
G-15668	Kerr-McGee Oil Industries, Inc., (Operator), *et al.*
G-15678	The Atlantic Refining Company.
G-15718	Humble Oil & Refining Company.
G-15730	Continental Oil Company.
G-15751	Gulf Oil Corporation.
G-15752	Phillips Petroleum Company (Operator), *et al.*
G-15763	Continental Oil Company (Operator), *et al.*
G-15837	The California Company, A Division of California Oil Company.
G-15846	Union Oil Company of California.
G-15935	M. L. Mayfield, *et al.*
G-16033	The Atlantic Refining Company.
G-16342	Sunnyland Contracting Company, Inc.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; GENE M. WOODFIN, TRUSTEE FOR THE JEAN CURRY GLASSELL TRUST, DOCKET NO. CI63-885

ORDER SEVERING PROCEEDING, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 14, 1964)

On February 4, 1964 Gene M. Woodfin, Trustee For The Jean Curry Glassell Trust (Woodfin) filed an offer of settlement and petition for issuance of certificate of public convenience and necessity in the above-entitled proceeding.

---

[3] The producers here were not required by our March 5, 1962 order to make refunds. They are therefore in a different position with respect to the payment of interest than those producers who were required in the March 5 order to make refunds, but who obtained a stay of that order from us. As a part of our stay order, we provided that they should pay 7% interest upon amounts to be refunded for the period commencing on the 91st day after issuance of the March 5 order. See, for instance, order issued April 26, 1962 in *Texaco Inc., et al.*, Docket No. G-15546, *et al.*

Woodfin's settlement proposal is similar to recent settlements conditionally approved by the Commission in the Union Texas Proceeding[1] and provides for the issuance of a certificate of public convenience and necessity at a rate of 20.625¢ per Mcf[2] for a sale of gas from the Chacahoula Field, Lafourche Parish, south Louisiana; a rate-increase moratorium through March 31, 1968 (subject to the usual exceptions); extension of the take-or-pay make-up period from 2 years to 4 years; refunds of all amounts above the settlement rate collected since the date of initial delivery.

No answers to Woodfin's petition and offer of settlement have been received.

We find this proposal, generally, to be in the public interest and shall approve it subject to the following reservations and conditions.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the petition and offer were filed, February 29, 1964. This has been a requirement in all of our orders approving settlements arising out of the Union Texas proceeding.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium period at a rate no higher than the rate in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever this individual docket from the consolidated proceeding *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, and issue a certificate of public convenience and necessity in accordance with the application, settlement proposal and conditions of this order.[3]

The Commission finds:

(1) Gene M. Woodfin, Trustee For The Jean Curry Glassell Trust is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

---

[1] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963 and the Examiner's Decision was issued on January 14, 1964. The matter is now before the Commission on exceptions to the Examiner's Decision.

(3) Woodfin is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, is required by the public convenience and necessity and is in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

The Commission orders:

(A) The matters in Docket No. CI63–885 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(B) A certificate of public convenience and necessity is hereby issued to Gene M. Woodfin, Trustee For The Jean Curry Glassell Trust, upon the conditions set forth herein authorizing the sale of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application and settlement proposal herein.

(C) The certificate granted by paragraph (B) above, is granted upon the express condition that Woodfin comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(D) Within 90 days from the date of issuance of this order, Woodfin shall refund to the pipeline purchaser the difference between the amounts collected for gas delivered since the date of initial delivery and the amount that would have been collected under the settlement rate for gas delivered since that time together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, February 29, 1964.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Woodfin shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Woodfin with all the terms of this order and of the settlement proposal, Woodfin shall be relieved of any further refund obligations in this certificate proceeding and said proceeding shall terminate.

(G) The certificate herein issued is not transferable and shall be effective only so long as Woodfin continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94 (b) and the detailed submittal requirements of Part 154.94 (f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Woodfin, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Woodfin, the Commission staff, or any affected party herein in any other proceeding.

OPINION NO. 417-A

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. G-5471, ET AL.

OPINION AND ORDER DENYING REHEARING AND STAY

(Issued April 15, 1964)

Syllabus

1. Applications for rehearing by persons not parties to proceeding, are not in order. P. 929.
2. Pipeline association members who are not respondents or interveners are not legally entitled to evidentiary hearing. P. 929.
3. Characterization of instant docket as a general rule-making proceeding is erroneous—precedents of wide application are customarily established in cases in which only single company is a party. P. 929.
4. Administrative agency may proceed by rule-making proceeding but is free to arrive at general principles in individual cases. P. 929.
5. Action in inviting participation of interested parties as *amici* to give opportunity for participation in decision on a precedent of possible industry-wide applicability does not mean Commission has committed error. P. 929.
6. Commission may take official notice of relevant and material facts in determining whether voluntary use of liberalized depreciation results in tax deferral or tax reduction. Pp. 929, 930.
7. *Opinion No. 417* leaves any pipeline not a party thereto, legally free to introduce evidence demonstrating inapplicability of determinations made there to its individual situation. P. 930.
8. There is no basis for contention that Commission exhausted its administrative discretion by initial decision to normalize rather than flow through tax benefits—flexibility to adjust to additional experience and changing conditions is basic to administrative process. P. 930.
9. Commission refutes argument that provision for future flow through and for zero return on accumulated deferred balances does not afford sufficient incentive for continued use of liberalized depreciation and thus not in accord with *Panhandle*. P. 931.
10. Contention that existing accumulations be flowed through to customers is rejected. P. 932.
11. Commission *denies* applications for rehearing and stay.
   Commissioner Woodward *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

Applications for rehearing of our "Opinion and Order on Proper Treatment of Liberalized Depreciation Tax Deductions", issued as Opinion No. 417 on February 3, 1964, were filed by Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) and the Independent Natural Gas Association of America (INGAA) on March 4, 1964. These applicants urge that the Commission reconsider and vacate its decision, and terminate the instant proceeding. Alabama-Tennessee also seeks, as alternative relief, a stay pending judicial review. The People of the State of California and its Public Utilities Commission (California) filed an application for rehearing on March 5, 1964. California approves our determinations and objects only to the Commission's action with respect to accumulated deferred tax balances.

At the outset we note that neither INGAA nor California are parties to this proceeding and that Section 19(a) of the Natural Gas Act limits the right to apply for rehearing to those persons, States, municipalities or State Commissions who are aggrieved by an order issued in a proceeding to which they are parties. Thus, their applications for rehearing are not in order. Nevertheless, the Commission permitted all interested persons to participate as *amici curiae* in this proceeding on the question of the proper treatment in pipeline rate proceedings of liberalized depreciation deductions under Section 167 of the Internal Revenue Code, because of the importance and industry-wide implications of that policy determination. Accordingly, we shall discuss the contentions made in the applications for rehearing filed by INGAA and California without, however, granting them any other procedural rights not normally enjoyed by non-parties.

Alabama-Tennessee and INGAA contend that the Commission's decision herein was based on an insufficient record; on matters *de hors* the record; and on findings contrary to facts which could have been established if another opportunity to present pertinent evidence were afforded.

Alabama-Tennessee was afforded a full hearing on its rate increase filing which is the subject of this proceeding. An intervener in its rate proceeding timely and properly raised the liberalized depreciation issue and presented evidence in support of flow through. In our Order Denying Motion for Reconsideration, issued July 30, 1962, we have already considered and rejected Alabama-Tennessee's claim that its failure to submit evidence on this issue was excused or justified because the Company chose to rest its case on the Commission precedents which then favored normalization.

There is also no basis for the claim of INGAA that the pipeline members of that association who are not respondents or interveners in this proceeding are legally entitled to an evidentiary hearing. INGAA erroneously characterizes this docket as a general rule-making proceeding. While the liberalized depreciation issue in the case is of general interest, the case is solely a determination of just and reasonable rates for Alabama-Tennessee. Precedents of wide application are customarily established in cases in which only a single company is a party. An administrative agency may of course proceed by a rule-making proceeding but it certainly is free to arrive at general principles in individual cases. No question could have been raised concerning the propriety and legality of our procedures even if we had heard argument from only the parties in this case. Certainly our action in inviting the participation of other interested persons as *amici* to give them an opportunity to participate in the decision on a precedent of possible industry-wide applicability does not mean that the Commission has committed error. The position maintained by INGAA leads to the paradoxical result that a regulatory body may determine a policy of broad import and substantial impact in an individual proceeding without hearing from interested persons who are not parties to the case but is in error if it affords all persons who may be affected an opportunity to present their views as *amici* prior to final decision.

Alabama-Tennessee and INGAA have also objected to the Commission's action in officially noticing relevant and material facts for the purpose of determining whether a company's voluntary use of liberalized depreciation results in a tax deferral or a tax reduction. Our opinion advised all parties concerned that we had elected this course of action and adverted to Section 1.26(d) of the Rules of Practice and Procedure, which provides that whenever facts are officially noticed, ". . . any party shall, on timely request, be afforded an opportunity to show the contrary." Neither Alabama-Tennessee nor INGAA denied the truth or correctness of any of the facts noticed by the Commission, nor have they requested that official notice be taken of any controverting or mitigating facts.

The argument of the proponents of normalization raises no factual question but goes rather to our determination of law and policy that the tax consequences of liberalized depreciation must be measured with respect to the loss of tax depreciation deductions on the over-all properties used in rendering public service rather than on specific assets acquired within a single year. An evidentiary hearing of the type held in this case is not even required in such a determination (*Pan American Petroleum Corp.* v. *F.P.C.*, 322 F. 2d 999 (CADC, 1963); *Mississippi River Fuel Corp.* v. *F.P.C.*, 281 F. 2d 919 (CADC), certiorari denied, 365 U.S. 827; *cf. Cities of Lexington, et al.* v. *F.P.C.*, 295 F. 2d 109, 114 (CA4); *Interstate Power Co.* v. *F.P.C.*, 236 F. 2d 372, 385 (CA8), certiorari denied, 352 U.S. 967; *F.P.C.* v. *Transcontinental Gas Pipe Line Corp., et al.*, 365 U.S. 1 (1961); *Market Street Railroad Corp.* v. *Railroad Commission of California*, 324 U.S. 548, 560.)

INGAA's pleading questions the Commission's central conclusion that there will be no increase in taxes and no payback from the accumulated tax reserve when the plant balance grows or remains constant. We have considered INGAA's contentions and the two State commission decisions they cite[1] and find no substance in the argument or any support therefor in the cited cases, neither of which adopted INGAA's theory.

There can be no question as to the validity of our findings with respect to Alabama-Tennessee and other typical pipelines and our decision leaves any gas pipeline which has not been a party to this proceeding legally free to introduce evidence and testimony of exceptional situations demonstrating the inapplicability of the determinations made in Opinion No. 417 to its individual situation.[2]

Alabama-Tennessee and INGAA's argument that this Commission cannot now in light of its experience depart from its prior position that normalization is the proper rate treatment has been answered in Opinion No. 417. There is also no basis for the related contention that the Commission has exhausted its administrative discretion by its initial decision to normalize rather than flow through these tax benefits. Indeed, the flexibility thus to adjust to additional experience and changing conditions is basic to the administrative process. Other regulatory agencies have made this very change in policy in the light of new facts and greater knowledge and understanding of the implications of their original policy decisions and such action has been affirmed on judicial review.[3]

---

[1] *In Re Georgia Power* 36 PUR 3d 506, 509 (Georgia PSC 196). *In Re Consumers Power Co.* 38 PUR 3d 355, 363 (Mich. PSC 1961).

[2] We put aside as extraneous INGAA's claim that the Commission erred in concluding that flow through generally produces lower rates than does normalization. The contention is refuted in this case by the fact that our decision to require flow through results in a reduction of Alabama-Tennessee's rates.

[3] *Cincinnati Gas & Electric Co.*, 35 PUR 392 (Ohio PUC 1960); affirmed *Cincinnati Gas & Electric Co.* v. *Ohio PUC*, 173 Ohio 473, 184 NE 2d 84 (Sup. Ct., 1962); *Re Central Maine Power Co.*, 17 PUR 3d 452, 460–463 affirmed, *Central Maine Power Co.* v. *Maine PUC*, 136 A 2d 726 (Sup. Ct., 1957); *Re Public Service Co. of New Hampshire*, 18 PUR 3d 523 (NHPSC, 1957); *Hope Natural Gas Co.*, 23 PUR 3d 394, 405 (W. Va. PSC, 1958); *Re Tax Treatment of Accelerated Depreciation*, 33 PUR 3d 209 (Cal. PUC 1960).

Alabama-Tennessee and INGAA argue that provision for future flow through and for a zero return on accumulated deferred balances does not afford natural-gas pipelines sufficient incentive for the continued use of liberalized depreciation and thus is not in accord with the opinion of the Court of Appeals for the District of Columbia Circuit in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 316 F. 2d 659, 662, 663 (CADC 1963), certiorari denied 375 U.S. 881.

This argument is not well taken for it misconceives the posture of the case before the court of appeals. The *Panhandle* decision was grounded on the assumption that liberalized depreciation results in a tax deferral, and that a return on the deferred tax funds which are temporarily available but must eventually be paid out in taxes is a necessary inducement to the gas companies to utilize liberalized depreciation.[4] As we pointed out in Opinion No. 417 experience has proven that this assumption is not valid and that such higher tax liabilities constitute a remote and improbable contingency. In these circumstances the lower rates made possible by flow through of the tax savings from liberalized depreciation will be a more effective stimulus to new investment than normalization and thus better achieve the ultimate Congressional purpose in authorizing the use of liberalized depreciation.

The *Panhandle* case does not hold to the contrary. It arose under the previous determination by this Commission, which we have shown was erroneous, that it must treat liberalized depreciation as a tax deferral. The earlier Commission ruling focused upon the effect of its use with respect to individual items of depreciable property and ignored the overall tax liabilities of the regulated company. In this context the Commission held, first in the *Northern Natural* case, 25 FPC 431, and then in *Panhandle*, that a 1½ percent return was appropriate as an inducement for the company to utilize liberalized depreciation. The Commission on rehearing before the Court in *Panhandle* pointed out that the *Alabama-Tennessee* case was then underway to review the basic question of whether flow through rather than normalization was the proper regulatory treatment for liberalized depreciation. The court in *Panhandle* made clear that it was not passing on the Commission's discretion to adopt a different treatment for liberalized depreciation, noting that the Commission had not used flow through in its decision in the case before it, and stating that "[w]e therefore intimate no opinion concerning the validity of the course proposed in the briefs and consider only the Commission's action under review" (316 F. 2d 661).

The alternative argument by Alabama-Tennessee and INGAA, that unless we allow a return on accumulated deferred taxes we will retroactively deprive the company of the alleged statutory incentive to the utilization of liberalized depreciation, is clearly without merit. Alabama-Tennessee has received the benefits of an interest-free loan (plus a 1½ percent return on reinvested funds) since it commenced using liberalized depreciation.[5] It now has the option of retaining the fund (pending the unlikely necessity of using it to offset actual increases in taxes) or submitting a proposal for flowing all or part of the fund to its customers by way of lower rates, which we have found should enhance its competitive position and make for greater expansion. Our action herein does not deprive Alabama-Tennessee of the advantages of using liberalized depreciation either retroactively or prospectively.

---

[4] But, as the court in *Panhandle* pointed out, there are "other advantages" to the use of liberalized depreciation even under such circumstances. It did not conclude that a return of 1½ percent, or any amount at all, was in fact necessary, but only that it would "not disturb" a determination by the Commission that it was appropriate "since these evaluations are within the expert competence of the Commission."

[5] Alabama-Tennessee argues that the funds standing to its credit in the deferred tax accounts are not consumer-contributed capital, in a legal sense, because customers do not acquire any legal or equitable interest in the assets or funds of a regulated company by paying their bills for service rendered. In support of this thesis, it cites *Board of Commissioners* v. *New York Telephone Co.*, 271 U.S. 23, 32 (1926). That case is not in point because the court was there dealing with general revenues received without restrictions as to their disposition. We are here concerned with revenues collected for a specific purpose and placed in a special account which restricted the use of these funds and prohibited their use for the payment of dividends, *cf. El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567, 573–574 (CA5, 1960).

California argues that since we have determined upon rate flow through for the future, we should also order the existing accumulations be flowed through to the consumer in the form of rate refunds or reductions. The present ratepayers no longer have to pay a return on the funds previously accumulated, and will receive the immediate benefit of the tax savings presently accruing to the company. Moreover, we have made clear that we will give Alabama-Tennessee, and other companies ordered to shift to flow through, the option of flowing through all or part of their accumulated funds pursuant to an approved plan which will insure that any reduction in the consumer-contributed capital fund will be reflected in lower rates to such consumers. The fact that the funds already accumulated will probably never be used for the tax repayment purpose for which they were originally collected does not mean that no provision whatever may be made for this contingency. Balancing all considerations the Commission decided that rather than to order the refund of these finds contributed by consumers it would permit Alabama-Tennessee to retain them in a special account. Permitting the company to retain these funds provides no reason or excuse, however, for allowing any element of return thereon. In this manner, full justice is done to the ratepayer while at the same time the company is afforded a margin of protection against the risk that it may at some time in the future be subjected to higher tax payments by reason of having taken liberalized depreciation.

Alabama-Tennessee has requested a stay of Opinion No. 417 and the accompanying order pending the final outcome of court litigation concerned with the validity of those administrative actions. The granting of a stay would irreparably injure jurisdictional gas consumers because Alabama-Tennessee has not offered to refund the excess revenues if we grant the stay and our decision is affirmed. Moreover, refunds are clearly not an adequate substitute for an immediate rate reduction (*F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154–155, 1962). We are, therefore, constrained to reject the application for a stay.

Alabama-Tennessee correctly points out that since Opinion No. 360 mistakenly eliminated any return allowance upon its deferred tax balance, although the Commission intended to allow a 1.5 percent return thereon, there is no necessity for further action here in order to insure that it will not earn any return upon such consumer-contributed capital. As Finding Paragraph (7) of Opinion No. 417 states, we ordered that the amount of the funds in Account 282 during the applicable test year in Docket No. G–19984 be excluded from its recognized rate base in the belief that it had been allowed such a partial return. Accordingly, we are modifying the provisions of our order with respect to this matter. We adhere, however, to our prior conclusion that the deduction of amounts accumulated in the deferred tax accounts from the rate base is the proper method of accomplishing our objective of eliminating any return on such funds.

There is no substance to the argument advanced by INGAA and Alabama-Tennessee that our determination to deduct these accumulated deferred tax balances from the rate base must be supported without evidence that these funds have in fact been invested in operating facilities or working capital.

By definition, these dollars cannot be paid out as dividends under the restrictions imposed in Account 282, and the Commission has specifically found that they should be used to supply a portion of the company's capital requirements. (*Northern Natural Gas Co.,* 25 FPC 431 at 438, 441 (1961)). (We observe, also, that Alabama-Tennessee's pleading expressly admits that it has invested the tax deferrals in plant (p. 15).

The Commission orders:

(A) Except as discussed above, the applications for rehearing filed in this proceeding present no issues of fact or law which were not fully considered by the Commission, or which upon now being considered require any change or modification of Opinion No. 417, and the applications are hereby denied.

(B) Alabama-Tennessee's request for stay is hereby denied.

(C) Finding paragraph (7) of Opinion No. 417 is modified to read as follows:

(7) Upon re-examination of the present policy of permitting a specific return of 1.5 percent to be earned upon the portion of the rate base equivalent in amount to accumulated "deferred tax" funds in Account 282, we find that Alabama-Tennessee and other natural gas companies similarly situated are not entitled to any return upon such customer-contributed capital and that, in view of our prior action in Opinion No. 360 in inadvertently denying any such return, there is no need to exclude the amount of such funds in Account 282 during the applicable test year in Docket No. G–19984 from the recognized rate base herein.

Commissioner Woodward *dissenting* for the reasons set forth in his dissenting statement filed herewith.

Commissioners Woodward and O'Connor *would grant rehearing* for the reasons stated in their dissents to Opinion No. 417, issued February 3, 1964. [31 FPC 222 and 232.]

Woodward, Commissioner, *dissenting:*

On February 3, 1964, when the original Opinion and Order issued in this proceeding, I filed a dissenting statement in which I concluded, *inter alia,* that natural gas companies should not be permitted to earn a rate of return upon that portion of the rate base equivalent to the reserve for accumulated deferred taxes resulting from normalization and that such reserve should be excluded from the rate base.

While correctly recognizing the absence of any cash cost to a company acquiring tax deferral funds, my initial position did not accord equitable weight to that element of risk to which such funds are subjected in their use to create new plant while the company remains solely accountable for deferred taxes. This uncompensated risk is sufficient, in my view, to compel a company to revert to straight-line depreciation raising essential funds in the capital market, in which event the reimbursement of capital costs would cover the risk factor.

Authorities hold that whether a company should use liberalized or straight-line depreciation for tax purposes is a matter solely within management's discretion, not subject to compulsion or control by a regulatory agency.[1]

In order to achieve its objective, Congress provided incentives to the taxpayer sufficiently attractive not only to encourage him to utilize liberalized depreciation but also to invest the funds thereby made available in new plant. I am now convinced that effectuation of the intent of Congress requires allowance by the Commision of a return on the funds accumulated by tax normalization.

---

[1] *Central Hudson Gas & E. Co.,* 28 PUR 3d 317, 320 (N.Y.); *Niagara Mohawk Power Corp.,* 28 PUR 3d 171, 182 (N.Y.); *Hope Natural Gas Co.,* 23 PUR 3d 394, 400 (W. Va.); *Georgia Power Co.,* 36 PUR 506, 512 (Ga.); *Piedmont Natural Gas Co.,* 34 PUR 3d 1, 15 (N.C.).

As recognized by the Commission in the *Northern Natural Gas Company* case, 25 FPC at 438: "We must . . . reject the contention of our staff that the accrued deferred taxes should be included in the capital structure at zero percent interest. The treatment suggested by staff would deprive the company of any earnings from the accumulated deferred taxes and would have the same practical effect as though the amount of deferred taxes were excluded from the rate base. This would deprive the company of most of the benefits arising from use of liberalized depreciation". The Court of Appeals for the District of Columbia reached a similar conclusion in its *en banc* decision in the recent *Panhandle* case.[2]

The Commission must allow "a sufficient profit to provide incentive to initial investment".[3] The adequacy of incentive is, of necessity, an individualized determination. I favor the granting of a rate of return which will yield gross revenues (*i.e.*, cost to ratepayers) in the same amount as would result from raising private capital equivalent to a company's deferred tax reserves.

With the modification developed herein, my initial dissenting statement is equally applicable in the instant proceeding. Rehearing should be granted and Opinion No. 417 and Order, issued February 3, 1964, should be reversed and set aside.

---

[2] *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 316 F. 2d 659 (D.C. Cir. 1963), Cert. denied, 375 U.S. 881 1963.

[3] *Panhandle Eastern Pipe Line Co.* supra.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168,[1] G-20435,[1] G-20577[2]

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CLARIFICATION AND PETITION FOR REHEARING

(Issued April 15, 1964)*

On March 16, 1964, The Superior Oil Company (Superior) filed a motion for modification and clarification and a petition for rehearing of the Commission order issued March 9, 1964, in the above-entitled proceedings.[3] In that order we denied Trunkline Gas Company (Trunkline) the relief requested by it in a petition for declaratory order filed on October 25, 1963, as supplemented on November 13, 1963. We also required Trunkline to recompute any payments it had made to Superior which were computed on the basis of lower rates than those in effect subject to refund herein, and to pay Superior any additional amounts required on the basis of such recomputation. Trunkline had requested the Commission to determine the Superior favored-nation increases involved here to be unlawful. Trunkline also requested permission to pay Superior on the basis of the applicable increased rate ceilings set forth in the policy statement pending determination of Superior's just and reasonable rates.

In the instant motion Superior contends that Trunkline should be required to pay interest at 7% on any deficiency in payment and that Trunkline should also pay Superior for any damages it may have sustained because of Trunkline's failure properly to pay Superior for gas taken by it. In the alternative, Superior requests this Commission to hold that it lacks jurisdiction over these matters.

---

[1] Consolidated with the Area Rate Proceeding in Docket No. AR64-2, *et al.*

[2] Consolidated with the Area Rate Proceeding in Docket No. AR61-2, *et al.*

*Rehearing denied, 31 FPC 1511. See order on remand issued June 16, 1965, 33 FPC 1268.

[3] Trunkline on March 31, 1964, filed an untimely answer to Superior's motion.

Superior in its answer to Trunkline's petition for a declaratory order did not request that Trunkline be required to make up any deficient payments with interest. The question was thus not before us when we issued our March 9 order. It is clear, however, that we have authority to require the payment of interest in appropriate cases. See *Mississippi River Fuel Corp.* v. *F.P.C.*, 281 F. 2d 919; and *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149. In view of Trunkline's unilateral action of reducing payments without approval of this Commission and the fact that Superior is obligated to make refunds of the collected amounts if ultimately found unjust or unreasonable, we conclude that interest should be required on amounts withheld (those amounts properly payable but not tendered by Trunkline). We shall therefore modify our March 9 order to require Trunkline to pay interest on the withheld amounts at the same rate provided under Superior's refund obligations. We do not believe, however, that we have power under the Natural Gas Act to adjudicate any claim for additional damages that Superior may have suffered as a result of Trunkline's actions. Our action herein is therefore without prejudice to any private action in law or in equity that Superior may have against Trunkline.

The Commission orders:

(A) For the reasons set forth above, the order of March 9, 1964 in the above-entitled proceedings is hereby modified to require Trunkline to pay interest on the withheld amounts at the rate provided in Superior's undertakings in these dockets to the date of payment required in accordance with paragraph (C) of the March 9 order, and the time periods within which Trunkline shall comply with the provisions of paragraphs (C) and (D) of the March 9 order are hereby extended to 30 and 45 days, respectively, from the date of issuance of this order.

(B) Except to the extent provided in paragraph (A) hereof, Superior's motion and petition filed on March 16, 1964, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP64–163

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

On January 23, 1964, Humble Gas Transmission Company (Applicant), filed in Docket No. CP64–163 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring station in Adams County, Mississippi, for the sale of natural gas to Mississippi Gas Corporation for resale within a service area lying to the southeast of Natchez, Mississippi, all as more fully set forth in the application.

Third year peak day and annual requirements for gas are estimated to be 97 Mcf and 7,436 Mcf respectively. The proposed service will be rendered under Applicant's Rate Schedule G–1 of its FPC Gas Tariff, Original Volume No. 1.

The estimated total cost of the proposed facilities is $1,555, which cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Humble Gas Transmission Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 29, 1963, in Docket No. CP63-56 (29 FPC 162).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Humble Gas Transmission Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP61-274

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

Mississippi River Transmission Corporation (Mississippi River) filed on February 3, 1964, in Docket No. CP61-274, an application, and a supplement thereto on February 7, 1964, to amend the order of the Commission issued July 21, 1961, in the above docket (last amended December 18, 1963). The order to be amended granted Mississippi River a certificate of public convenience and necessity authorizing among other things the transportation of natural gas through its system to provide cushion or base storage gas to Storage Corporation (Storage) for the development of a natural gas storage project in the St. Jacob Field near St. Jacob, Illinois, and the construction and operation of certain facilities to enable the transportation to and the injection of natural gas into the storage reservoir, all as more fully set forth in the application and supplement on file with the Commission.

In the application to amend, as supplemented, Mississippi River seeks authorization: (1) to install and operate a 300 Hp field compressor unit and to defer the installation of a 550 Hp compressor unit previously authorized, (2) to increase the volume limitations imposed in the order of July 21, 1961, to a total of 6,000,000 Mcf for the field rather than 3,000,000 Mcf, and to permit the injection of 2,000,000 Mcf annually instead of 1,000,000 Mcf, and (3) to extend the time for installation of authorized facilities to March 31, 1965.

Due notice of the filing of the application to amend and supplement thereto and opportunity for hearing thereon has been given by publication in the Federal Register on March 26, 1964 (29 F.R. 3786). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued July 21, 1961, in Docket No. CP61-274 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued July 21, 1961, in Docket No. CP61-274 be and the same is hereby further amended by authorizing Mississippi River: (1) to install and operate a 300 Hp field compressor unit and to defer the installation of the 550 Hp compressor unit previously authorized, (2) to increase the volume limitations imposed in said order of July 21, 1961, to a total of 6,000,000 Mcf for the field rather than 3,000,000 Mcf, and to permit the injection of 2,000,000 Mcf annually instead of 1,000,000 Mcf, and (3) to extend the time for installation of authorized facilities to March 31, 1965.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-173

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

On February 3, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-173 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point consisting of a tap and meter station on its existing transmission facilities in Muscatine County, Iowa, and the sale and delivery of natural gas to Iowa Southern Utilities Company (Iowa Southern) for resale and distribution by it in the Community of Letts, Iowa, all as more fully described in the application on file with the Commission.

Applicant proposes the new delivery point and sale of additional volumes of natural gas to Iowa Southern to meet the third-year peak day and annual volume requirements of the Community of Letts, estimated to be 212 Mcf and 21,004 Mcf, respectively. The proposed additional volumes of gas will not increase Iowa Southern's contract demand.

The estimated cost of the proposed facilities is $16,540, and will be defrayed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed construction and operation of facilities, and the sale and delivery of natural gas by Applicant to Iowa Southern as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction and operation of facilities, and sale of natural gas by Applicant to Iowa Southern are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act, and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding authorizing the construction and operation of facilities and the sale and delivery of natural gas to Iowa Southern as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62-307

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

On February 17, 1964, Northern Natural Gas Company (Northern) filed in Docket No. CP62-307 an application to amend the order of the Commission issued March 18, 1963, 29 FPC 530, in said docket authorizing among other things the construction by March 18, 1964, of 1.5 miles of 6-inch to 12-inch pipeline and the installation of a 550 Hp compressor unit in order to test and develop the Vincent Underground Storage Field in Humboldt, Webster and Wright Counties, Iowa, at a total estimated cost of $209,600. Northern seeks, by the subject application to amend, authorization to extend the date for completion of construction from March 18, 1964, to December 31, 1964, to replace approximately 1,000 feet of 4-inch tie-over pipeline with 8-inch, and to install an additional 550 Hp compressor unit for the injection of gas in said Storage Field, all as more fully set forth in the application to amend on file with the Commission.

Northern states that the larger tie-over pipeline and the additional compressor unit are necessitated by a decrease in operating pressures and will not affect the total authorized volume of 5,000 MMcf for the testing and development of the Storage Field. The revised estimated total cost of facilities is $417,300.

Due notice of the filing of the application to amend and opportunity for hearing has been given by publication in the Federal Register on March 19, 1964 (29 F.R. 3551). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued March 18, 1963, in Docket No. CP62-307, granting Northern certain certificate authorizations be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 18, 1963, in Docket No. CP62-307 be and the same is hereby amended by authorizing Northern to replace approximately 1,000 feet of 4-inch tie-over pipeline with 8-inch pipeline, to install an additional 550 Hp compressor unit, and to extend the date for completion of facilities from March 18, 1964, to December 31, 1964, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; OCEAN DRILLING & EXPLORATION COMPANY (OPERATOR), ET AL., DOCKET NOS. CI60-743, CI61-1469, CI61-1708

ORDER CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

On January 23, 1964, Ocean Drilling & Exploration Company (Odeco) filed an offer of settlement and petition requesting that the above-entitled Odeco dockets be severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, (hereinafter referred to as the Union Texas proceeding) and that certificates of public convenience and necessity be issued to Odeco in accordance with its applications and settlement proposal.

On January 31, 1964, the Commission staff filed an answer to Odeco's petition urging rejection of the settlement proposal and denial of the petition. Specifically, staff objected to the offer for its failure to provide for refunds of amounts collected by Odeco under its Rate Schedule No. 3 (Docket No. CI60-743) above that which would have been collected at the settlement rate proposed, 19¢ per Mcf.[1]

Staff argued that since the Commission approved the Humble Oil & Refining Company (Humble) settlement by order issued in these proceedings on August 7, 1963, it has approved the settlement of over one hundred additional dockets, and, with one exception, the settlements have provided for refunds of all amounts in excess of the settlement rates collected under temporary certificates which contained refund conditions. Staff contended that Odeco too should make refunds of excesses which it has collected under its Rate Schedule No. 3.

On February 17, 1964 the Philadelphia Gas Works Division of the United Gas Improvement Company (PGW) filed a letter with the Secretary indicating opposition to the settlement offer of Odeco. On February 28, 1964, Public Service Electric & Gas Company (PSE&G) filed a letter with the Secretary supporting the position of PGW.

On February 24, 1954, Odeco filed a supplement to its offer of settlement agreeing to make refunds which staff, in its answer, contended are required. Subsequent to the filing of Odeco's supplement, both PGW and PSE&G withdrew their opposition to Odeco's settlement offer.[2]

---

[1] All volumes expressed at 15.025 psia.

[2] The withdrawals of opposition were filed by PGM on March 25, 1964, and by PSE&G on April 1, 1964.

Odeco's settlement proposal, as now supplemented, is similar to recent settlements conditionally approved by the Commission in the Union Texas proceeding[3] and provides for the issuance of certificates of public convenience and necessity at a rate of 19¢ per Mcf for sales of gas from offshore south Louisiana under Odeco's FPC Gas Rate Schedule Nos. 3, 5 and 6; a rate-increase moratorium through March 31, 1968 (subject to the usual exceptions): extension of the take-or-pay make-up periods from 2 years to 4 years; refunds with interest to all amounts above the settlement rate collected since the dates of initial deliveries.

We find this proposal, as supplemented, to be in the public interest generally and shall approve it subject to the following reservations and conditions.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the supplement to the petition and offer was filed, February 29, 1964. This has been a requirement in all of our orders approving settlements arising out of the Union Texas proceeding.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, will be made during the moratorium period at a rate no higher than the rate in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in this matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The purchaser in each case is Transcontinental Gas Pipe Line Corporation (Transco). The refunds to be received as a result of the settlement of Docket Nos. CI60-745 and CI61-1469 will be passed on to Transco's customers. Transco will also adjust its rates to reflect the reduced gas purchase costs resulting from the settlement of these two dockets.

However, the flow through provisions of our order in the recent Transco rate settlement in Docket No. RP61-13[4] do not refer specifically to Docket No. CI61-1708. Therefore, in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and reductions in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest that it receives as a result of the settlement of this docket, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs which result from the settlement of Docket No. CI61-1708. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlement of Docket No. CI61-1708 in a special account subject to further orders of the Commission.

---

[3] See *e.g.* orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*

[4] *Transcontinental Gas Pipe Line Corporation*, Docket No. RP61-13, 27 FPC 187 (1962).

In accordance with the above we shall sever Docket Nos. CI60–745, CI61–1469 and CI61–1708 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and issue certificates of public convenience and necessity in accordance with the applications, settlement proposal, as supplemented, and conditions of this order.[5]

The Commission finds:

(1) Ocean Drilling & Exploration Company is a "natural-gas company" within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Odeco is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the report and account for the refunds, interest and purchased gas cost reductions as ordered below.

The Commission orders:

(A) The matters in Docket Nos. CI60–743, CI61–1469 and CI61–1708 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(B) Certificates of public convenience and necessity are hereby issued to Ocean Drilling & Exploration Company upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal, as supplemented, and this order, and for the construction and operation of any facilities described in the application and settlement proposal, as supplemented, herein.

(C) The certificates granted by paragraph (B) above, are granted upon the express condition that Odeco comply fully with the terms of this order and the settlement proposal, as supplemented, which settlement is expressly approved, under the conditions of this order.

(D) Within 90 days from the date of issuance of this order, Odeco shall refund to the pipeline purchaser the difference between the amounts collected for gas delivered since the dates of initial deliveries and the amounts that would have been collected under the settlement rate for gas delivered since such dates together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the supplement to the settlement proposal was filed, February 29, 1964.

---

[5] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding, concluded July 25, 1963 and the Examiner's Decision was issued on January 14, 1964. The matter is now before the Commission on exception to the Examiner's Decision.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Odeco shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Odeco with all the terms of this order and of the settlement proposal, as supplemented, Odeco shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as Odeco continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94 (b) and the detailed submittal requirements of Part 154. 94 (f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposal, as supplemented.

(I) The grant of certificates herein and approval of the settlement proposal, as supplemented, is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Odeco, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Odeco, the Commission staff, or any affected party herein in any other proceeding.

(J) Within 15 days from the date of receipt of refunds and interests applicable to Docket No. CI61–1708 required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs which result from the settlement of Docket No. CI61–1708. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold in a special account such refunds and interest resulting from the settlement of Docket No. CI61–1708.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. G–12321

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1964)

United Gas Pipe Line Company (United Gas) filed an application on January 21, 1964, and a supplement thereto on February 10, 1964, to amend an order of the Commission issued September 10, 1957, which granted a certificate of public convenience and necessity authorizing among other things the sale up to 2500 Mcf of natural gas on a maximum day to Southern Pine Lumber Company (Southern Pine) at Diboll, Texas. The application to amend seeks authorization (a) to increase the total maximum day deliveries to 4100 Mcf and (b) rearrange the existing meter setting and to install two additional meters at an estimated net cost of $10,331, all as more fully set forth in the application to amend on file with the Commission.

Applicant states that the additional gas is required to meet the fuel and processing needs of a new plywood fabricating plant of Southern Pine and U.S. Plywood Corporation, to be operated by Southern Pine.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 7, 1964 (29 F.R. 3182). No protest or petition to intervene has been filed in the proceeding concerning the amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued September 10, 1957, in Docket No. G–12321 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 10, 1957, in Docket No. G–12321 be and the same is hereby amended by authorizing United Gas Pipe Line Company to rearrange and install metering facilities as requested and to sell and deliver up to 4100 Mcf of natural gas on a maximum day to Southern Pine Lumber Company instead of 2500 Mcf as previously authorized, all as hereinbefore described, and as more fully set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COMMISSION LETTER ORDER OF OCTOBER 30, 1963, DIRECTING RESPONSES TO TWO QUESTIONNAIRES:

(I) SUMMARY LISTS OF RESPONDENT'S (1) GAS AND OIL PRODUCTION AND (2) FIELD AND CYCLING PLANTS BY PRICING AREAS—YEAR 1962 AND

(II) COSTS AND STATISTICS PERTAINING TO OIL AND GAS PRODUCTION, EXPLORATION, GAS SYSTEMS, AND FIELD GASOLINE AND CYCLING PLANT OPERATIONS—YEAR 1962

ORDER MODIFYING LETTER ORDER AND DENYING PETITION FOR RELIEF FROM FURNISHING GASOLINE PROCESSING PLANT DATA

(Issued April 16, 1964)

On February 6, 1964, Union Oil Company of California filed a petition seeking to be relieved of a reporting requirement, imposed by Commission's questionnaire issued to gas producers on October 30, 1963, which directs the respondents to provide cost and operating data for field gasoline and cycling plants operated by them or plants in which they have an interest. Union Oil contends that the task is too burdensome for it to undertake (it estimates 885 man-days are required) and further, that all of the plants it is responsible for reporting are located entirely within the borders of the State of California and sell natural gas only in that State.[1]

The questionnaire is designed to measure continental United States and production area investments, costs and expenses, revenues, and operations related to the natural gas production and processing activities of all the natural gas companies designated as respondents to the questionnaire. We would expect these data principally to be used as evidence in an investigatory area rate proceeding in which just and reasonable rates will be fixed for natural gas sold in interstate commerce. In the Permian Basin and South Louisiana area rate proceedings the Commission secured gasoline plant data only for respondents' plants in the pricing area in question. Since gas produced in California is entirely consumed within that State it does not become subject to Commission jurisdiction and there is no present occasion to conduct an area price proceeding for California. It is desirable to reduce a respondent's reporting burden where it is possible to do so without adversely affecting the objectives of scheduled or future area rate proceedings. It does appear possible to dispense with detailed reporting of data where a respondent's plants are located in the State of California, thereby substantially easing Union's burden, although the Commission would not now be willing to forego detailed data for a plant which is located in one of its pricing areas but makes no jurisdictional sales. Moreover, the Commission desires that Union Oil supply certain of the summary data for its gasoline plant activities viewed as a separate department, rather than in an undifferentiated category "all other activities" as Union Oil proposes for certain items. The separate summary reporting of gasoline plant costs may facilitate analysis of certain continental U.S. costs, such as general corporate investments and expenses, departmental costs, and income tax costs. Accordingly, Union may limit its questionnaire processing plant response to the information required by the following parts of the questionnaire:

Schedule	Sheet(s)	Column(s)	Line(s)
K	1	(1), (2), (3), (4), (5), (6), (7), (10), (13)	07.
L	2	(1)	17 through 24, inclusive.
N	1	(1)	01 through 30, inclusive.
O	1	(1)	15 through 21, inclusive.
O	2	(1)	15 through 21, inclusive.
M	9	(1) through (16)	07.
M	10	(1) through (16)	07.

The Commission orders:

The petition of Union Oil Company of California, filed on February 6, 1964, seeking to be relieved of the requirement, contained in the above-entitled letter order and questionnaire II that its report data concerning its field gasoline and cycling plants located in California is denied, except to the extent relief is provided herein.

---

[1] In a separate report, Union Oil advised us that it is engaged in oil and gas production in 20 of the 26 producing areas described in the questionnaire instructions, pp. 1-5(a).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HASSIE HUNT TRUST, OPERATOR, ET AL., DOCKET NO. G-19115; H. L. HUNT, OPERATOR, ET AL., DOCKET NO. G-19116; HUNT OIL COMPANY, DOCKET NO. G-19117; WILLIAM HERBERT HUNT TRUST ESTATE, OPERATOR, DOCKET NO. G-19118; LAMAR HUNT TRUST ESTATE, DOCKET NO. G-19119; GEORGE W. GRAHAM, INC., OPERATOR, ET AL., DOCKET NO. G-19123; PLACID OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G-19124; PLACID OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G-19125

ORDER SEVERALLY DENYING APPLICATION FOR RECONSIDERATION OF ORDER MODIFYING OPINION NO. 412-A AND MOTION FOR STAY OF PRICE MORATORIUM

(Issued April 17, 1964)

On March 20, 1964, the above-listed producers filed an application for rehearing and reconsideration of our order issued February 24, 1964, in these proceedings.[1] Applicants request that we either delete the price moratorium ordered or, in the alternative, that we grant a stay thereof pending judicial review. In addition applicants protest our requirement that they execute and file an agreement and undertaking to comply with the refund requirement specified in Ordering Paragraph (D) of Opinion No. 412-A.

The price moratorium as here applied precludes the filing of all price increases in excess of 18 cents per Mcf for the sales in Districts No. 2 and 4 and 19 cents per Mcf in District No. 3 pending the issuance of a final decision in the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64-2, or until January 1, 1968, whichever is earlier. In contesting the condition applicants argue that we have no authority to prevent producers from filing contractually authorized rate changes under Section 4. They also contend that there is no support for the conclusion that rate filings above the specified levels could have "a substantial price impact on other gas purchase contracts in the area under price redetermination clauses," claiming that many sales are being made to many pipelines at rates in excess of these levels in the areas at issue at the present time. Finally, applicants contend that the action of the Commission in prescribing the moratorium is contrary to their Constitutional rights, powers and privileges.

We have carefully considered the allegations contained in the application for rehearing. In our opinion, the moratorium previously imposed must be maintained if the consuming public is to be afforded the "complete, permanent and effective bond of protection from excessive rates and charges" which the Supreme Court has described as the purpose of the Natural Gas Act.[2] The price-conditioning technique there spelled out is the means of protecting the public interest by keeping gas at triggering prices from entering interstate commerce in the interim period until just and reasonable area rates are fixed. The purpose of the Section 7 condition on the initial price can be effectively frustrated if six months later the producer is free to increase his price to levels that will raise the level of price redetermination rates in the area. In such circumstances the *CATCO* command to "hold the line" would become almost impossible of fulfillment. The imposition of a moratorium on the certificate at the maximum price which, for the reasonable future, can be found to be consistent with the public interest is, we believe a practical method of meeting the Commission's obligation with fairness to both the producers and the public. The recent opinion of the Supreme Court in *F.P.C. v. H. L. Hunt, et al.*,[3] while not passing directly on the extent of our authority to condition permanent certificates, endorses the basic public interest reasons for our condition herein and expressly affirms our power to modify "contract provisions as a condition of the granting of a certificate." (slip op. p. 11)

---

[1] "Order Granting Application For Reconsideration and Modifying Opinion and Order."

[2] *Atlantic Ref. Co. v. P.S.C. of New York* (*CATCO*), 360 U.S. 378, 389.

As to the basis for the specific moratorium levels of 18 cents in District Nos. 2 and 4 and 19 cents in District No. 3 applied in these proceedings, our files of producer rate schedules together with records in previous cases[4] reveal that the three highest effective rates in District Nos. 2, 3, and 4, excluding Hunt's rates, are:[5]

District No. 2: 18.0¢/Mcf, Florida Gas Transmission Co.; 18.0¢/Mcf, Lone Star Gathering Co.; 18.0¢/Mcf, Natural Gas Pipeline Company of America.

District No. 3: 20.0¢/Mcf. Trunkline Gas Co.; 21.5¢/Mcf, Texas Electric Power Co.; 19.0¢/Mcf, Florida Gas Transmission Co.

District No. 4: 19.5¢/Mcf, Florida Power & Light Co.; 18.0¢/Mcf, South Texas Natural Gas Gathering Co.; 18.0¢/Mcf, Natural Gas Pipeline Company of America.

Natural Gas Pipeline Company of America, the purchaser here, has no two-party favored-nation clauses in its gas supply contracts which would be triggered by the instant sales. There are, moreover, no third-party favored-nation clauses in these areas. The purpose of our condition is to prevent the triggering effect on the numerous price redetermination clauses which do exist in the subject areas. Price redetermination clauses customarily provide for the rate to be redetermined on the basis of the highest prices to three different purchasers in a given area. While it is, of course, difficult to gauge with exact precision the adverse effect of permitting higher rates to go into effect here, any price above the lowest of the three highest prices in each area, as set forth above, would raise the redetermination level of rates of other producers in these areas having price redetermination clauses in their gas sales contracts. For this reason we have chosen the lowest of the three highest prices in each area as the price beyond which the producers in this case should not be permitted to go. In so acting, we are simply following the Supreme Court's admonition in *CATCO* to "hold the line."

Accordingly, the application for rehearing on the price moratorium will be denied. For the reasons set forth in the February 24, 1964, order the motion for stay of the moratorium also must be denied.

Applicants further contend that we erred in requiring them to execute an agreement to include interest at 7 percent per annum on all amounts refunded pursuant to Paragraph (D) of the Order accompanying Opinion No. 412-A. They allege that as the entire question of interest on the refund is being litigated, they should not be made to submit an express agreement at this time to include 7 percent interest on excess charges continued to be collected under our stay. The interest rate herein designated is the same as generally imposed for all funds collected subject to refund. The application for modification of the requirement is denied.

---

[3] No. 273, Oct. term 1963, 32 U.S.L. Week 4294 (March 30, 1964), 376 U.S. 515.

[4] Producers making intrastate sales are not required to have rate schedules on file with this Commission. The intrastate sales set forth in the table were gleaned from previous cases.

[5] If Hunt has any factual basis for taking a contrary view, it is incumbent upon them to file a motion to that effect within 30 days of the date of issuance of this order clearly setting forth their basis for any factual disagreement.

The Commission orders:

(A) The application for rehearing and reconsideration filed March 20, 1964, is denied.

(B) The motion for stay of the price moratorium provided in Paragraph (E) of the Order accompanying Opinion No. 412-A, as amended, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

NEKOOSA-EDWARDS PAPER COMPANY, PROJECT NO. 2255

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued April 17, 1964)

On October 21, 1963, Nekoosa-Edwards Paper Company, licensee for Project No. 2255, filed revised Exhibit J and K drawings to indicate changes in the location of the transmission line right-of-way.

The licensee states that at the time its application for license was filed, it advised our staff that part of the transmission line shown on Exhibit K, Sheet 3 of 3 (FPC No. 2255-4) transversed a platted area designated for residential use and that sometime in the future the line would be re-routed so as not to interfere with the residential development as it progressed. The changes in the location of the line will not affect the operation of the project.

Pursuant to the licensee's request, our staff has revised Exhibits J and K approved by the Commission on September 1, 1959, to show the changes indicated on the Exhibits J and K drawings filed on October 21, 1963.

The Commission finds:

Exhibit J, Sheet 1 of 1 (FPC No. 2255-1) and Exhibit K, Sheet 3 of 3 (FPC No. 2255-4), on file with the Commission, revised in conformity with the Exhibit J and K drawings filed October 21, 1963, conform to the Commission's rules and regulations and as so revised should be approved as part of the license for the project.

The Commission orders:

The revised Exhibits J and K described in the above finding are hereby approved as part of the license for Project No. 2255.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

PLACER COUNTY WATER AGENCY, PROJECT NO. 2079

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued April 17, 1964)

On January 22, 1964, Placer County Water Agency, licensee for Project No. 2079, filed for Commission approval revised Exhibits J and L drawings for the French Meadows development of the project. The filings, which were made pursuant to Articles 2 and 3 of the license, provide for the elimination of the surge shaft near the downstream portal of the French Meadows-Hell Hole Tunnel.

Through studies made by Pacific Gas & Electric Company, contractor for the purchase of the project power output, PG&E developed definite criteria for the operation of French Meadows development. On the basis of such criteria, the Licensee concluded that the surge shaft is not necessary for the operation of the French Meadows plant and related facilities; that its elimination will not impair the safe operation of the unit or diminish the plant's or the project's capacity to produce electric energy; and that such elimination will result in an estimated reduction of $240,000 in the project's capital cost.

Commission staff have reviewed the submitted designs and surge calculations and conclude that the elimination of the surge shaft from the proposed French Meadows-Hell Hole Tunnel is not detrimental to project operation and in view of the use of a relief valve at the turbines, will not result in excessive positive or negative pressures under normal load acceptance and normal or emergency load rejection operating conditions. The licensee's reduction of $240,000 in the estimated capital cost of the project is reasonable.

The Commission finds:

(1) The following revised exhibits conform to the Commissions's rules and regulations and should be approved as part of the license for the project:

Exhibit J Sheet 1 revised January 13, 1964 (FPC No. 2079-184) entitled "General Project Map."

Exhibit L Sheet 8 revised January 13, 1964 (FPC No. 2079-185) entitled "French Meadows-Hell Hole Tunnel-Plan and Profile."

Exhibit L Sheet 9 revised January 13, 1964 (FPC No. 2079-186) entitled "French Meadows Power Plant and Penstock."

(2) The following described exhibits, now part of the license and which have been superseded are hereby eliminated from the license for the project:

Exhibit J Sheet 1 revised August 1, 1962 (FPC No. 2079-171) entitled "General Project Map."

Exhibit L Sheet 8 revised August 1, 1962 (FPC No. 2079-138) entitled "French Meadows-Hell Hole Tunnel-Plan and Profile."

Exhibit L Sheet 9 revised August 1, 1962 (FPC No. 2079-139) entitled "French Meadows Power Plant-Penstock and Surge Shaft."

The Commission orders:

The revised exhibits described in filing (1) above are hereby approved as part of the license for Project No. 2079, and the exhibits described in finding (2) above as being superseded are hereby eliminated from the license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NOS. 1893, 1913 AND 2140

ORDER DETERMINING NET CHANGES IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND ACCRUED DEPRECIATION, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued April 17, 1964)

Public Service Company of New Hampshire, Licensee for project Nos. 1893, 1913 and 2140,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming, for the period from January 1, 1957, through December 31, 1961, net increases in the actual legitimate original cost of Project No. 1893 of $192,482.94, the actual legitimate original cost of Project No. 1913 of $58,539.47 and a net decrease in the actual legitimate original cost of Project No. 2140 of $4,773.48.[2]

---

[1] All three projects are located in the State of New Hampshire on the Merrimack River and when acquired by the Licensee were constructed developments, although [Footnote 1 continued on p. 950.]

Commission's staff conducted a field examination of the licensee's books and records for the three projects for the period from January 1, 1957, through December 31, 1961. As a result of the examination, staff proposed, subject to Commission's approval, certain adjustments agreed to by the licensee by letter dated December 6, 1962, as follows: (1) a reduction of $2,159.00 in the claimed actual legitimate original cost of Project No. 1893, as of December 31, 1961, due to retirement of project land; (2) a reduction of $137.20 in the claimed actual legitimate original cost of Project No. 1913, due to elimination of the cost of relocating existing fence.

The accounting disposition of the proposed adjustments is to be accomplished by the following composite journal entry:

Account No.	Title	Debit	Credit
271	Contributions in aid of construction	$2,159.00	
101	Electric plant in service Project No. 1893		$2,159.00
216	Unappropriated earned surplus	137.20	
101	Electric plant in service Project No. 1913		137.20

No adjustments were proposed for Project No. 2140.

The staff also examined net changes in the accrued depreciation for the period from January 1, 1957, through December 31, 1961, and accepted without any adjustments the net increase in the accrued depreciation as recorded by the licensee for each of the projects as hereinafter set forth.[3]

The New Hampshire Public Service Commission was advised by letter of this Commission dated February 7, 1963, of the proposed adjustments, and resulting project costs and accrued depreciation. By letter of February 12, 1963, it indicated no objection to the adjustments.

Project No. 1913 was substantially redeveloped upon Licensee's acquisition thereof. Project No. 1893 may be described as Licensee's Amoskeag Plant; Project No. 1913 may be described as Licensee's Hooksett Plant; and Project No. 2140 may be described as Licensee's Garvins Falls Plant. The respective licenses authorizing the operation and maintenance of the above projects, issued pursuant to Section 4(e) of the Federal Power Act, provide for the determination by the Commission of the actual legitimate original cost of and accrued depreciation on the projects. By their respective provisions, those licenses are for the following terms: Project Nos. 1893 and 1913 for a period effective January 1, 1938 and terminating June 30, 1970; and Project No. 2140 for a period effective January 1, 1938 and terminating December 31, 1975.

[2] The Commission, by order issued September 26, 1958 (20 FPC 425) determined, *inter alia*, the actual legitimate original costs as of December 31, 1956, in the amounts of $2,067,239.85 for Project No. 1893, $409,088.60 for Project No. 1913, and $1,000,182.08 for Project No. 2140.

[3] By order of June 30, 1961 (25 FPC 1314) the Commission determined the accrued depreciation as of December 31, 1956, to be: $278,225 for Project No. 1893, $101,050 for Project No. 1913, and $332,687 for Project No. 2140. That order also directed licensee to make provision for annual depreciation at increased depreciation rates, beginning January 1, 1960, to 2.383 (percent) for Project No. 1893, 1.801 (percent) for Project No. 1913, and 2.576 (percent) for Project No. 2140.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments, including the accounting dispositions and resulting project costs and project accrued depreciation, and the New Hampshire Public Service Commission, by its concurrence, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) The net changes in the actual legitimate original cost of the three projects for the period from January 1, 1957, to December 31, 1961, are: net increases of $190,323.94 for Project No. 1893 and of $58,402.27 for Project No. 1913, respectively, and a net decrease of $4,773.48 for Project No. 2140, classified by primary plant accounts as shown in the attached Schedules I, II, and III, respectively.

(4) As of December 31, 1961, the actual legitimate original cost is $2,257,563.79 for Project No. 1893, $467,490.87 for Project No. 1913, and $995,408.60 for Project No. 2140, classified by primary plant accounts as shown on attached Schedules I, II and III, respectively.

(5) The net increases in the project accrued depreciation for the period from January 1, 1957, to December 31, 1961, are: $148,975 in the case of Project No. 1893, $14,049 in the case of Project No. 1913, and $22,970 in the case of Project No. 2140, classified by functions as shown on the attached Schedules I, II and III, respectively.

(6) As of December 31, 1961, the accrued depreciation balances are: Project No. 1893, $427,200, Project No. 1913, $115,099, and Project No. 2140, $355,657, all classified by functions on the attached Schedules I, II and III, respectively.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary plant accounts for each of the projects, as of December 31, 1961, classified by primary plant accounts, as shown on attached Schedules, in the total amounts of $2,257,563.79 for Project No. 1893, $467,490.87 for Project No. 1913, and $995,408.60 for Project No. 2140.

(D) Licensee, to the extent that it has not already done so, shall establish and maintain for each project accrued depreciation accounts as of December 31, 1961, in the amounts and classified by functions, as shown in the attached Schedules, in the following amounts: $427,200 for Project No. 1893, $115,099 for Project No. 1913, and $355,657 for Project No. 2140.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of the adjusting entries for each of the two affected projects, Nos. 1893 and 1913, showing compliance therewith.

SCHEDULE I

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, PROJECT NO. 1893

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED PROJECT COSTS AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTIONAL GROUPS AS OF DEC. 31, 1956; CLAIMED CHANGES FOR THE PERIOD JAN. 1, 1957-DEC. 31, 1961, WITH ADJUSTMENTS THERETO; AND ALLOWED PROJECT COSTS AND PROVISION FOR DEPRECIATION AS OF DEC. 31, 1961

Account		Approved cost as of Dec. 31, 1956 [1]	Plant changes Jan. 1, 1957 to Dec. 31, 1961			Allowed Cost as of Dec. 31, 1961
No.	Title		Net as claimed	As adjusted	As allowed	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	ACTUAL LEGITIMATE ORIGINAL COST					
	Hydraulic Production					
330	Land and land rights	$357,006.16	----------	$(2,159.00)	$(2,159.00)	$354,847.16
331	Structures and improvements	104,272.15	$2,865.72	----------	2,865.72	107,137.87
332	Reservoirs, dams, and waterways	1,122,258.16	20,363.07	----------	20,363.07	1,142,621.23
333	Water wheels, turbines, and generators	321,493.35	69,169.38	----------	69,169.38	390,662.73
334	Accessory electric equipment	81,937.27	88,655.23	----------	88,655.23	170,592.50
335	Miscellaneous powerplant equipment	14,727.84	11,429.54	----------	11,429.54	26,157.38
	Total hydraulic production	2,001,694.93	192,482.94	(2,159.00)	190,323.94	2,192,018.87
	Transmission					
352	Structures and improvements	17,346.83	----------	----------	----------	17,346.83
353	Station equipment	42,270.05	----------	----------	----------	42,270.05
355	Poles and fixtures	159.82	----------	----------	----------	159.82
356	Overhead conductors and devices	503.22	----------	----------	----------	503.22
358	Underground conductor and devices	5,265.00	----------	----------	----------	5,265.00
	Total transmission	65,544.92	----------	----------	----------	65,544.92
	Total	2,067,239.85	192,482.94	(2,159.00)	190,323.94	2,257,563.79
	ACCUMULATED PROVISION FOR DEPRECIATION					
	Hydraulic production	258,866.00	142,410.00	----------	142,410.00	401,276.00
	Transmission	19,359.00	6,565.00	----------	6,565.00	25,924.00
	Total	278,225.00	148,975.00	----------	148,975.00	427,200.00

[1] See Commission Order issued Sept. 26, 1958 (20 FPC 425).
( ) Denotes reduction.

SCHEDULE II

PROJECT No. 1913 PUBLIC SERVICE CO. OF NEW HAMPSHIRE

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED PROJECT COSTS AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTIONAL GROUPS AS OF DEC. 31, 1956, CLAIMED CHANGES FOR THE PERIOD JAN. 1, 1957–DEC. 31, 1961, WITH ADJUSTMENTS THERETO AND ALLOWED PROJECT COST AND PROVISION FOR DEPRECIATION AS OF DEC. 31, 1961

Account		Approved cost as of Dec. 31, 1956[1]	Plant net as claimed	Changes Jan. 1, 1957 to Dec. 31, 1961		Allowed cost as of Dec. 31, 1961
No.	Title			As adjusted	As allowed	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	ACTUAL LEGITIMATE ORIGINAL COST					
	Hydraulic Production					
330	Land and land rights	$20,000.00	$12.00		$12.00	$20,012.00
331	Structures and improvements	30,549.80	955.70	(137.20)	818.00	31,368.30
332	Reservoirs, dams, and waterways	244,905.71	25,744.52		25,744.52	270,650.23
333	Water wheels, turbines, and generators	94,759.35	4,286.37		4,286.37	99,045.72
334	Accessory electric equipment	13,075.52	27,833.00		27,833.00	40,908.52
335	Miscellaneous powerplant equipment	5,798.22	(292.12)		(292.12)	5,506.10
	Total	409,088.60	58,539.47	(137.20)	58,402.27	467,490.87
	ACCUMULATED PROVISION FOR DEPRECIATION					
	Hydraulic production	101,050.00	14,049.00		14,049.00	115,099.00

---

[1] See Commission Order issued Sept. 26, 1958 (20 FPC 425).

( ) Denotes reduction.

SCHEDULE III

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, PROJECT NO. 2140

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED PROJECT COSTS AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTIONAL GROUPS AS OF DEC. 31, 1956, CLAIMED CHANGES FOR THE PERIOD JAN. 1, 1957–DEC. 31, 1961, WITH ADJUSTMENTS THERETO AND ALLOWED PROJECT COSTS AND PROVISION FOR DEPRECIATION AS OF DEC. 31, 1961

Account		Approved cost as of Dec. 31, 1956[1]	Changes Jan. 1, 1957 to Dec. 31, 1961			Allowed cost as of Dec. 31, 1961
No.	Title		Plant claimed	As adjusted	As adjusted	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	ACTUAL LEGITIMATE ORIGINAL COST					
	Hydraulic Production					
330	Land and land rights	$80,361.97	($531.00)	------------	($531.00)	$79,830.97
331	Structures and improvements	217,369.91	(40.14)	------------	(40.14)	217,329.77
332	Reservoirs, Dams and Waterways	279,232.32	------------	------------	------------	279,232.32
233	Water wheels, turbines, and generators	266,849.18	3,665.57	------------	3,665.57	270,514.75
334	Accessory electric equipment	48,063.20	3,228.75	------------	3,228.75	51,291.95
335	Miscellaneous Powerplant equipment	13,900.27	1,757.79	------------	1,757.79	15,658.06
	Total hydraulic production	905,776.85	8,080.97	------------	8,080.97	913,857.82
	Transmission					
352	Structures and improvements	28,978.88	(1,043.45)	------------	(1,043.45)	27,935.43
353	Station equipment	65,426.35	(11,811.00)	------------	(11,811.00)	53,615.35
	Total transmission	94,405.23	(12,854.45)	------------	(12,854.45)	81,550.78
	Total	1,000,182.08	(4,773.48)		(4,773.48)	995,408.60
	ACCUMULATED PROVISION FOR DEPRECIATION					
	Hydraulic production	[2] 297,644.00	38,552.00	------------	38,552.00	336,196.00
	Transmission	35,043.00	(15,582.00)		(15,582.00)	19,461.00
	Total	332,687.00	22,970.00	------------	22,970.00	355,657.00

---

[1] See Commission Order issued Sept. 26, 1958 (20 FPC 425).
[2] See Commission Order issued June 30, 1961 (25 FPC 1314).
( ) Denotes reduction.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON, PROJECT NO. 2149

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES

(Issued April 17, 1964)

On August 1, 1963, Public Utility District No. 1 of Douglas County, Washington, filed for Commission approval revised Exhibits L drawings and Exhibit M for its proposed Wells Project No. 2149 located on the Columbia River, Washington. The exhibits were filed pursuant to Article 29 of the license for the project and supersede certain exhibits now part of the license.

The revised Exhibit L drawings and Exhibit M show the results of continuing studies made by the licensee of the Wells project in order to: (1) satisfy fishery requirements; (2) resolve complex hydraulic conditions resulting from combining in one structure a power plant, spillway and fish handling facilities comprising a so-called Hydro-Combine; (3) make structural changes due to rearrangement of the switching equipment to make it more readily serviced by the gantry cranes; and (4) to eliminate an impervious cutoff under the east embankment to bedrock, resulting from additional subsurface explorations.

The revised Exhibit L drawings and Exhibit M show also that as a result of model studies; a portion of the generator structures was modified, the elevation of the spillway apron was raised and its shape modified, the location of the draft tube gates were changed, the spillway gates were slightly modified to eliminate vibration, and the design of the switching structures and their arrangement were modified to occupy less space on the top deck of the Hydro-Combine, thereby increasing the ability of the gantry cranes to handle the various equipment and perform the various functions required.

Fish handling facilities are incorporated in the Hydro-Combine and are the result of extensive model studies and coordination between the licensee and State and Federal fish authorities. By letters dated October 14, 1963, October 15, 1963, and November 18, 1963, the Washington State Department of Game, the Washington State Department of Fisheries, and the Department of the Interior, have given their respective approval to the revised Exhibit L drawings insofar as the drawings pertain to the functional aspects of the fish handling facilities. Details relating to the design of the fish handling facilities are still under study by the licensee and the State and Federal agencies mentioned above, and Commission approval herein of the revised Exhibit L drawings is restricted to their functional aspects only.

The license for the project presently authorizes an initial capacity comprising seven generating units of 70,585 kilowatts each, for a total of 494,095 kilowatts, or 659,000 horsepower for annual charge purposes. The licensee now proposes to enlarge the generator and transformer ratings to take advantage of a presently guaranteed increased horsepower output of each turbine of 120,700 horsepower rather than the 112,000 horsepower output originally guaranteed by the manufacturers of the generating units. The new generator ratings will be 77,425 kilowatt each or a total of 541,975 kilowatts for an initial installation of seven units. Accordingly, the license should be modified to show the new authorized installed initial capacity for annual charge purposes as 723,000 horsepower.

The Chief of Engineers, Department of the Army, has advised that the plans of the project structures affecting navigation are satisfactory and the tracing has been approved in accordance with the provisions of Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned, and also indicated that the proposed location of the future navigation lock shown on the tracing might be changed but that any new proposal would consider compatibility with other project features.

The Commission finds:

(1) The following described revised Exhibit L drawings, and revised Exhibit M, (Revised July 1963) entitled "General Description of Equipment" except insofar as the latter relates to the design of the fish handling facilities, conform

to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L-1	F.P.C. No.	Title
		WELLS HYDROELECTRIC PROJECT—COLUMBIA RIVER HYDRO—COMBINE
Sheet 1A	2149-64	General layout.
Sheet 2A	2149-65	Section through the unit.
Sheet 3A	2149-66	Section through the spillway.
Sheet 4A	2149-67	Section through the future unit.
Sheet 4B	2149-86	Section through the future unit.
Sheet 5A	2149-68	Section through the fish facilities.
Sheet 5B	2149-87	Section through the fish facilities.
Sheet 6A	2149-69	Longitudinal section.
Sheet 7A	2149-70	Plan view.
Sheet 8A	2149-71	Sectional plans.
Sheet 9A	2149-72	Sectional plans.
Sheet 9B	2149-88	Sectional plans.
Sheet 9C	2149-93	Sectional plans.
Sheet 10A	2149-73	Sectional plans.
Sheet 10B	2149-89	Sectional plans.
Sheet 11A	2149-74	Sectional plans.
Sheet 12A	2149-75	Sectional plans.
Sheet 13A	2149-76	Future units—Plans.
Sheet 13B	2149-90	Future units—Plans.
Sheet 13C	2149-94	Future units—Plans.
Sheet 14A	2149-77	Fish facilities.
		WEST EMBANKMENTS
Sheet 17-A	2149-80	Plans and sections.
		EAST EMBANKMENTS
Sheet 17-B	2149-91	Plans and sections.

(2) Exhibit L, Sheets 1, 2 and 3 (FPC Nos. 2149-42, -43 and -44, respectively) and Exhibit M filed April 25, 1961, now parts of the license for the project and which have been superseded, should be eliminated from the license for the project.

(3) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 659,000 horsepower to 723,000 horsepower.

The Commission orders:

(A) The revised Exhibit L drawings and revised Exhibit M, except insofar as the latter relates to the design of the fish handling facilities, described in finding (1) above, are hereby approved as part of the license for the project, and the Exhibit L drawings and Exhibit M, described in finding (2) above, are hereby eliminated from the license for the project.

(B) Article 46(i) of the license for the project is hereby amended, effective as of January 1, 1963 to show 723,000 horsepower as the authorized installed horsepower capacity of the project for annual charge purposes.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–96

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 17, 1964)

On October 25, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP64–96 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the sale and delivery of an additional 53,663 Mcf of natural gas per day to certain existing customers, all as more fully set forth in the application.

The proposed construction consists of approximately 116 miles of 30 and 36-inch pipeline loops and 10,960 additional compressor horsepower in existing mainline compressor stations together with miscellaneous sales and appurtenant facilities. The total proposed additional service of 53,663 Mcf per day will consist of 43,845 Mcf per day of pipeline service, 8,818 Mcf per day of storage service and 1,000 Mcf per day of liquefied natural gas service.

Applicant states that the proposed construction and additional service are designed to meet the demand of Applicant's customers commencing with the 1964–65 heating season. The proposed facilities will increase Applicant's system capacity from 2,518,484 Mcf per day to 2,581,352 Mcf per day.

The estimated total cost of the proposed facilities is $24,422,000, which cost will be financed initially through short-term bank loans. Long-term financing will be accomplished as part of a financing program covering the proposed and other facilities.

Several petitions to intervene in support have been filed herein. In each case, the burden of such filings has been that the petitioners did not request formal hearing in this proceeding and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desired to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as the shortened procedure is being used herein, no further action on the various intervention petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales

of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (2), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (2), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within nine months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

UTAH POWER & LIGHT COMPANY, DOCKET NO. E-7130

DECLARATORY ORDER

(Issued April 17, 1964)*

On October 11, 1963, the Utah Power & Light Company (Petitioner), a Maine corporation with principal offices in Salt Lake City, Utah, filed under Section 1.7(c) of the Rules of Practice and Procedure a petition, including a statement of facts, for a declaratory order removing uncertainty as to whether it needs a license under Part I of the Federal Power Act (16 U.S.C. 791–823) to continue to maintain and operate its Pioneer project works on the Ogden River at Ogden, Utah.

The petition shows that the Pioneer project's sole source of water power is the Pine View Dam. Water passes from the dam through a 5.5 mile wood-stave flowline to the head of Ogden Canyon. Here, the Ogden River Water Users' Association (Association) diverts part of the water into its irrigation system, and Petitioner diverts the remainder to its project works. The water used by Petitioner flows into a surge tank, passes through a 4800-foot steel penstock to the powerhouse, and empties through a half-mile ditch into the Ogden River. The installed capacity of Petitioner's project is 5,000 kilowatts.

---

*See 31 FPC 1537, vacating order, etc.

Petition to Review dismissed, *Utah Power & Light Co. v. F.P.C.*, 339 F. 2d 436 (CA10–1964).

The Bureau of Reclamation of the Department of the Interior built the Pine View Dam between 1934 and 1937. By authority of the Reclamation Act of June 17, 1902 (32 Stat. 388, 389), the Secretary of Interior has authorized the Association to operate and maintain the dam and reservoir. The wood-stave flowline is owned jointly by Petitioner, whose interest is about 45 percent, and the Association, holding the remainder. Petitioner wholly owns the powerhouse and appurtenant facilities.

Under subsection 23(b) of the Federal Power Act (16 U.S.C. 817), it is unlawful for Petitioner, which does not claim to hold a Federal permit predating the act's approval on June 10, 1920, "for purpose of developing electric power, to . . . utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of . . . a license granted pursuant to this Act." The term "government dam" is defined "for purposes of this Act" in section 3(10) (16 U.S.C. 796): ". . . a dam or other work *constructed* or *owned* by the United States for Government purposes with or without contribution from others." [Emphasis supplied.]

The Pine View Dam and Reservoir are still owned by the United States. Moreover, since the dam was Federally constructed, it would be a "Government dam" as Congress defined the term for purposes of the Federal Power Act, even if the United States had disposed of it. Directly in point is the Commission's order in *Green Mountain Power Corp.*, Project No. 2090, 13 FPC 1211 and 1321 (1954). Petitioner is required by subsection 23(b) to apply for and obtain a license for the continued maintenance and operation of its Pioneer project.

The Commission finds:

(1) The Pine View Dam is owned by the United States;

(2) The Pine View Dam was constructed by the United States;

(3) Thus, the Pine View Dam is a "Government dam" as the word is defined in section 3(10) for purposes of the Federal Power Act;

(4) The Utah Power & Light Company's Pioneer project utilizes surplus water or water power from the Pine View Dam.

The Commission orders:

Utah Power & Light Company shall file, within ninety days from the date of issuance of this order, application for license pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder for the continued maintenance and operation of its project works of its Pioneer project on the Ogden River at Ogden, Utah.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-184

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 20, 1964)

On February 19, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-184 an application pursuant to Section 7(c) of the Natural Gas

Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to certain existing customers for resale and distribution.

The facilities proposed to be constructed consist of five measuring and regulating stations and thirteen mainline taps to be operated for the purpose of accommodating the routine requests for natural gas received by Applicant from seven of its existing authorized resale customers, all as more fully set forth in the application on file with the Commission.

The customers to be served with natural gas, above-mentioned, are, The Tucson Gas, Electric Light and Power Company, Western Gas Service Company, Southern Union Gas Company, Arizona Public Service Company, California-Pacific Utilities Company, Northwest Natural Gas Company and Washington Natural Gas Company. The proposed delivery facilities will be located at various points through Applicant's extensive system.

Applicant estimates the total third year peak day and annual requirements under this application to be 4,071 Mcf and 675,853 Mcf, respectively.

The estimated total cost of the proposed facilities is $42,200 which is to be financed out of current working funds supplemented when necessary by short-term bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64-178

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 20, 1964)

On February 10, 1964, Lone Star Gas Company (Applicant) filed in Docket No. CP64-178 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Denton County, Texas, and the transportation of natural gas in order to serve the City of Shady Shores and the Lake Shore Park Addition to said city, all as more fully set forth in the application

Applicant proposes to construct and operate the following facilities:

(1) Approximately 1,200 feet of 2-inch transmission Line F-15 from 16-inch Line F to a city gate measuring station to be installed near the City of Shady Shores, and

(2) Approximately 300 feet of 2-inch transmission Line F-14 from 16-inch Line F to a proposed regulator station and measurement facilities when warranted by the number of customers, to be installed for service to the Lake Shore Park Addition.

The total estimated third year peak day and annual requirements for the two communities are 234 Mcf and 13,519 Mcf (at 14.73 psia), respectively.

The cost of the proposed facilities is estimated to be $9,010, which cost will be financed out of funds on hand.

Applicant states that it will construct and operate the distribution system necessary for the proposed service.

It appears that Applicant has obtained the necessary franchise from Shady Shores.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the

meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general trems and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

POWER AUTHORITY OF THE STATE OF NEW YORK, PROJECT NO. 2000

ORDER AMENDING ORDER REJECTING APPLICATION FOR REHEARING

(Issued April 20, 1964)

Power Authority of the State of New York (Authority) on March 20, 1964, petitioned this Commission to set aside or modify its Order Rejecting Application for Rehearing issued February 27, 1964, 31 FPC 467, in the above-entitled matter. By that order, we refused to grant the application for rehearing on two grounds—first, on the merits, and second, on the ground that it was not filed until after the 30-day period within which an application for rehearing is allowed by Section 313(a) of the Federal Power Act.

Petitioner does not ask that we reconsider the matter on the merits, but only that the rejection on the ground of untimely filing be eliminated from the order. If it cannot be established that the application was made within the time allowed by the statute, the courts will lack jurisdiction to review the determination of the Commission. *Dayton Power and Light Co.* v. *F.P.C.*, 251 F. 2d 875 (CADC, 1957).

The Authority presents, in support of its petition, an affidavit of an attorney that he mailed 14 copies of the application for rehearing to the Secretary of the Commission on February 11, 1964, in New York City, and at the same time mailed one copy to the Commission's staff attorney of record in this proceeding. The last day for making application for rehearing was February 12, 1964. The 14 copies mailed to the Secretary were stamped in the Commission's mailroom with February 13, 1964, as the date of receipt. There is no independent recollection by mail clerks or by personnel in the Secretary's office as to the actual date of receipt. The best recollection of the staff attorney to whom one copy was mailed is that he received that copy on February 13, 1964.

In the light of the new evidence submitted with the present petition, we now find that the application for rehearing was received by the Commission on February 12, 1964, and that the application was timely. There is a rebuttable presumption that the copies mailed on February 11 arrived on February 12, which was not a holiday in the District of Columbia. *Arkansas Motor Coaches* v. *C.I.R.*, 198 F. 2d 189 (CA8, 1952); *Central Paper Co.* v. *C.I.R.*, 199 F. 2d 902 (CA6, 1952); *Shultz* v. *United States*, 132 F. Supp. 953 (C. Cls. 1955); *Helman* v. *Fruit Growers Express Co.*, 200 F. Supp. 234 (D.N.J., 1961). This presumption is not rebutted by the stamped date of receipt under the present circumstances.[1]

The Commission finds:

The application for rehearing by Power Authority of the State of New York in the above-entitled matter was made on February 12, 1964, within 30 days of the issuance of the order as to which rehearing was sought.

The Commission orders:

The Order Rejecting Application for Rehearing issued February 27, 1964, in this proceeding is hereby amended to read as follows:

ORDER DENYING APPLICATION FOR REHEARING

On February 12, 1964, Power Authority of the State of New York (the Authority) made application for rehearing of the Commission's Opinion No. 415 and accompanying order issued January 13, 1964, in the above-entitled matter, in which the Commission denied the Authority's applications for exemption from annual charges in accordance with Section 10(e) of the Federal Power Act for the period from July 17, 1958, through December 31, 1961, except for partial exemptions totaling $9,621.70.

The application for rehearing presents no new argument or citation of authority beyond that which was presented, and carefully considered by the Commission, prior to the aforesaid order of January 13, 1964. Upon full reconsideration, we believe the aforesaid order was correct, and should be adhered to, for the reasons stated in Opinion No. 415.

---

[1] The presumption would not prevail against a clerk's positive recollection of out-of-time receipt. *Shultz* v. *United States*, 132 F. Supp. 953, 955 (C. Cls., 1955).

The Commission finds:

No new facts or principles of law have been presented by the Applicant in its application for rehearing which either were not fully considered by the Commission prior to its order herein or, having been now considered, warrant further hearing, modification, or revocation of said order.

The Commission orders:

The Application for Rehearing filed herein by Power Authority of the State of New York be and the same hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

WISCONSIN PUBLIC SERVICE CORPORATION, PROJECT NOS. 1940, 1957, 1966, 1968, 1979, 1989, 1999

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COSTS, NET CHANGES THEREIN, ACCRUED DEPRECIATION, NET CHANGE IN ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued April 20, 1964)

Wisconsin Public Service Corporation, Licensee for Project Nos. 1940 (Tomahawk), 1957 (Otter Rapids), 1966 (Grandfather Falls), 1968 (Hat Rapids), 1979 (Alexander), 1989 (Merrill), and 1999 (Wausau),[1] filed initial statements, pursuant to Section 4.20 of the Commission Regulations under the Federal Power Act claiming actual legitimate original project cost and applicable project accrued depreciation in the amounts indicated below for Project Nos. 1940 and 1966 as of December 31, 1938 and for the five other projects as of January 1, 1938:

---

[1] The licenses, all issued pursuant to Section 4(e) of the Federal Power Act, were issued or authorized on the dates and for the periods as follows:

Project No.	Date order or license issued	Effective	Terminates
1940	Sept. 29, 1948	Jan. 1, 1937	Dec. 31, 1986
1957	Jan. 25, 1951	Jan. 1, 1938	June 30, 1970
1966	Feb. 20, 1951	Jan. 1, 1938	Dec. 31, 1987
1968	Nov. 4, 1949	Jan. 1, 1938	June 30, 1970
1979	Apr. 25, 1950	Jan. 1, 1938	June 30, 1974
1989	Aug. 8, 1951	Jan. 1, 1938	June 30, 1970
1999	May 10, 1955	Jan. 1, 1938	June 30, 1970

The projects are all located on the Wisconsin River within the State of Wisconsin.

Project No.	Claimed cost as of—		Claimed depreciation as of—	
1940 [1]	$607,114.28	Dec. 31, 1938	$2,667.23	Dec. 31, 1938
1957	151,557.36	Jan. 1, 1938	21,567.35	Jan. 1, 1938
1966 [2]	2,196,094.52	Dec. 31, 1938	59,016.95	Jan. 1, 1938
1968	331,884.90	Jan. 1, 1938	66,705.60	Jan. 1, 1938
1979	758,768.09	Jan. 1, 1938	65,776.33	Jan. 1, 1938
1989	331,245.17	Jan. 1, 1938	31,775.60	Jan. 1, 1938
1999	1,347,966.12	Jan. 1, 1938	115,461.91	Jan. 1, 1938

[1] The license for Project No. 1940 is effective as of Jan. 1, 1937. All constructed facilities in existence at that date were subsequently removed and new project facilities were constructed thereafter being placed in commercial operation on Jan. 15, 1938.

[2] As of Jan. 1, 1938, the effective date of the license in Project No. 1966, the only facilities or property existence or included in the license were a concrete and stone masonry dam about 36 feet high, with a spillway equipped with taintor gates, a powerhouse integral with the dam (now converted to a warehouse) in which turbines, generators and accessory and miscellaneous power plant equipment were installed, and the necessary project lands. The generating facilities were excluded from the license. This development is known as the "upper development." In February of 1938, construction of the "lower development" was begun and the project became operational on Dec. 20, 1938.

In addition thereto, Licensee has recorded changes in cost and accrued depreciation through December 31, 1952, for Project No. 1966 and through December 31, 1955 for the remaining Projects as follows:

Project No.	Recorded net changes in cost	Recorded changes in accrued depreciation	Period
1940	$31,036.30	$185,337.97	1939-55
1957	12,986.75	35,067.20	1938-55
1966	11,356.73	323,722.52	1938-52
1968	68,175.86	95,545.02	1938-55
1979	9,107.75	184,176.62	1938-55
1989	29,367.66	78,584.01	1938-55
1999	44,766.45	186,393.66	1938-55

The resulting amounts of total claimed or recorded project cost, and total claimed project accrued depreciation, of the various projects as of the dates shown are as follows:[3]

Project No.	Total claimed or recorded cost	Total claimed and recorded accrued depreciation	To period ending Dec. 1931
1940	$638,150.58	$188,005.20	1955
1957	164,544.11	56,634.55	1955
1966	2,207,451.25	382,739.47	1952
1968	400,020.76	162,250.62	1955
1979	767,875.84	249,952.95	1955
1989	360,612.83	110,359.61	1955
1999	1,392,732.57	301,855.50	1955

Licensee filed a statement of claimed actual legitimate original costs for Project No. 1966 as of December 31, 1938. By letter dated August 23, 1963, Licensee concurred in a staff recommendation for an adjusted project cost of $382,890.54 as the project initial cost as of January 1, 1938 (the effective date of the license) and the adjusted cost of the project in the amount of $2,085,001.01 as of December 31, 1952.

---

[3] Section 4(b) of the Federal Power Act and the various terms of the respective licenses for Project Nos. 1940, 1957, 1966, 1968, 1979, 1989, and 1999 provide for Commission determination of the actual legitimate original project costs, accrued depreciation applicable to the several projects and net investments of licensee therein, all in accordance with the Act and the Rules and Regulations of the Commission thereunder.

Actual legitimate original cost for Project No. 1940 is determined hereinafter as of December 31, 1938 because all constructed facilities in place on the effective date of the license were removed shortly after that date and new facilities constructed which were placed in operation on January 15, 1938.

The Commission staff conducted field studies of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed project costs as of the dates referred to above, cost changes, accrued depreciation, changes in accrued depreciation and resulting project costs and accrued depreciation for Project No. 1966 as of December 31, 1952 and for all other Projects as of December 31, 1955.

Following those studies, a tentative agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving: (1) The reclassification of certain items within project plant accounts; (2) the elimination of certain items from project plant by transfer to nonproject plant accounts; (3) eliminations of other amounts from claimed or recorded project costs; and (4) the accounting dispositions of all amounts involved in the proposed adjustments.

The results of the staff examination, concurred in by the Licensee by letters of February 17, 1958,[3] February 27, 1958, October 19, 1961, August 23, 1963[4] and April 26, 1963, are summarized in the accompanying schedule 1 and detailed for each project in the accompanying schedules 2 through 15 which are appended hereto.[5]

In summary, the results of the staff's proposed adjustments effect a reduction in recorded project plant costs for all projects in the aggregate amount of $559,695.33 as follows:

Reduction in initial claimed cost	$(601, 165. 12)
Net adjustments from dates of claimed initial cost to terminal dates covered	50, 510. 11
Net adjustment to claimed cost	(550, 655, 01)
Reconciliation of booked costs to claimed costs for cost in project plant accounts not claimed	(9, 040. 32)
Total Adjustments to be recorded	(559, 695. 33)

This is all as more specifically shown in the Schedules appended hereto together with the accounting disposition of all amounts involved in the proposed adjustments by the several projects and by the project and balance sheet accounts affected. In summary, the accounting dispositions of all amounts involved in the proposed adjustments are shown by the following composite journal entry:

---

[3] By this letter, License also submitted revised statements of initial claimed accrued depreciation as of January 1, 1938, for Project Nos. 1957, 1968, 1979, 1989 and 1999.

[4] By this letter Licensee also submitted its revised statement of initial project accrued depreciation as of January 1, 1938 for Project No. 1966.

[5] [Omitted in printing.]

Account No.[1]	Title	Debit or () credit
101	Utility plant in service:	
	Project Nos.:	
	1957	($369.31)
	1966	1,502.75
	1979	(1,702.91)
	1989	200.16
	1999	369.31
	Nonproject	209,863.58
121	Other physical property	(991.15)
154	Materials and supplies	1,225.59
108	Reserve for depreciation:	
	Project Nos.:	
	1968	1,174.13
	1979	1,102.85
	1999	1,121.01
	Nonproject	72,997.47
216	Earned surplus	273,201.85

[1] Accounting references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees effective January 1, 1961, except for Schedules 1 through 15 which employ the account numbers and titles effective prior to January 1, 1961. This reflects the fact that the project costs herein are recorded in Licensee's plant accounts as of dates prior to January 1, 1961. In some of these schedules the new account numbers appear parenthetically.

The Wisconsin Public Service Commission was advised by letter of this Commission dated October 2, 1963 of the proposed adjustments and accounting dispositions, and by letter dated October 16, 1963 that Commission expressed concurrence therewith.

The Commission finds:

(1) Licensee by its acceptance of the proposed adjustments including the accounting dispositions and resulting respective project costs, project reserves for depreciation and project net investments, and the Wisconsin Public Service Commission by its concurrence in the staff recommendations herein have obviated the necessity for the notice and opportunity to protest, provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments and accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost, accrued depreciation and net investment in Project Nos. 1940, 1957, 1966, 1968, 1979, 1989, 1999 as of the effective dates of the licenses therefor (except for Project No. 1940, which was entirely reconstructed after the effective date of the license and for which the claimed initial project cost date (12/31/38), is used) are hereby determined to be as follows:

Project No	Date	Original cost	Accrued depreciation	Net investment
1940	Dec. 31, 1938	$608,151.81	$2,667.23	$605,484.58
1957	Jan. 1, 1938	132,464.26	21,567.35	110,896.91
1966	Jan. 1, 1938	382,890.54	59,016.95	323,873.59
1968	Jan. 1, 1938	320,384.80	66,705.60	253,679.20
1979	Jan. 1, 1938	740,563.39	65,776.33	674,787.06
1989	Jan. 1, 1938	217,154.91	31,775.60	185,379.31
1999	Jan. 1, 1938	1,122,004.30	115,461.91	1,006,542.39

(4) The net changes in the cost of the aforementioned several projects in the periods shown and the respective resulting actual legitimate original costs of those projects as of the dates set forth below are hereby determined to be:

Project No.	Period	Net changes of cost	Original cost	
			As of—	Amount
1940	Jan. 1, 1939–Dec. 31, 1955	$24,706.80	Dec. 31, 1955	$632,858.61
1957	Jan. 1, 1938–Dec. 31, 1955	14,377.09	Dec. 31, 1955	146,841.35
1966	Jan. 1, 1938–Dec. 31, 1952	1,702,110.47	Dec. 31, 1952	2,085,001.01
1968	Jan. 1, 1938–Dec. 31, 1955	63,817.72	Dec. 31, 1955	384,202.52
1979	Jan. 1, 1938–Dec. 31, 1955	6,656.75	Dec. 31, 1955	747,220.14
1989	Jan. 1, 1838–Dec. 31, 1955	26,855.05	Dec. 31, 1955	244,009.96
1999	Jan. 1, 1938–Dec. 31, 1955	18,595.04	Dec. 31, 1955	1,140,599.34

(5) The net changes in project accrued depreciation for the aforementioned several projects in the periods shown and the resulting balances of accrued depreciation as of the respective dates shown are hereby determined to be the credit amounts as follows:

Project No.	Period	Net change	Balance of accrued depreciation	
			As of—	Amount
1940	Jan. 1, 1939–Dec. 31, 1955	$185,337.97	Dec. 31, 1955	$188,005.20
1957	Jan. 1, 1938–Dec. 31, 1955	35,067.20	Dec. 31, 1955	56,634.55
1966	Jan. 1, 1938–Dec. 31, 1952	323,722.52	Dec. 31, 1952	382,739.47
1968	Jan. 1, 1938–Dec. 31, 1955	94,370.89	Dec. 31, 1955	161,076.49
1979	Jan. 1, 1938–Dec. 31, 1955	183,073.77	Dec. 31, 1955	248,850.10
1989	Jan. 1, 1938–Dec. 31, 1955	78,584.01	Dec. 31, 1955	110,359.61
1999	Jan. 1, 1938–Dec. 31, 1955	185,272.67	Dec. 31, 1955	300,734.58

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The adjustments and accounting dispositions proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, for Project Nos. 1957, 1966, 1968, 1979, 1989, and 1999 showing the initial debit balances for the named projects as of the effective date of the licenses and for Project No. 1940 as of December 31, 1938; showing accrued depreciation as of those dates; showing net increase or change in the actual legitimate original cost of the respective projects for the periods indicated above; the total debit balances; the net change in accrued depreciation and the total credit balance of accrued depreciation as of the dates indicated; all as determined above and shown more specifically in the attached Schedules 1 through 15.

(D) Licensee shall, within 90 days from the issuance of the Commission's order, file with the Commission three certified copies of Licensee's FPC Form No. 7 and adjusting journal entries showing compliance with this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black.

ORANGE AND ROCKLAND UTILITIES, INC., DOCKET NO. E–7157

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued April 21, 1964)

Orange and Rockland Utilities, Inc. (Applicant), a corporation organized under the laws of the State of New York and qualified to do business in the State of New York with its principal business office at Nyack, New York, filed an application on March 12, 1964, for authority pursuant to Section 204 of the Federal Power Act to issue unsecured Promissory Notes in the maximum principal amount of $24,150,000 outstanding at any one time.

According to the application the Promissory Notes proposed to be issued by the Applicant consist of notes of a maturity of one year or less from the date of issuance but in any event to mature not later than June 30, 1965. Applicant states that none of the Notes proposed to be issued will be resold to the general public and no finder's fee or other fee, commission or remuneration is to be paid in connection therewith to any third person for negotiating the transaction. Applicant states that the notes will bear an interest rate not over one quarter of one per cent in excess of the New York City prime rate. Applicant anticipates that the notes will be issued to banks located in the territory served by the Applicant and to New York and Boston banks.

According to the Application, $23,000,000 of the proceeds will be utilized for the Applicant's construction program estimated at $18,382,900 in 1964 and $16,724,900 in 1965. The major items of Applicant's 1964 and 1965 construction programs are the addition of the 170,000 kw generating unit at Lovett Plant and construction of 138 kv transmission facilities to serve load centers at Hillburn and West Nyack from the new unit. According to the application, estimated expenditures for the Lovett Steam Unit #4 will be $9,445,000 in 1964 and $8,194,000 in 1965. Expenditures for Coal handling equipment at the Lovett Plant are estimated at $355,000. Total transmission expenditures including the 138 kv facilities mentioned above are estimated at $2,220,000 for 1964 and $1,714,000 for 1965; total expenditures for distribution facilities are estimated at $3,416,000 for 1964 and $3,658,000 for 1965 and Gas Department expenditures $2,947,000 for 1964 and $3,159,000 for 1965. Of the $24,150,000 proceeds, $1,150,000 will be utilized to refund $1,150,000 principal amount of First Mortgage Bonds 3% series due June 1, 1965 issued by The Orange and Rockland Electric Co., a predecessor company.

Subject to obtaining authorization from the Public Service Commission of New York, the Applicant plans to pay off the notes no later than June 30, 1965 through the application of funds derived from the sale of long-term debt and/or equity securities and from retained earnings.

Written notice of the application has been given to the Public Service Commission of the State of New York, and the Board of Public Utility Commissioners of the State of New Jersey and the Governors of those States. Notice of the application was also published in the Federal Register on March 25, 1964 (29 F.R. 3719), stating that any person desiring to be heard or to make any protest with reference to the application should on or before April 7, 1964, file protests or petitions with the Federal Power Commission, Washington, D.C., 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 13, 1958 in the matters of *Orange and Rockland Utilities, Inc.* and *Rockland Electric Company*, in Docket No. E-6827.

(2) The proposed issuance of Promissory Notes in the maximum principal amount of $24,150,000 outstanding at any one time, all as described above, constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the maximum principal amount of $24,150,000, all as described above, will be in excess of 5 per cent of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not now organized and operating in a State, under the laws of which the security issue herein involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance by Applicant of Promissory Notes in the maximum principal amount of $24,150,000, outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application as amended, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereto, being not later than June 30, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GAS-PURCHASE FACILITIES—BUDGET-TYPE APPLICATIONS—PIPELINE COMPANIES—WAIVER OF COST REQUIREMENTS, DOCKET NO. R-259

ORDER NO. 281

AMENDING §§ 2.58 AND 157.7 OF THE COMMISSION'S REGULATIONS

(Issued April 21, 1964)

The Commission, in this order, is amending §§ 2.58 and 157.7 of its Rules and Regulations to clarify the obligations of applicants seeking authority to secure budget-type certificates where the application does not meet the prescribed limitations of such rules.

Section 2.58 of the Commission's General Rules and Regulations, entitled "Budget-type certificate applications—gas-purchase facilities" is being amended by adding a new paragraph which provides that any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified herein shall be accompanied by a request for waiver of the provisions of such paragraph and will be granted only for good cause shown. A similar amendment is being made to § 157.7 of the Commission's Regulations under the Natural Gas Act, relating to "Abbreviated applications."

These amendments do not impose any new requirement upon pipeline applicants for budget-type certificates in connection with gas-purchase facilities since provisions for seeking waiver of a Commission regulation is already set out in § 1.7 of the Commission's Rules of Practice and Procedure. However, reference to these requirements in §§ 2.58 and 157.7 should help insure that applicants will be aware of and will comply with the existing requirements.

Notice of rulemaking pursuant to section 4(a) of the Administrative Procedure Act and § 1.19 of our Rules of Practice and Procedure is unnecessary here since the amendments relax existing procedural requirements. For the same reason it is appropriate to make the amendments effective immediately.

The Commission finds:

(1) The adoption of these amendments are necessary and appropriate to the administration of the Natural Gas Act.

(2) Since these amendments involve matters of Commission practice and procedure and impose no new requirement, the notice, hearing and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7 and 16 thereof (52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f, 717o) *orders:*

(A) Parts 2 and 157 of the Commission's Rules and Regulations, Chapter I of Title 18 of the Code of Federal Regulations, are amended in the following respects:

1. In Part 2 amend § 2.58 by redesignating paragraph (a) as (a)(1), redesignating paragraph (b) as (2) and adding a new paragraph (b). As so amended paragraphs (a) and (b) will read as follows:

§ 2.58 Budget-type certificate applications—gas-purchase facilities.

* * * * *

(a) (1) The total estimated cost of the facilities to be installed in a given twelve-month period does not exceed 1½ percent of the applicant company's plant account or $5,000,000, whichever is the lesser.

(2) The total cost of any single project facilities to be installed during the authorization period does not exceed 25 percent of the total budget amount or $500,000, whichever is the lesser.

(b) Any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified in paragraph (a) hereof shall be accompanied by a request for waiver of the provisions of such paragraph and will be granted only for good cause shown.

[Secs. 7, 16, 52 Stat. 825, 830, 56 Stat. 83; 15 U.S.C. 717f, 717o.]

2. In Part 157 amend paragraph (b) of § 157.7, as prescribed in Order No. 280, by redesignating subparagraph (1) as (1) (i), redesignating subparagraph (2) as (ii) and adding a new paragraph (2). As so amended subparagraphs (1) and (2) will read as follows:

§ 157.7 Abbreviated applications.

* * * * * *

(b) *Gas-purchase facilities—budget-type applications.* An abbreviated application requesting a budget-type certificate authorizing the construction of gas-purchase facilities during a given twelve-month period and operation thereafter may be filed when:

(1) (i) The total estimated cost of the gas-purchase facilities proposed in the application does not exceed 1½ percent of the applicant's gas plant (Account 101, Uniform System of Accounts Prescribed for Natural Gas Companies) or $5,000,000, whichever is the lesser.

(ii) The total cost of gas-purchase facilities for any single project to be installed during the authorized construction period does not exceed 25 percent of the total budget amount or $500,000, whichever is the lesser.

(2) Any application proposing the construction of facilities having an estimated total cost in excess of the amounts specified in subparagraph (1) hereof shall be accompanied by a request for waiver of the provisions of such paragraph and will be granted only for good cause shown.

[Secs. 7, 16, 52 Stat. 825, 830, 56 Stat. 83; 15 U.S.C. 717f, 717o.]

(B) These amendments shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

RATE SCHEDULES OF PUBLIC UTILITIES, DOCKET NO. R-260

ORDER NO. 282

STATEMENT OF POLICY

(Issued April 21, 1964)

§ 2.5 *Filing of rate schedules by Public Utilities.*

The Commission has received a number of inquiries from public utilities who are presently engaged in reviewing the status of their wholesale power sales, in the light of the recent Supreme Court decision in the *Colton* case, *Federal Power Commission* v. *Southern California Edison Company*, 376 U.S. 205, 11 L. ed. 2d 638, decided March 2, 1964, as to the manner in which the Commission would expect to treat filings made with it of existing wholesale sales which had not previously been filed with this Commission. In response to such inquiries the Commission believes it appropriate to advise all public utilities that, while it of course cannot prejudge the possible rights of interested third parties, its primary objective is in insuring that the rate schedules for all jurisdictional sales are promptly filed with this agency, as required by law, and that where such rate schedules are filed with this agency by August 1, 1964, it does not intend on its own motion to initiate any inquiry into past failures to file such schedules.

In accordance with this policy the Commission, in the absence of valid objection by any interested party, will permit all existing rate schedules to be filed as initial rate schedules pursuant to the provisions of Section 35.1(b) of its Regulations under the Federal Power Act and will give favorable consideration to requests pursuant to the provisions of Section 35.11 of these Regulations to make such schedules effective as of the date of filing or such earlier date as the public utility may show is consistent with the public interest, if such filings are made on or before August 1, 1964. Moreover, while the Commission will carefully review all such filings to insure that they are consistent with the statutory standards, it is contemplated that any Commission action resulting from such review would normally be taken pursuant to the provisions of Section 206 of the Federal Power Act.

It is recognized that despite the Supreme Court's latest reiteration of the broad scope of this agency's jurisdiction over wholesale sales of public utilities, there may remain some special situations in which a company engaged in the wholesale sale of electric energy, although it is interconnected with systems in other states directly or indirectly, will wish to contest its jurisdictional status as a public utility or the status of particular sales. However, the Commission's existing procedures provide full protection for such companies since they are free to file their wholesale rates with a reservation of the question of jurisdiction, which could then be adjudicated in an orderly way.

[Secs. 205, 309, 49 Stat. 851, 825h; 16 U.S.C. 824d, 825h]

OPINION NO. 425

SOUTHEASTERN PUBLIC SERVICE COMPANY, DOCKET NO. RI63-361

OPINION AND ORDER DISMISSING RATE INCREASE

(Issued April 21, 1964)*

Syllabus

1. It is not necessary here to fix specific rate at which producer should make this sale in the future; such determination should be made in current area rate proceeding for South Louisiana. P. 974.
2. Sole purpose in setting instant case for hearing was to provide producer-respondent early opportunity to justify increase so prices would not escalate if increase could not be justified—no departure from announced policy in fixing producer rates generally in area proceeding rather than on basis of individual costs was intended. P. 975.
3. There is no need to rule on propriety of proposed adjustments to original cost or appropriateness of use of acquisition costs, because even on basis of acquisition costs—which is most Commission could allow—producer has not justified proposed increase. Pp. 975, 976.

---

*Initial decision appears on p. 978. Rehearing and stay denied, 31 FPC 1553.

4. Since no specific rate is fixed here it is unnecessary to compute a precise cost of service for sale. P. 977.
5. Commission *disallows* and *dismisses* rate increase and *requires* refunds, in proceeding initiated under Section 4(e) of the Natural Gas Act. P. 977.

Commissioner O'Connor *concurring in result only.*

George B. Mickum, III, Richard E. Rubenstein and *Charles F. Dugan* for Southeastern Public Service Company.

Robert W. Perdue and *James D. Annett* for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

This proceeding arises from a rate filing by Southeastern Public Service Company (Southeastern) proposing to increase its rate for a sale of natural gas from the South Section 28 field in St. Martins Parish, Louisiana, from 23.25¢ per Mcf to 25.25¢ per Mcf. By Commission order issued March 7, 1963, we suspended the proposed rate increase and ordered an immediate hearing to determine whether Southeastern could justify such a rate, which would be higher than any jurisdictional rate currently effective in South Louisiana.

Hearings before the Presiding Examiner were concluded on November 1, 1963. At the hearings Southeastern submitted its cost of service in purported justification of the increase and the Commission staff rebutted this evidence with its own cost of service and contended for a rate decrease. The only intervenor in the proceeding was the purchaser, Southern Natural Gas Company, and Southern did not enter an appearance at the hearing, nor did it file any pleadings other than its intervention petition.

On the basis of the evidence submitted by Southeastern and the Staff, the Examiner on January 29, 1964, issued his initial decision in which he found that a reasonable cost of service for this sale was 22.18¢ per Mcf and on this basis ordered the rate increase dismissed with refunds of all monies collected above 23.25¢. In addition he ordered that Southeastern should reduce its presently effective rate to 22.18¢.

Exceptions were filed by both Southeastern and Staff. Southeastern argues that the Examiner improperly determined its original cost, workover costs, allocation of liquid revenues and rate of return, and that it is entitled to the claimed rate. Southeastern contends also that even if the Examiner found the rate increase not to be justified he could not in this proceeding prescribe for the future some rate other than the previously effective rate.

Staff in its exceptions contends that the Examiner allowed excessive amounts for working capital, rate base, workover costs, rate of return and rate case expenses. Staff also contends that the Examiner should have ordered refunds down to the 22.18¢ level.

On the basis of all evidence of record, the parties' briefs, the Examiner's decision and the exceptions thereto we are of the opinion that Southeastern has not justified the rate increase and that such increase should be disallowed. We are also of the opinion that it is not necessary in this proceeding to fix a specific rate at which Southeastern should make this sale in the future but rather that that determination should be made in the area rate proceeding for South Louisiana now in progress (AR61-2).

In our order of March 7, 1963, setting this case for hearing we made the following statements:

> Under Section 4(a) of the Natural Gas Act all rates which are not just and reasonable are declared unlawful. If after a hearing the Commission

finds the proposed increase rate unjust and unreasonable it must be disallowed.

The rate proposed by Southeastern is higher than any presently effective rate in South Louisiana and is greatly in excess of the applicable price level set forth in the Commission's Statement of General Policy No. 61-1, as amended. Since it may serve as a basis not only for price redeterminations at a higher rate under other gas purchase contracts in the area but also for triggering favored-nation increases, there is need to suspend the effectiveness of the proposed rate and to order an expeditious hearing thereon. At such a hearing the burden is on the respondent to prove that the increased rate is just and reasonable.

The Commission's order of March 7 thus makes it clear that in setting this case for hearing our sole purpose was to provide Southeastern an early opportunity to justify this rate increase so that prices in the area would not escalate to a higher level if the rate increase could not be justified. We did not intend to depart from our announced policy of fixing producer rates generally in area proceedings rather than on the basis of individual costs.

It is imperative that we promptly dispose of rate filings which threaten to trigger additional increases through the operation of indefinite escalation clauses in other contracts for otherwise an unjustified rate increase may set off a chain of increases before the case is completed. This is not to say that the Commission would not fix a just and reasonable rate below the level of the underlying rate if the evidence clearly supported such a finding and it could be made promptly. However, the Commission will not delay the rejection of a triggering increase to pursue a detailed analysis of the precise level of a rate which can best be fixed on an area basis.

In this proceeding staff conceded that on the basis of its direct presentation Southeastern had made a *prima facie* showing on a cost basis to justify the proposed rate. Staff therefore introduced evidence indicating that certain adjustments should be made in Southeastern's figures, which, if all were accepted, would reduce the *prima facie* cost for this one sale to a level below the underlying rate. This case can be disposed of without reaching the controversial refinements of an individual producer's cost. We will dismiss the increase and leave the determination of a final just and reasonable rate to the area proceeding in Docket No. AR61-2.[1]

In attempting to justify its rate increase, Southeastern submitted a general company-wide cost of service, a cost of service with an allocation and assignment of costs to the South Section 28 field, and an abbreviated acquisition cost of service.

Southeastern obtained the South Section 28 field by purchase from the Aluminum Company of America (Alcoa) in 1962 at an acquisition price of $5,120,602. In our order setting the case for hearing we directed Southeastern to make a showing of the original cost of the field to Alcoa. It was on this basis that the Examiner determined the rate base, rather than on the acquisition cost to Southeastern. On the basis of the original cost to Alcoa the Examiner determined that the acquisition cost exceeded the depreciated original cost by about $850,000. In its exceptions Southeastern contends that the Examiner should have used its acquisition cost, or in the alternative that the original cost to Alcoa should be adjusted to include the dry-hole cost of developing the field and interest and overhead during construction. Inclusion of these additional costs to Alcoa would increase the original cost above the acquisition cost. We find that there is no need to rule upon the propriety of these proposed adjustments or on the question of whether the use of the acquisition cost is appropriate because even on the basis of its acquisition cost, which is the most we could allow, Southeastern has not justified the rate increase it has proposed.

---

[1] *Cf. Slade, Inc. (Operator), et al.*, 29 FPC 11.

Southeastern's cost of service for this sale on the basis of its acquisition cost, which we are not in any way endorsing but merely using as the basis most favorable to the company for testing whether its rate increase is justified, is set forth in its exhibit 3 attached hereto as Appendix A. As the use of this cost presentation eliminates the need to discuss Southeastern's contentions with regard to the adjustments to Alcoa's original cost, the item of $152,139 should be eliminated from this cost exhibit. Southeastern concedes that if it is allowed acquisition costs the amortization of Alcoa's development dry holes should be eliminated.

The only cost item in exhibit 3 over which there is controversy is the $460,390 of operating expenses. This figure includes an allowance by Southeastern of $174,682 per year for workover costs. Staff contended that $25,000 per year was a reasonable amount. A large part of the Examiner's decision was devoted to a review of the voluminous evidence and arguments on this point. His final conclusion that $70,000 a year is a reasonable allowance for workover costs appears to be amply supported in the record and we can find no reasoning in the exceptions of either Southeastern or the Staff which would convince us that the Examiner's allowance should be changed. In testing Southeastern's increase we shall, therefore, include the Examiner's allowance of $70,000 per year for workover costs. Thus the figure of $460,390 should be adjusted to $355,708.

The one revenue item in the exhibit, in the amount of $177,049, does not include royalty revenues which staff contends should be a part of a purported showing of total revenues from this sale because the royalties were already included as a cost in the expenses. We agree with staff that in testing the justification for this out-of-line rate it is appropriate to measure all of the revenues against all of the costs. The "Other gas revenues" figure should therefore be increased to $208,848.

The sale of the 4,469,702 Mcf of gas in the test year at the underlying rate of 23.25¢ would add revenues of $1,039,206. Thus the total revenue from the sales from this field equals $1,248,054. The total adjusted costs, without return, come to $1,098,983. This leaves the amount of $149,071 available as return on Southeastern's investment.

In determining whether such an amount would produce an adequate return it is necessary to examine Southeastern's acquisition cost. The interest item in its cost exhibit is particularly significant. It results from the part of Southeastern's investment which is represented by notes and production payments. In purchasing the field Southeastern paid the $5,120,602 by pledging $3,900,000 in production payments carrying an interest rate of 5⅝ percent. There were also given two notes for the remaining $1,220,602. One has been paid and one is due in 1966. Thus according to the calculations in the staff brief Southeastern has only 12.6 percent of the acquisition cost in common equity and the remaining 87.4 percent in a loan and future production payments on which all interest costs have already been allowed in the cost of service.

As set forth in Southeastern's brief the acquisition cost for the test year as adjusted for plant additions and depreciation and depletion gives a rate base of $4,983,678. 12.6 percent of this amount is $627,943. Earnings of about $150,000 on an equity investment of $628,000, a return of 24 percent, could hardly be considered an inadequate return. If the interest is included as a part of the over-all return, the amount, available for return on the acquisition rate base is $385,296, which gives an over-all return of 7.73 percent.

The conclusion that Southeastern's return is not unreasonable is strengthened by the evidence that Southeastern engages in almost no exploration but only purchases fully developed properties. Since this field is being fully developed there should be little occasion for additional investment by Southeastern, and as its equity increases through loan repayments and production payments the rate base will be decreasing almost correspondingly.

The foregoing adequately disposes of the Exceptions of Southeastern. Since we are not fixing a specific rate but merely dismissing the application for a rate increase, it is not necessary to rule on the additional exceptions by our Staff (all of which would reduce the cost further) or to compute a precise cost of service for this sale. The rate in effect prior to this increase is already in issue in AR61-2 and it will be redetermined in that proceeding.

The Commission orders:

(A) No part of the proposed rate increase filed by Southeastern Public Service Company has been justified on this record and such rate increase is therefore disallowed and dismissed.

(B) Within 45 days of the issuance of this opinion and order Southeastern shall refund to Southern Natural Gas Company all amounts collected in excess of the rate in effect prior to the filing of this increase with 7 percent interest thereon and shall within 15 days after making such refunds file with the Commission in writing and under oath its calculations on which such refunds were based together with a copy of a release from Southern Natural respecting such refunds.

(C) Within 30 days from the issuance of this order Southeastern shall file a notice of change in its FPC Gas Rate Schedule No. 2, providing for a reduction in rate to that in effect prior to this increase.

(D) Upon compliance by Southeastern with the provisions of the paragraphs (B) and (C) above, this proceeding shall be terminated.

Commissioner O'Connor *concurring* in the result only.

APPENDIX A

SOUTHEASTERN PUBLIC SERVICE COMPANY, SEPSCO DIVISION
SUMMARY OF COSTS BASED ON ACQUISITION COST

SOUTH SECTION 28 FIELD, ST. MARTIN PARISH, LOUISIANA

For the 12 months ended Sept. 30, 1962

Line No.	*Column (1)* *Particulars*	*(2)* *Amount*
1	Operating expenses	$460,390
2	Administrative and general expenses	68,860
3	Depletion and depreciation	328,870
4	Amortization of exploration and development costs	152,139
5	Other taxes	109,410
6	Interest	236,135
7	Other gas revenues	(177,049)
8		1,178,755
9	Annual production in Mcf	4,469,702
10	Cost per Mcf	26.37¢

NOTE: This summary of cost does *not* include a return on investment and is based on the cost of properties in the hands of Southeastern.

APPENDIX B

ADJUSTED COSTS BASED ON ACQUISITION COSTS

Costs	
Operating expenses	$355,708
Administrative and general expenses	68,860
Depreciation and depletion	328,870
Other taxes	109,410
Interest	236,135
Total cost	1,098,983
Revenues	
4,469,702 Mcf @ 23.25¢/Mcf	$1,039,206
Other gas revenues	208,848
Total revenues	1,248,054
Return (not including interest on debt)	149,071
Rate base (Acquisition cost plus additions)	5,312,548
Less depreciation and depletion	328,870
	4,983,678

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON NOTICE TO MAKE INCREASED RATE EFFECTIVE

(Issued January 29, 1964)

PURDUE, *Presiding Examiner:* In this proceeding, respondent Southeastern Public Service Co. proposes an increase in its rate for the sale of gas to Southern Natural Gas Co. from the existing rate, 23.25¢ per Mcf, to 25.25¢ per Mcf.[1] These figures include a tax reimbursement to the seller of 1.75¢ per Mcf. The proposed increase would result in an annual dollar increase for such sale of about $89,062. On March 16, 1957, Alunminum Co. of America, predecessor of respondent, as "Seller," and Southern Natural, as "Buyer," entered into a contract for the sale and purchase, in the field, of natural gas produced by the seller in "South Section 28 Field," St. Martin Parish, Louisiana. This contract is now in effect as a rate schedule; and the proposed change in rate is a periodic rate increase called for by the provisions thereof.

On February 5, 1963, respondent, under Section 4(d) of the Natural Gas Act, filed a notice of rate change, designated Supplement No. 3 to its FPC Gas Rate Schedule No. 2. On March 7, 1963, the Commission instituted this proceeding, pursuant to Section 4(e) of the Act, by the issuance of an order providing for a hearing concerning the lawfulness of the proposed increased rate, and suspending the operation of such rate supplement "until August 8, 1963, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act."

The proceeding came on for hearing before the undersigned Examiner on April 30, 1963, continued intermittently over a period of 29 hearing days, and concluded on November 1, 1963. The Commission staff challenge the validity of the rate increase, and contend for a rate decrease. At the hearing, evidence both oral and documentary was introduced by respondent and the staff; and cross-examination of witnesses was conducted by each participant. On November 15,

---

[1] All volumes of natural gas referred to herein are at a pressure base of 15.025 psia.

1963, respondent filed a motion to make the proposed change in rate effective, subject to refund, under an agreement and undertaking (Notice of Effectiveness issued January 23, 1964). After the conclusion of the hearing, the participants filed briefs and thereby the proceeding was submitted for consideration and decision.

STATEMENT OF PRELIMINARY FACTS

Prior to January 1, 1962, respondent's predecessor, Alcoa, was the owner of oil and gas leases here involved in South Section 28 Field in the Louisiana Gulf Coast area. During the period 1955 to 1957, inclusive, Alcoa had explored and developed the field by a total of 22 wells, of which 12 were successful and 10 are now producing. Of the wells now producing, two are single completions; five are dual completions; and three are triple completions. The multiple completions (dual and triple) are wells where parallel strings of tubing (two in the case of a dual completion and three in the case of a triple completion) are run inside the casing, each string ending in a different producing zone. Above each producing zone in the well a packer is placed—an apparatus the purpose of which is to isolate the production from the other zones in the well and allow the production to come up through the tubing. At the time the triple completions were drilled, they marked a new technique, the first of the three being the world's first triple completion. The wells are completed in one or more of ten different sand zones, the deepest of which is the Hackberry Sands. The deepest well, a single completion, is 13,800 feet; the other wells range in depth from 10,750 feet to 12,400 feet. There are a number of reservoirs in the field, resulting from fault blocks. The field produces gas and liquid condensates, the condensates being extracted by a dry frac unit.

In the contract between Alcoa and Southern Natural, Seller committed itself to sell to Buyer all gas produced in the field that Seller should have the right to market; and Buyer agreed to purchase a minimum annual take geared to Seller's reserves and deliverability. At present deliverability, the minimum delivery, on an annual basis, is 12,200 Mcf per day. Under a "200% swing provision" in the contract, Southern Natural may at any time take "a quantity of gas equal to 200% of the minimum take as in effect from time to time." The contract is to continue for a primary term of 20 years, and from year to year thereafter unless terminated upon notice. Deliveries under the contract commenced December 1, 1958.

As of January 1, 1962, Alcoa sold the leases, equipment, gathering system, and other property to respondent for a price of $5,120,602, and respondent succeeded to the rights and obligations of Alcoa under the Southern Natural contract. Alcoa continued to operate the properties, as respondent's agent, for the first five months of 1962; and respondent then took over the active operation. Respondent is a diversified company, engaged (partly through subsidiary companies) in the manufacture and sale of ice, retail sale of liquified petroleum gas, distribution of agricultural and industrial chemicals, production and sale of oil and natural gas, and transmission of natural gas. Its oil and gas production and sale constitute approximately 15% of its total business. In addition to its production operations in the South Section 28 Field, Southeastern, partly through its subsidiaries, engages in oil and gas production operations in Texas, New Mexico, West Virginia, Ohio, and Kentucky.

A special importance attaching to this case appears from a recital in the order of March 7, 1963:

> The rate proposed by Southeastern is higher than any presently effective rate in South Louisiana and is greatly in excess of the applicable price level set forth in the Commission's Statement of General Policy No. 61-1, as

amended. Since it may serve as a basis not only for price redeterminations at a higher rate under other gas purchase contracts in the area but also for triggering favored-nation increases, there is need to suspend the effectiveness of the proposed rate and to order an expeditious hearing thereon.

Respondent presented a case in chief; and, following the staff's case in opposition, presented a case in rebuttal, in which it advanced certain claims not contended for in its case in chief.

DISCUSSION

Burden of Proof

Respondent has the burden of proving that the increased rate is just and reasonable. That is to say, respondent must "satisfy our minds" of such fact. Natural Gas Act, Sec. 4(e); *Transcontinental Gas Pipe Line Corp.*, 11 FPC 94, 96–97, citing *Advances in Rates—Western Case*, 20 I.C.C. 307.

Test Year

The year consisting of the twelve months ending September 30, 1962 was the latest year for which figures were readily available. The participants utilized this period as the test year, and agree that it was proper to do so. The Examiner shares this view.

Differences between Respondent and Staff

Both respondent and the staff in their presentations employed the utility cost rate-base method.

In its showing, respondent adopted two approaches. In its Exhibit 1, it presented a cost of service on a company-wide gas operation basis with an allocation and assignment of costs to the South Section 28 Field. Under this approach, most of the costs shown are claimed direct costs incurred in such field. In its Exhibit 2, respondent presented simply a company-wide gas operation cost of service, including therein all the amounts which it claims as costs incurred in the South Section 28 Field. In Exhibit 1, respondent shows for the South Section 28 Field a unit cost per Mcf of 30.26¢; and in its Exhibit 2, a company-wide unit cost per Mcf of 25.72¢. Respondent's apparent position is that either basis justifies the proposed increase in rate to 25.25¢ per Mcf for the sale from the South Section 28 Field.

The staff based its case on the first of these two approaches, and thereby derived a unit cost of service of 20.10¢ per Mcf (as adjusted in a relatively minor amount by a concession made in their brief).

The Examiner is of the opinion that the rate for the sale in question should be fixed by adopting the first of the two approaches. On this basis, the differences between respondent and the staff are set out in a tabulation, Appendix 1 hereto. It will be seen from Appendix 1 that the differences between respondent, in its case in chief, and the staff consist of five items; *viz*, Operating Expenses, $149,682; Depreciation, Depletion, and Amortization Expense, $26,557; Exploration and Development Expense, $137,866; Other Gas Revenues (Credit), $31,220; and Return, $108,747. These differences, all of which involve costs pertaining to the South Section 28 Field, will be discussed *seriatim*.

Operating Expenses—Workover Expense

The sole controversy between respondent and the staff respecting a proper allowance for operating expenses pertains to the workover expense. A workover, as defined by an engineer witness, is "any work undertaken on a well to repair or correct a condition or to make any necessary change in that well to affect its behavior in the manner you want it to perform." In the South Section 28 Field, the principal trouble experienced has been communication between the sand zones.

Respondent claims for workover expense an annual allowance of $174,682; the staff maintain that $25,000 per annum is a reasonable amount. Most of the testimony adduced at the hearing and 100 pages of the briefs concern this question. There is evidence that, considered to the exclusion of other evidence, would support either of these two extremes; and there is evidence that would afford a basis for settling on almost any figure in between.

The Examiner is of the considered opinion that $174,682 is far too large an amount, and that $25,000 is far too small. Relative to the former figure, respondent in effect contends that, over the remaining 16 years of the gas sales contract with Southern Natural, it will pay out a total of $2,794,912 for workovers. This cost is so out of line as to indicate on its face that the claim is exhorbitant.

Moreover, at the time respondent purchased the properties, Alcoa had incurred most of the workover expense upon which respondent relies as historical experience to justify the allowance that it seeks. This expense had been so heavy that Alcoa had made very little, if any, profit on its sale of gas to Southern Natural. Respondent purchased the properties with full knowledge of the past expense, and also required that Alcoa agree to perform certain additional major workovers before respondent would enter into the contract of purchase, which workovers are also now relied upon as justification for the allowance claimed. It seems doubtful that respondent would have bought the properties had it believed that the great workover expense which it now says will take place, will in fact be necessitated. Furthermore, interest and bias enter into testimony on behalf of respondent.

On the other hand, respondent's claim is based on an average of the actual expense for the years 1958–1961, inclusive, in the performance of seven workovers; and it is not reasonable to say that that expense is going to drop down to an average of $25,000 per annum.

The staff contend that the great burden of the workover costs over the four-year 1958–61 period is nonrecurring; that both the frequency of workovers and the average cost per worker will not continue. The question presented is: To what extent does the evidence establish that these costs are recurring costs? In other words, to what extent are we justified in projecting the past experience into the future?

The evidence shows that a large portion of the workovers has been necessitated by "mechanical failures" or, to use a synonymous term, "equipment failures"; and that such workovers stand to be nonrecurring. A mechanical failure, in the sense used in the testimony, is the failure of a piece of equipment to perform its function when there is no cause for the failure other than the structure of the equipment itself or the manner of its installation or utilization.

Alcoa's manager of oil and gas operations, a witness on behalf of respondent, testified that in the South Section 28 Field, Alcoa was "pioneering in multiple completions," and that "some of the equipment failed in that it did not operate as we had planned it to do"—in other words, there were mechanical failures. Respondent's general manager, in the case in chief, testified that "much of the equipment used . . . was unproven at that time"; that "Consequently, there were workovers which were caused principally by equipment failures"; but that "As wells are reworked, either due to mechanical failure or excessive water production or any of the other reasons motivating workovers, newer and more modern equipment is being rerun in the wells," including hydraulic-type packers which are "better equipment." There is other testimony by respondent's own witnesses showing that Alcoa and respondent on working over the wells changed equipment for "improved equipment" that had become available.

The staff presentation was made by two engineer witnesses. They submitted a study, Exhibit 16, which shows, and the Examiner finds, that in the period from 1956 to the early part of 1962, Alcoa (and in the latter part of 1962, respondent) performed 18 workovers on 11 wells. One of the wells, after it was worked over, being unusable for production, was converted to a salt-water disposal well; another of the wells was abandoned. The total cost of 15 of these workovers, as set out in Exhibit 16, was $1,214,216, the staff witnesses having obtained the figures from respondent's books and records. (A corresponding figure derived from an exhibit introduced by respondent is lesser by $73,875.) The costs of the other three workovers are not shown, but were relatively small amounts. In 1957, there was only one workover, costing $65,628; and in 1958, one workover, costing $35,450. Exhibit 16 also sets out the staff witnesses' conclusions as to the causes of the workovers, based upon a review by them of well records and files of respondent, which included the well data during Alcoa's ownership of the properties. According to Exhibit 16, coupled with explanatory testimony of the staff witnesses, the unproved equipment and mechanical failures necessitated most of the workovers. The testimony of respondent's general manager above quoted supports the staff position in measure. For it has been noted that equipment or mechanical failure and excessive water production were the two reasons which he specified "motivated" workovers. On cross-examination, when asked as to what other reasons besides equipment failures caused the workovers, he merely said, "Well, there were instances in which excessive water production caused wells to be worked over." Later, however, he specified "corrosion," "plus the fact that we have had to attempt to increase deliverability," as causes of workovers; and further said, "there have been many and varied reasons for these workovers." Plainly, mechanical failures were a major reason for the workovers.

Unfortunate incidents, of a nonrecurring nature, augmented or occasioned certain of the workovers. Workover No. 1 on the Olivier well cost $62,628. Most of this expenditure was necessitated by acid corrosion, resulting from acid, which employees had used to cleanse the productive formation during the completion of the well, being permitted to remain in the tubing.

Other unfortunate happenings, nonrecurring in nature, consisted in the running of an exceptionally large number of packers in the Potier well, and the undue frequency of packer failures in such well. Just four days after the Potier well had been worked over for failure of the top packer, the top packer failed again. In all, Alcoa ran packers in the hole of the Potier well 25 times, the packers either being pulled and redressed or else replaced.

In deciding what is a reasonable and justifiable estimate of future workover expense, there is an exhibit of controlling significance, the De Laat report. The time when, and circumstances under which, the report was prepared, make manifest its importance. Respondent employed an independent engineer consultant, Mr. Bart De Laat, and his staff, to prepare the report for the use of the Chemical Bank New York Trust Co. in order to obtain a loan of a portion of the purchase price of the properties. The report is dated October 1, 1961. At that time, most of the workovers upon which respondent predicates its claim for an annual allowance of $174,682 had already been performed; and substantially all of the remainder were in the contemplation of Mr. De Laat as being required of Alcoa as a prerequisite to respondent's purchase of the properties. Mr. De Laat testified that when he prepared the report he was "fully aware of the past workover cost," and had gone "through all the detailed production and well completion history and performance history of each well." Of equal significance, the report was prepared a year and a half before the institution of this rate proceeding; and manifestly was not prepared in contemplation of a rate proceeding. The fact that the report was made for submission to a New York bank in obtaining a purchase loan is an indicum of its trustworthiness and reliability. The engineer, himself, said, "This report is made for sophisticated people who understand some of the problems in connection with the property"—for an "experienced financial institution who have capable oil men at the head of their oil departments." The conclusion is justified that the engineer knew beforehand that unless his report was reasonably reliable, the Chemical Bank New York Trust Co. would likely not long rely upon it or him; nor would other financial institutions in the future stand to accord his reports that acceptance which is essential to his services being of value to clients seeking to obtain bank loans. In the light of these considerations, the Examiner feels warranted in according predominant weight to the De Laat report in reaching a determination as to the probable number of workover operations in the field over the period of the next several years.

Fortified with all his knowledge of the past workovers, Mr. De Laat estimated in the report that in the 9¼-year period consisting of the last three months in 1961 and the years 1962 to 1970, inclusive, there would only be seven major workovers. According to his estimate, two of these would be in the last three months of 1961: and one in each of the years 1963, 1964, 1966, 1968, and 1970. He also estimated that there would be one "minor workover" because a completion was "sanded up"; but apparently this job developed into a major workover thereafter performed. In addition, the report estimates "several workovers" "over the next four to five years" from the date of the report "to exploit nonperforated intervals of presently producing sands." As to these, the witness said, "The only thing we were pointing out here was that in our opinion some of the reservoirs were inadequately exploited and should have additional perforations"; that they might or might not be the expensive type of workovers, and might or might not be included in the major workovers already estimated; that "if it was a simple addition of perforations, the expense would be very nominal."

Mr. De Laat, in the report, estimated only the capital cost—*i.e.*, cost of materials—of the expensive workovers, at a median figure of $25,000 each; and made no provision for the total dollars to be spent on these workovers. The reasons that the witness assigned for the omission of the total dollars were that,

> Comprehensive life experience with tubing was not known, corrosion experience was not known and in any case hazards attributable to these elements as well as mechanical failures cannot be estimated unless there is a thorough and complete history over a long period of time . . . we show in the report what past cost history there was. This showed very large expenditures for workovers. We assume that a sophisticated prospective purchaser of properties will take that into account in making up their own minds.

The experience subsequent to the time of the report indicates that the projection of workovers therein is too low; but there has been no such increase in the number above those estimated as to establish a trend. In the last quarter of 1961 and continuing on into early 1962, three workovers were performed instead of the two that Mr. De Laat estimated in the report. And in 1962, three workovers were performed in one well. But the total cost of these three workovers was only $62,146. As to 1963, in May 1963, respondent introduced an exhibit which shows only an expenditure of $8,000 in January 1963, which amount was apparently incurred in completing the last of the three 1962 workovers. In view of the broad scope of the evidence which respondent introduced in its rebuttal case, down to the very conclusion of the hearing on November 1, 1963, it is safe to conclude that had there been any significant workovers up to that time in 1963, respondent would have offered evidence thereof. The Examiner increases the estimate of seven major workovers in the report by the four additional major workovers that have since been performed, and includes still two other workovers for good measure. The Examiner thus arrives at a total of 13 major workovers in the period beginning with the last quarter of 1961 and continuing through 1970, six of which have been performed. The seven that, under the Examiner's estimate, remain to be performed in the seven-year period 1964 through 1970 thus average one a year. In addition, there are to be taken into account the "several" workers to exploit nonperforated intervals.

At the hearing, Mr. De Laat did advance opinions as to the cost of future workovers. He said on direct examination that for the workover of a triple completion well, "$80,000 to $100,000 . . . is not an abnormal amount of money." On cross-examination, he said concerning the cost of workovers, "The figures I have referred to which I believe on the initial number of workovers set out would be somewhere around $90,000 to $100,000 a year, ..." The record does not show to what "figures" the witness had reference. By the "initial number of workovers," he apparently meant the seven major workovers that he projected over the 9¼ years from October 1961 covered in the report. At $90,000 per year, the cost per workover would come to $118,928; and at $100,000 per year, to $132,143.[8] These last figures conflict with his testimony on direct examination; apparently the witness, as can easily happen on cross-examination, made a mental miscalculation.

Mr. De Laat, in the attempt to support respondent's position, further gave the opinion on cross-examination that the future annual workover expense would "probably" be $150,000 to $175,000, "taking into account the higher incidence rate" of workovers. The opinion thus expressed lacks sufficient basis, and has not been justified. The Examiner cannot accord to it the reliance that he places upon the De Laat report made for the use of the bank.

The staff witnesses consider a reasonable estimate of average major workover cost to be $15,000 (actually $14,285) per workover.[9] The Examiner is of the view that this estimate is too low, but it is helpful in reaching a judgment decision as to a proper allowance.

A witness on behalf of respondent, Mr. J. Kelly Elliott, a petroleum engineer, now with Brown Oil Tools, was from 1953 to 1962 in the employ of Humble Oil & Refining Co. For the last several years of such period, his position was District Reservoir Engineer in a district in the upper Gulf Coast Texas area where Humble had 800 oil and gas wells; and he was responsible, among other matters, for individual well studies for workovers. The evidence shows that this district is geologically very similar to the Louisiana Gulf Coast. The witness said that he did not consider the past workover costs in the South Section 28 Field as out of line with the experience of others in the same area, and that the average cost per workover was normal for the conditions. The witness had reference to the staff Exhibit 16, wherein the average cost per workover, for 15 workovers, is $80,948. Respecting the three other workovers listed in the report the cost of which is not given, the nature of the work done was such that the cost was relatively little, so that the average for the 18 workovers is substantially less than $80,948. In the light of the entire record, the Examiner cannot accept Mr. Elliott's opinion as justification for inferring that the future average cost per workover in the field will be as great as the average cost in the past.

---

[8] $90,000×9¼ (yrs.)÷7 (workovers) equals $118,928. $100,000×9¼ (yrs.)÷7 (workovers) equals $132,143.

[9] $100,000÷7 (workovers) in 1958–61 period equals $14,285.

But Mr. Elliott went on to state:

> Based on the multiply completed wells which we had at depths and pressures comparable to the South Section 28 Field, I would expect an average workover cost to exceed $50,000 per workover attempt.

On cross-examination, the witness said that he could not see how an average workover cost for a dual or triple completion under the depths and pressures in the South Section 28 Field would be less than $50,000, "and it would be somewheres upward of $50,000 per workover on an average per job basis." He further said:

> * * * let's say over a period of 10 or 12 workovers you would expect that some of your workovers you might have of the more simple variety for $25,000, which you would estimate you could and would do them for that. Maybe the first two you do would be estimated at $25,000. But maybe that third or fourth well, it might be $150,000 or $200,000 because of unforeseen difficulties that will occur. And you can bet on the fact that they will occur over a number of these activities. You cannot predict which well it will be or what will be the behavior or problem. That is why it is so difficult to have accurate budgets on workovers.

Mr. Elliott's testimony that the average cost per workover would be "somewheres upward of $50,000," the much lesser figure of the staff witnesses, the fact that two of respondent's wells are single completions entailing lesser workover cost, and evidence as to extraordinary expense attendant upon past workovers in the field, warrant a finding that an average allowance for the future of $55,000 per major workover is justified and liberal. The Examiner so finds and concludes.

Therefore the Examiner makes a yearly allowance of $55,000 for his estimated average of one major workover per year in the period 1964 through 1970. The Examiner considers that an additional $15,000 per year is an ample allowance for the workovers to exploit nonperforated intervals. He grants such additional allowance, thus bringing the total yearly allowance for workover expense to $70,000. The Examiner finds and concludes that such total yearly allowance is reasonable and justified.

A number of other points made in the briefs will now be specifically dealt with.

(1) Respondent seeks to make something of the fact that the workover expense in the test year was $273,382, despite the fact that respondent, itself, adjusted this figure downward to reflect the average of four years. The reason for this large expenditure between September 1961 and September 1962 was respondent's requirement that Alcoa perform certain workovers as a condition to respondent's purchasing the properties.

(2) Respondent argues that the 200% swing provision of its gas purchase contract with Southern Natural increases the workover expense substantially above that which would otherwise be required. Respondent cites testimony of its general manager that wells had been reworked in order to maintain the seller's capability to meet this obligation, and that except for such obligation many of the workovers could have been deferred until other ones also required attention. The evidence justifies the conclusion that the swing provision will increase the necessity for workovers but little, if any. Prior to October 4, 1960, the minimum take under the Southern Natural contract had been a volume in excess of 16,000

Mcf per day. But on such date, Alcoa and Southern Natural made a redetermination of the gas reserves, which resulted in a substantial reduction in the amount of the reserves. As a consequence the minimum take obligation was adjusted downward to 12,200 Mcf per day, and the maximum take (200% of the minimum take) was lessened. Respondent has more than enough capacity to meet the adjusted maximum take; during the period in 1963 when respondent was delivering 200% of the minimum quantity, respondent did not produce from all of the formations. Also the De Laat report takes the 200% swing provision into account in its estimate of workovers.

(3) Respondent avers that "the record demonstrates through witnesses well-qualified by wide Gulf Coast and Southern Louisiana experience, that the frequency of workovers in the past was not exceptional. . . . "; and cites the testimony of three witnesses in support of this statement. The first of these witnesses testified on direct examination:

> Q. How does the frequency of workovers found to be required in South Section 28 compare with your experience generally in the Gulf Coast area- A. Our experience is that the frequency is the same.

But on cross-examination, he testified:

> * * * these questions and answers were under duress in meeting a time schedule on this thing. The frequency of workover—it is practically—it has no meaning to relate workovers in one field to another field in my opinion.

The second witness, Mr. C. C. Brown, president of Brown Oil Tools, testified that the workover experience of Alcoa in the field was not excessive, as evidenced "by other workover situations." He then proceeded to refer to two situations in other fields; *viz*,

> [1] There are a number of wells in highly faulted areas similar to South Section 28 where the faults are shifting and very frequently these wells have to be worked over simply because the faults have shifted and cut the casing off.
>
> [2] "Again, referring to the Gulf Coast area in one specific occasion I have in mind, a well went out of control and cratered."

There is no claim here that a situation of either of these kinds has necessitated a single workover in the South Section 28 Field.

There were also general statements by this witness on cross-examination that "a lot" of companies in South Louisiana are having trouble with packers. Such testimony does not establish the frequency of the packer trouble. The exceptional nature of the number of packers run in the Potier well appears from the testimony of Mr. Brown on cross-examination:

> Q. Of any of those people you know that are having trouble in South Louisiana, and by people I mean companies, do you know anyone that has had to install 25 new or redressed packers in any well in less than a four year period? A. Twenty-five in any one well? Aren't you a little high on your numbers, sir?
>
> Q. No. I just asked if you knew of any. A. No, not 25, and I don't think you can show it on that record either, 25 in any one well. . . .

The third witness gave the following testimony on direct examination:

> Q. * * * In your experience in the oil and gas property management, is the workover of wells particularly in Southern Louisiana a regular occurrence? A. It is regular occurrence. Statistically in the Gulf Coast area we find that from 10% to 15% of the total number of wells will require some remedial work each year.

On cross-examination, he explained this reference to statistics in the Gulf Coast area:

> This is just on over-all quote of our experience and the general experience of others, and the higher figure there, the 15 percent, which means about one well out of six has to be worked over every year, is usually in relation to salt domes, where you have a different condition.

Again, this witness testified on direct examination:

> Q. In your opinion is the frequency of workover as shown by the past history of this field exceptional? A. No, and it would not be unusual in this area for the future requirements here to equal or exceed the previous experience.

On cross-examination, in reference to the foregoing question and answer, he testified:

> Q. * * *In your experience, isn't it also possible for a field to have a frequency less than this? A. Oh, yes. There are fields that are less than this.
>
> Q. Quite a bit less, in fact? A. Oh, certainly. . . .

The testimony of these witnesses fails to "satisfy our mind" that the frequency of workovers in the South Section 28 Field was not exceptional for a field of its geological characteristics.

(4) In rebuttal, an Alcoa engineer who had been in charge of the drilling of the South Section 28 Field and of the workover operations conducted by Alcoa, sponsored an exhibit which set out a classification by him of workovers as to cause. He attributed to mechanical failures only 13.77% of the expense of the workovers. He specified the other causes, and the proportionate expense attributable to each as follows: corrosion, 49.53%; aromatic hydrocarbons (referred to in the testimony by a coined word, "aromatics"), 18.31%; cement failures, 15.05%; and reservoir depletion, 3.33%.

(a) As to corrosion, the evidence shows, and the Examiner finds, that the corrosion problem in the field is not severe; indeed, during most of the period of Alcoa's operation of the properties, the corrosion was so little and so localized that Alcoa did only a meager amount of "corrective control." The evidence shows that by late 1961 corrosion had increased; on the other hand, respondent now has a good corrosion control program. It appears that a good corrosion preventive program while very effective in overcoming the trouble, is not "completely successful"; but neither does the Examiner completely disallow respondent's claim for workover expense.

(b) As to aromatic hydrocarbons, the Alcoa engineer testified that a number of packer failures were due to aromatic hydrocarbons deteriorating the rubber-like seal of packers. It is questionable, on the basis of the record, if aromatic hydrocarbons have had this or any other adverse effect on equipment in the South Section 28 Field. In the case in chief, respondent's general manager did not even mention them as a reason why workovers became necessary. It is true that the evidence shows that the rubber sealing of some of the packers removed from the wells had deteriorated to the point where they would not hold; also tests reveal that some aromatic hydrocarbons are present in some of the gas produced in the field. Mr. Brown testified that on one or two occasions he saw packers in this condition that had been removed from one of the wells; and that "I think it was aromatics." He frankly states, however, that "heat will help do the same thing."

Also, the evidence shows that certain types of aromatic hydrocarbons are present in nearly all gas, but that the types harmful to equipment are "very unusual." Mr. Brown testified concerning a conversation he had had with his chemist following a test of fluid from one of the wells:

> Q. He told you, is it not true, sir, that the packer had been exposed to aromatics, but did he tell you that as a result of his tests he definitely concluded that aromatics caused the failure of the rubber? A. He did not say that and he couldn't say that because he didn't know. Neither did I.
>
> Q. Because he didn't know the content of the aromatics? A. He didn't know the contents of the fluids or the gases. He did know it had been attacked by some aromatics, that is all he knew.
>
> Q. He just knew there was aromatics present? A. That is right.

Furthermore, the evidence shows that even if deleterious aromatic hydrocarbons exist in some of the reservoirs in the field, they are no longer a serious problem. Mr. Brown testified:

> Q. How did you solve the aromatic problem? A. We developed lead rings which would protect the packaging element. This was found to work well and experience has shown that the sealing element is holding with this protection.

On redirect examination, some qualification of this testimony was attempted, but the import of it remains substantially the same; and in any event the Examiner places greater weight on the original testimony, above quoted.

Mr. De Laat's testimony is to the same effect:

> Q. Are you stating that if they had an aromatics problem that it should be cured today? A. Sure. We have got equipment to cure it today, sure.

Respondent adverts to testimony that there are objectionable features to the lead shielded packer. Other witnesses, however, testified that the new-type packer is better equipment; and their testimony is fortified by the fact that producers have been, and are, installing it in their wells.

Respondent also notes that there are 12 of the old-type packers still in 7 wells in the field. There is no evidence that aromatic hydrocarbons of any type are present in liquid samples coming from any of the sands from which 2 of these 7 wells produce. Moreover, the record shows that the 3 triple completion wells now contain the lead shielded packers; and that approximately 60% of the workover expenditures were in these 3 wells.

Finally, respondent points to an assertion of respondent's general manager, given in the rebuttal case, on cross-examination, on the last day that testimony was adduced in this lengthy hearing: "We have two wellheads that are leaking because of the effect of aromatics." This belated averment is not persuasive.

(c) Respecting cement failures, according to respondent's claim only three cement failures have taken place in just two wells. These failures occurred in 1959 and 1960. The Alcoa engineer, himself, testified that the primary cement jobs done on the well holes in the field were highly and unusually successful; that "the techniques employed" exhibited "an unusually high percentage of success." Mr. De Laat, of course, was well aware of these cement failures when he made his estimate of future workovers in his report.

(d) The evidence shows that respondent's claim of reservoir depletion having caused workover expense is unfounded. Respondent attributes two workovers in the Olivier well to depletion of a reservoir; but the evidence establishes that there has been only small production from the reservoir, and that the reservoir is not depleted. Apparently the trouble was cement failure causing water encroachment, the expense of one of the workovers being aggravated by the incident already considered of employees having left acid in the tubing. The expense of the two workovers, other than that caused by the acid, was small—$35,950.

(5) Respondent's general manager in rebuttal sponsored an exhibit which sets out the results of studies made by the witness to determine the future workover costs in the field. According to this exhibit, respondent's general manager predicts, in the 10-year period 1963 to 1972, inclusive, 20 workover jobs, varying in number and cost in particular years, totaling $1,709,500—an average cost per workover of $85,475, and an average annual cost of $170,950. He predicts during the ensuing 10 years, estimated by him to be the remaining life of the field, 10 more workovers, totaling $700,000. This evidence is not persuasive for the following reasons: (1) The study marks a departure from the case in chief, where respondent relied solely upon a showing of historical experience. (2) The study is an afterthought—the witness did not prepare it until August 1963, after the staff had presented their case, and after the Examiner had fixed September 23, 1963 for presentation of the evidence in rebuttal; nor had respondent or its general manager made any such analysis prior to that time. (3) The presentation is contrary to the De Laat report and other evidence in the case which the Examiner considers to be more reliable.

(6) In its reply brief, respondent for the first time claims that "even assuming that all past workovers were of a nonrecurring nature because of the 'experimental' nature of equipment used, . . . those workover costs must be capitalized and amortized over the life of the field." The reason assigned is that under the "assumption" of nonrecurring nature, the workovers were incurred in order to place the wells in condition to deliver gas to Southern Natural. Respondent then proceeds to set out different depreciation, depletion and amortization and return figures from those contained in its exhibits. The Examiner rejects this contention for the following reasons: (1) Respondent did not advance such theory either in its case in chief or in its rebuttal case; it assigns a new and different ground for a rate increase from those that the staff was accorded an opportunity of meeting. (2) Abandoned experiments which do not manifest themselves in property useful in the public service should not be included in the rate base. (3) Reaccounting for these expenditures should not be permitted. (4) Respondent did not pay Alcoa any of the purchase price of the properties as recompense for the workover expenses that Alcoa had incurred; and to permit respondent to profit by an allowance in its rates for the expenses incurred by Alcoa would be unjust enrichment. As to grounds (3) and (4), the same or similar reasons for rejecting another claim of respondent are spelled out more particularly under the subhead "Exploration and Development Expense," *infra*, pp. 990, 991, 992.

In the foregoing treatment, the Examiner has not dealt with every single argument made in the 100 pages in the briefs of the participants treating of workovers. What in our opinion are the major points have been covered. ". . . there is no requirement in law that every contention or even most of the contentions advanced by the . . . parties respecting the numerous issues . . . , be ruled on *seriatim* and specific findings made on each." *Tennessee Gas Transmission Co.*, 17 FPC 406, 415. The Examiner, however, has considered all points made in the briefs, all the evidence in the proceeding, and the demeanor of witnesses on the stand as well.

Depreciation, Depletion and Amortization Expense

It will be seen from Appendix 1 that respondent claims as Depreciation, Depletion and Amortization Expense, $286,755; whereas the staff say that the figure should be $260,198—a difference of $26,557. The difference is attributable both to the staff's reduction of respondent's claimed original cost and to the staff's figures in the calculation of the depreciation, depletion and amortization annual expense shown on Appendix 4 hereto. In revising this calculation, the staff would apply the developed percentage (6.09%) of the Mcf produced during the test period to the net depletable plant at September 30, 1962, to arrive at $260,198 as the test period expense.

It is hereinafter found, under the subhead "Rate Base," that the reduction by the staff of respondent's original cost figure is justified. Also, the staff's calculation of the annual expense for depreciation, depletion and amortization is proper. Hence, $260,198 is the correct test period expense for this item in the cost of service.

Exploration and Development Expense

Respondent makes a claim of $152,139 for what it terms "Amortization of exploration and development." Respondent arrives at the amount by amortizing on the unit-of-production method a dry-hole cost of $2,979,775 incurred by its predecessor, Alcoa, prior to August 1957, in defining the limits of the productive acreage in the South Section 28 Field. If this amortization were permitted, the consumer, over the 16-year projected remaining life of the field, would thereby be required to pay respondent in rates $2,346,492, nearly one-half of the amount that respondent paid for the properties. Respondent's claim is in lieu of the usual annual allowance for exploration and development expense, the reasons assigned by respondent's accounting witness being:

> First, it is a readily ascertainable figure. Second, this company has only recently begun to expand its operations and has no truly representative exploration history * * * At this time it is impossible to determine what the dry hole experience is going to be.

This position is without precedent and without justification. The Commission uniformly bases an allowance for exploration and development expense on the recent historical experience of the applicant for a rate increase, taking into account in a proper case a concrete drilling program for the future. *Southern Natural Gas Co.*, 29 FPC 323, 330; *Phillips Petroleum Co.*, 24 FPC 537, 550–51; *City of Cleveland* v. *Hope Natural Gas Co.*, 3 FPC 150, 178. Alcoa's dry-hole experience cannot be substituted for respondent's dry-hole experience as a measure of future exploratory activity, because respondent, not Alcoa, now owns and operates the property.

Respondent in its brief in effect concedes, as it must, the validity of such position, but goes on to say: "This in no way negates the claim made by Sepsco that the dry-hole expense attributable to this specific property is properly a part of the original cost to be recovered out of the revenues from that property, * * *" Respondent thus advances a separate and different ground for claiming that the $2,346,492 (the unamortized balance at the end of the test year of the $2,979,775) is a proper charge against the consumers of the South Section 28 gas that it sells. In developing the point at the hearing, respondent's accountant witness recognized that Alcoa had expensed the $2,979,775 and that no portion of the sum was a part of the depreciated original cost of the property; but asserted that "if a proportionate allowance is not given to [respondent] equal to the unrecovered dry-hole costs, the consumers of the gas will never have to pay for the cost of developing the South Section 28 Field."

Such ground for claiming proportionate allowances of the $2,346,492 in the annual costs of service is without merit. In the first place, reaccounting for these expenditures should not be permitted. In a rate case, *Hunt Oil Co.*, 28 FPC 623, where the company kept its accounts on the "venture accounting" basis, whereby dry-hole costs were charged to expense in the year in which the costs were incurred, and Hunt sought to capitalize these expenditures, Chief Examiner Marsh said at page 654:

> From an accounting standpoint the method of capitalizing such expenditures as part of the cost of property is distinguished by the fact that it results in expenditures being retained in capital asset accounts which have proved to be of no value. Support for the practice would be based on the theory that the cost of property which had proved productive is the sum of the expenditures incurred to find oil and gas. The prevailing view, and the preferred method, is to charge such expenditures to profit and loss as they are incurred.

And at page 655:

> * * * to establish a precedent * * * which would permit the regulated company the choice of a method which would best serve its interest would open the door to abuse and possible injustice. It is concluded then, that where in the past venture accounting has been employed, the use of asset accounting for rate making purposes cannot be permitted.

While the Commission did not pass upon the question whether asset accounting was justifiable in ascertaining Hunt's cost of service (28 FPC at p. 625), it is submitted that the views expressed by the Chief Examiner are sound and should be adopted.

In the second place, respondent failed to meet the burden of proof upon it to establish that Alcoa had not recovered the $2,979,775. Clearly, at the time Alcoa sold the properties to respondent, Alcoa had recovered a large portion of these expenses; and likely it had recovered all of them. The portion which we know that the company recovered was the benefits realized from federal income tax deductions. As to the remainder, the record shows that Alcoa explored and developed the South Section 28 properties in 1955, 1956, and 1957; that in these years, for the purpose primarily of furnishing gas for its own operations, Alcoa budgeted sizeable sums for exploratory wells—over $6,500,000 in each of the years 1955 and 1956, and more than $4,000,000 in 1957. In exploratory operations of this magnitude, there is a likelihood that Alcoa's ratio of successes in drilling was such that it recovered all of its dry hole costs. ". . . wildcatting today is done increasingly by big companies covering wide areas, able to average their dry holes and production holes . . . ." *Natural Gas Investigation, Docket No. G-580, Report of Commissioners Olds and Draper* (1948), p. 129; *cf., H. L. Hunt*, 28 FPC 897, 906. Respondent has not attempted to show or demonstrate that Alcoa experienced a poor or unprofitable success ratio. The language of the Supreme Court in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 591, is apt: "We cannot say that the Commission has deprived the companies of their property by refusing to permit them to earn for the future a fair return and amortization on the costs of maintenance of initial excess capacity—costs which the companies fail to show have not already been recouped . . . ." The Court of Appeals, District of Columbia Circuit, has specifically held that amounts already recovered by investors are properly excluded from the rate base. *Pennsylvania Water & Power Co.* v. *Federal Power Commission* (App. D.C.), 193 F. 2d 230, 244. Likewise, amounts already recovered by investors are not to be amortized as a charge against the consumer.

Lastly, there is no showing that respondent paid Alcoa any of the purchase price as recompense for these dry-hole costs, or made any allowance in such price for unrecovered exploration costs; and on the contrary, the record establishes that respondent did not do so. At the hearing, respondent conceded that it was unable to make such showing. Instead, the record discloses, and the Examiner finds, that respondent paid nothing as an allowance for the dry-hole costs. The purchase price exceeded the depreciated original cost by only $849,019.

Surely, none of the purchase price up to the amount of the depreciated original cost was a reimbursement for dry holes. As to the excess of the acquisition price over the depreciated original cost, the Examiner at the hearing addressed the following inquiry to respondent's counsel: "Do you propose to introduce any evidence . . . that the acquisition costs took into consideration an allowance for unrecovered exploration costs?" In response, respondent's counsel made the considered statement, "Southeastern as such did not earmark those dollars in that manner, ..." For respondent to profit by the consumer "reimbursing" it for these expenses incurred not by it, but by Alcoa, would be unjust enrichment. For this reason, also, the amortization item is rejected.

Only a small amount can be allowed respondent as exploration and development expense. Respondent's accountant witness, himself, said that respondent "by its own history has not been engaged in the exploration and development of oil and gas reserves." Generally, instead of exploring for new wells, respondent purchases properties having proved reserves—a practice indicated by its purchase of the properties in the South Section 28 Field and subsequent purchase of production properties in Wharton County, Texas. In the 16-year period from 1947 to 1963, respondent did not drill a single dry hole. In the 18-month period intervening between respondent's acquisition of the South Section 28 properties and the date that the staff accountant witness testified, respondent did expend, on a company-wide basis, $51,270 for exploration and development. The staff witness normalized this expense, on a 12-month period, at $34,146. Of such sum, the witness, on the basis of the Btu content of the gas produced by respondent in various fields allowed $14,273 in the cost of service for exploration in the South Section 28 Field. The Examiner is of the view that the method followed and the result reached by the staff accountant are reasonable and justified.

There is evidence on the part of respondent that in 1969 it plans to drill a deep exploratory well to test the Hackberry Sands at an estimated cost of $500,000. No allowance will be made in this proceeding for such proposal five years hence. When 1969 nears, if respondent has a firm proposal to drill such exploratory well in that year, and believes that an allowance in its rate for such purpose is required, it can seek appropriate relief. ". . . the doors of the Commission are open for increased allowances. This is not an order for all time." *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 615.

There is also evidence that in 1968 respondent plans to drill a development well in proved acreage at a cost of $215,000. Respondent voices concern at the "possibility" that the well "could be dry." While the prospective drilling of this well is, also, too remote to enter into the rate here fixed, it should be pointed out that the 13.17% return on equity capital herein allowed (*infra*, p. 1000) is predicated upon there being some risk associated with respondent's business.

Respondent says that *Sinclair Oil & Gas Co. (Successor in Interest to Southern Production Co., Inc.)*, 22 FPC 53, "supports the amortization of dry hole costs claimed by Sepsco." A review of that case negates respondent's assertion. There, Southern Production had purchased fully developed gas properties from Danciger Oil & Refining Co. In determining the cost of service to Southern Production for the sale of gas from the field, the Examiner allowed as an item in the cost of service an allocated portion of Southern Production's company-wide exploration and development expense during the test year, just as here the Examiner allows as an item in respondent's cost of service, an allocated portion of respondent's company-wide exploration and development expense. The staff there argued that the item should not be allowed because "presumably" the purchase price included the exploration and development expenses incurred by Danciger. The Examiner rejected this argument because, *inter alia*, there was no evidence that the purchase price included Danciger's exploration and development expenses. In affirming, the Commission said, "We do not, however, decide at this time whether [the allowance of an allocated portion of Southern Production's exploration costs] would be proper where there is evidence to show that all exporation and development costs are included in the purchase price of fully developed reserves." In making this observation, the Commission was dealing with a situation where, the properties having been "purchased" by Southern Production "prior to June 7, 1954," the Commission had held that it would not "inquire into acquisition costs." (22 FPC at p. 59.) Nor did the Commission have before it either the question whether the seller of the properties had recovered the exploratory costs prior to the sale, or the question whether the purchaser made an allowance in the purchase price for unrecovered exploration costs.

Other Gas Revenues (Credit)

In its case in chief, "in order to avoid the application of complicated allocation formulae," respondent elected to credit to the cost of service the revenue it received from the sale of liquid condensates. According to its computation, the cost of service was thereby reduced by $177,049. The staff pointed out an error in the computation; and, in accord with respondent's election, increased the credit by $31,220, to the correct amount, $208,269.

Return

Rate Base

Respondent contends for an average net plant investment rate base, for use in determining future rates in the South Section 28 Field, in the amount of $4,519,848. The staff contend that year-end balances of plant and reserve, resulting in a year-end net investment, are proper. Originally, the staff computed the year-end investment, together with the working capital allowance, to be $3,982,216. Later, the staff revised this rate base to $4,038,099. The difference in amounts between respondent and the staff is attributable to the difference in net investment, difference in working capital allowance, and different methods employed in computing the rate base.

Net Investment. In formulating its average net investment for the test year, respondent used beginning and end-of-test-period balances of booked plant and reserve, arriving at an average net investment of $4,440,015.

The staff arrived at a year-end net investment of $3,956,459. As shown by staff Exhibit 15, schedule 5, the staff made adjustments to plant of $293,312 for workover expense capitalized by Alcoa prior to the acquisition by respondent of the South Section 28 properties. This reduced respondent's claimed original cost from $5,313,665 to $5,020,353. The staff made further adjustments totaling $249,498, consisting of reducing respondent's plant additions to this property during the test period. These adjustments were in connection with workover expense capitalized, $191,946; and acquisition costs capitalized, $57,552. The exhibit also shows the staff's compilation of the accumulated depreciation, depletion, and amortization reserves at the beginning and end of the test year, which were in lesser amount than those claimed by respondent in its Exhibit 1, schedule 4. The staff now agree that an item of $70,926 which they had eliminated, relating to the Potier well, should be added back to the rate base.

As to the other items, respondent's objection is without merit. In the first place, respondent at the hearing "elected," in the words of its accountant witness, "not to adjust the Staff's presentation" respecting the amounts for plant and reserve comprising the net investment (except the $70,926) ; and respondent is bound by that election. The reasons assigned for, and the unqualified nature of, the election appear from the following testimony of the witness:

> Well, the effect—I mean to eliminate the argument, Mr. Examiner and Mr. Annett, is the effect on the cost of service is first not significant to argue the items. Secondly, when we re-examined these items, even though they were originally capitalized by Alcoa, it could be argued that they were workover costs, even though they were major workovers which Alcoa deemed to be completion costs and therefore capitalized them, rather than to get involved in argumentative measures in that we elected not to take exception to the Staff's position.
>
> By Mr. Annett:
>
> Q. In other words, when both Southeastern and staff makes a final adjusted cost of service, we will not consider these items we have been discussing as relevant to the case. A. That was our reasoning, yes, sir.

Respondent having taken this position at the hearing, it is now precluded from challenging the correctness of the adjustments in question.

In the second place, upon review of the adjustments made by the staff, the Examiner considers the $293,312 (less $70,926) of workover expense that Alcoa capitalized, and the $57,552 of acquisition costs capitalized, to be part of the acquisition cost to respondent (chargeable to the acquisition adjustment account), and therefore not part of the original cost of the property upon which rates are here predicated. The items of workover expense, totaling $191,946, capitalized by respondent during the test year, should have been expensed. In arriving at his decision herein, particularly in the allowance for workover expense, the Examiner has given consideration to these items as expenses during the test period. The staff's adjusted net plant amounts are acceptable to the Examiner and are used in arriving at the average net investment for the test period, as shown in Appendix 4 hereto.

Working Capital. Net working capital of $79,833 claimed by respondent as part of its rate base represents only the cash working capital, determined by taking one-eighth of a total of $638,660 comprised of operating expenses, administrative expenses, and other taxes. Respondent makes no claim for working capital spent for materials and supplies or prepayments. The staff's allowance for working capital of $25,757 is based on taking one-eighth of operating expenses, administrative expenses, and exploration and development expenses, as applicable to the South Section 28 Field. Neither respondent nor the staff have allocated company-wide materials and supplies and prepayments to the South Section 28 Field working capital allowance.

The Examiner has computed a working capital allowance of $98,824 for the South Section 28 Field rate base. The amount so computed represents an allocation, based on net plant investment, of company-wide expenses, materials and supplies, and prepayments. The Commission has traditionally included these items in the working capital allowance. A company-wide computation seems appropriate here since all the working capital of the company is normally available for use in whatever area it is needed.

Average vs. Year-End Rate Base. The Examiner is of the opinion that the use of the average net investment rate base for the test year is proper. Utilization of such a rate base is the accepted, standard practice of the Commission, except in certain independent producer rate cases where the reasons for use of year-end balances do not here apply. See the *Phillips* case, *supra*, 24 FPC at page 565.

As ground for the contention that year-end balances instead of average balances are warranted here, the staff point out that there have been only relatively minor additions to the plant in service during the year—an increase of $44,000 in the company-wide plant in service, and of $1,000 in the South Section 28 plant in service. The staff argue for the same treatment accorded in *Phillips*. They also argue that besides allowing the test year depreciation, depletion, and amortization expense, it is not fair to allow a return on one-half of this amount. In other words, the staff position is that respondent should not be permitted to collect the full year's depreciation expense, and also to collect a return on one-half of such expense in the process of using the averaging method in determining the rate base.

The Examiner does not subscribe to this view. The depreciation expense and the return are separate items. Respondent is entitled in the cost of service to the full allowance of depreciation, depletion, and amortization expense as computed in relation to plant for the test year. Respondent is also entitled to a return on a fairly evaluated rate base for the test year. In order to arrive at a fair evaluation of over-all plant investment, it appears proper under the circumstances here presented to use the average of beginning and end-of-year balances of plant and accumulated reserves, mainly *because* there were only minor changes in the plant account throughout the test year, both company-wide and in the South Section 28 Field.

The foregoing conclusion is consonant with the position taken by Mr. Kenneth L. Smith, until recently Assistant Chief of the Bureau of Rates & Gas Certificates of the Federal Power Commission, in charge of field investigations. Treating of the question as to how the plant in service should be averaged and also the broader question of choosing the particular method, *i.e.*, using year-end net plant investment or averaging the net plant investment for rate-base purposes, Mr. Smith said:

> The average of thirteen monthly balances is the safest average to employ where plant investment for a given test year is to be used. This is particularly true if there were significant changes in net plant which did not occur more or less uniformly during the test period. Again there will be other situations in which the average of beginning and year-end balances will suffice, either because there has been *little if any change in plant in service during the year* or because the net changes occurred uniformly throughout the test year.
>
> There could be situations in which the net plant balance at the end of the test period (plus working capital) would be the logical basis for computing the return to be allowed in determining the rate to be fixed. This type of treatment may at least have to be considered *if the plant in service has changed significantly at or near the end of the test period* because of a major construction program. The ending plant balance could not be used in the rate base, however, unless sales volumes and expenses used in determining the rate are adjusted to reflect volumes to be attained from the use of such incremented plant facilities. [The Rate Base: Its Determination and Relation to Cost of Service," Lecture No. 7, p. 5, *U.S. Federal Power Commission, Bureau of Rates & Gas Certificates, Course in Ratemaking* (1958-59), on file in F.P.C. Library; italics added.]

Rate of Return—Federal Income Tax

In establishing a rate for an independent producer under the utility cost rate-base method, "It is the duty of the Commission to fix a rate that represents the cost of service and a reasonable return on the investment, including compensation for consumption of the gas and an increment for incentive, . . ." *El Paso*

Natural Gas Co. v. *Federal Power Commission*, 281 F. 2d 567, 570, 573, certiorari denied 366 U.S. 912. Respecting a reasonable return on the investment,

> The goal of our inquiry is stated in *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 603, where it is said that there must "be enough revenue not only for operating expenses but also for the capital costs of the business" including "service on the debt and dividends on the stock." The return to the equity owner must be "commensurate with returns on investment in other enterprises having corresponding risks" and "sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital." [*Phillips* case *supra*, 24 FPC at p. 567.]

In the case presented by respondent, there is insufficiency of evidence to fix a rate of return. Respondent made no rate of return study, and did not even introduce evidence as to the capitalization of the company. Respondent argues that since the Commission allowed Phillips a rate of return of 11% (24 FPC at p. 574), it should allow respondent at least 10%. This conclusion is a *non sequitur*. In fixing a rate of return in rate cases involving electric companies, natural-gas pipeline companies, and natural-gas producer companies as well, the Commission has uniformly analyzed the capital structure of the Company in question; in no other way can the Commission ascertain the capital costs resulting from the three general types of securities—debt, preferred stock and common equity. In the *Phillips* case, the proportion of common equity was relatively high—88.4%; and at the 11% rate of return that the Commission allowed, the return on equity was approximately 12.0% (24 FPC at p. 574).

Respondent contends that the rate of return should include an allowance for a federal income tax component without regard to the effect of the statutory tax benefits available to a producer; and points to the *Phillips* case, where the Commission "[added] $45,000 to the cost of service to provide an allowance for Federal income tax." Respondent misconceives the Commission's action in that case. Contrary to respondent's implied contention, the Commission ruled that, in view of the *El Paso* case, *supra*, "tax incentives will not be included in the cost of service." The $45,000 represented the approximate amount of actual taxes that Phillips would be required to pay as a result of its producing operations. This amount was arrived at upon the basis of the allowed return of 11%, minus a credit to working capital. The approximate amount of the tax was so small that the Commission did not see fit to set up a separate tax calculation. Respondent cannot be heard to argue that the Commission's practical treatment of the item constituted a holding in any way, shape, or form that an independent producer should have an allowance in the rate of return for federal income tax benefits.

In the instant case, no federal income tax allowance is properly to be made, either as a separate item or as an element in the rate of return. Respondent has failed to establish that any portion of whatever tax respondent would pay as a result of all its integrated operations, was properly allocable to the South Section 28 production. Likewise, respondent has failed to establish that even on the basis of the 10% rate of return which it seeks, it would be required to pay a federal income tax by reason of its operations in such field in the test year, let alone the amount of such tax. Indeed, respondent did not claim a provision for federal income tax. And respondent's accountant witness, referring to the South Section 28 properties testified. ". . . I doubt if they produced much taxable income; chances are they produced some taxable income, but not much." In its brief, respondent concedes that it "is not claiming that it pays income tax on S. S. 28 operations."

The only evidence that affords a basis for fixing a rate of return is that adduced by the staff. The staff presentation gives effect to a *pro forma* consolidated capitalization of respondent as of February 28, 1963, which reflects "all commitments for long-term financing even those not fully consummated" on April 29, 1963. According to the evidence, respondent's long-term debt is 48.39% of such capitalization, with an interest cost of 5.74%; preferred stock, 8.96% of the capitalization with a dividend cost of 5.50%; accumulated deferred federal income taxes, 1.18% of the capitalization (to which item the staff rate-of-return witness assigned an allowance of 1.5%); and the common equity, 41.4% of the capitalization.

The staff recommendation respecting a proper allowance for the common equity was based on data in an exhibit showing the "return on invested capital" of the 500 largest industrial corporations in the United States. The staff took the data from a study made by the staff of the magazine *Fortune* in the issue of July 1962. The "return on invested capital" consists of earnings on the book value of the common stock (common stock plus surplus and retained earnings), and dividends on preferred stock. In the exhibit the corporations are separated into 16 groups, for the years 1957, 1958, and 1959; and into 21 groups for the years 1960 and 1961. *Fortune* had made like studies annually for a number of years.

Commercial lists of this general nature are admissible in evidence as an exception to the hearsay rule. Among the reasons assigned are that "the author knows beforehand that his work will have no commercial or professional market unless it is found to have usual accuracy"; and "the habitual use of the work by the trade or profession has tested its usual and practical accuracy and has sanctioned its trustworthiness." *Wigmore on Evidence* (3d Ed.), Vol. VI, sec. 1702. Respondent did not object to the admissibility of the exhibit. The staff's showing would have been stronger had they adduced explicit evidence respecting the extent to which the *Fortune* studies are made use of by business men and are relied on in the market place. The staff witness, formerly associated with a member firm of the New York Stock Exchange as a registered representative, did testify that *Fortune* is a reputable magazine; that the studies are "much publicized"; and that "I know of no one who has been able to show that they are invalid, that they are not accurately done, and that the staff of *Fortune* is incompetent. That is pretty well recognized." The staff say in their brief that "Just as do the publishers of [*Standard & Poor's* and *Moody's*], *Fortune* publishes all of the data underlying the summary figures used, and obtains such data from the companies' books and records." This averment is without support in the record. It is a matter of common knowledge, however, that *Fortune* is one of the leading business magazines, and that many of its readers are men engaged in financial fields and in business and industry, including top management. The Examiner is justified in inferring that the *Fortune* studies of return on invested capital are accepted and utilized to some extent by business men as a guide in their affairs; and to some extent by stockbrokers, security analysts, and the investing public in the sale and purchase of securities. The Examiner is of the view that the staff exhibit is some evidence—amounting to substantial evidence—of what it purports to show.

In the five-year period 1957 to 1961, inclusive, the exhibit lists 25 petroleum producing companies, classified as "Petroleum refining." Two of the companies are publicly owned, independent, nonintegrated oil and gas producers; and the remainder are integrated oil companies. According to the exhibit and accompanying testimony, for the five-year period, the annual median returns or rates of profit on "invested capital" for the petroleum refining group, after payment of taxes, averaged 8.88%. The testimony shows that the preferred stock issued by this group of companies and outstanding is, in the language of the staff witness, "very insignificant." The Examiner finds that the 8.88% represents the approximate average of the median rates of profit on the book value of the common stock of the 25 companies over the five-year period.

The staff take the position that this average, 8.88%, is a guide as to the return to the equity owner which should be allowed in fixing respondent's rate of return. The use of a percentage of earnings on book value is more favorable to respondent than employment of earnings-price ratios; but the book value percentage is tempered by using the median figure. Also, it would appear that use of the median earnings on book value makes sufficient allowance for the fact that respondent is a relatively small company.

The staff witness testified that when an investor "invests his money he invests . . . in the whole corporation. So in looking at the rate of return for this company, I have looked at the entire company." It is to be remembered that petroleum production is only 15% of respondent's business; and that respondent is engaged in the retail sale of liquefied petroleum gas, in the distribution of agricultural and industrial chemicals, in the transmission of natural gas, and in the manufacture and sale of ice. The staff witness said that respondent "is integrated as far as being diversified into different fields," but that he did not consider it to be "an integrated petroleum company in the sense . . . that it has production, refining and marketing"; hence that he found it "difficult" to put respondent on a comparable basis with the "Petroleum refining" group of companies. He further said, however, that the companies which *Fortune* lists in this category are the "largest" and the "most profitable," and are "representative" of the companies engaged in petroleum production; "so I am comparing [respondent] with [them]. I think that is a fair comparison."

The staff witness testified that in his opinion a rate of return of 8.5% for respondent is fair and reasonable. He pointed out that this rate would result in a return of 12.56% on common equity; and that "Recognizing the fact that the 1.5% allowance on deferred taxes is not a paid cost, but is in reality a return to common equity, the actual return on common equity at 8.5% overall is 12.61%."

Consideration of the returns shown by the *Fortune* study on "invested capital" of companies whose activities are comparable to a particular activity of respondent other than petroleum production, further supports the fairness of a 12.56% allowance on common equity. That leg of respondent's business consisting of the sale of liquefied petroleum gas falls, in the *Fortune* classification, within the category of "Petroleum refining" companies, already treated. That leg of respondent's business consisting of distributing chemicals falls, in the *Fortune* classification, within a "Chemicals" group. The staff study shows that over the period 1957–1961, the average of the median returns on "invested capital" for this group of companies, after taxes, was 11.64%—less than the staff recommended allowance on common equity for respondent. Apparently neither of those parts of respondent's business consisting of transmitting natural gas and manufacturing and selling ice, falls within any of the 21 groups listed in the *Fortune* study. As to the transmission-of-natural-gas activity, it would seem in order to be guided by the numerical median of the percentage allowances for common equity that the Commission made in the electric and natural-gas pipeline company cases hereinafter considered, which percentage is 11%. As to the activity of manufacturing and selling ice, we are relegated to a consideration of the *Fortune* study as a whole. The study appears to give a fair spectrum over the five-year period of the range of the median rates of profit of 16 and 21 major industries, after payment of taxes, as represented by the 500 companies. The median rates of profit range from a high of 15.8% for "Soaps, cosmetics" in 1960, and "Pharmaceuticals" in 1961, to a low of 5.3% for "Metal products" in 1961; and the average of the median rates of profit is 9.68%. The staff witness testified that the amount of preferred stock issued by the 500 companies is "very insignificant." It seems probable, therefore, that the median rates of profit, and the average of such rates, over the five-year period, for common equity of companies whose business consists of the manufacture and sale of ice were below the staff recommended allowance of 12.56%. Since "the whole is the sum of all its parts," it would seem that an allowance of 12.56% is a return to the equity owner of respondent which is at least "commensurate with returns on investment in other enterprises having corresponding risks," and is amply "sufficient to attract capital" to respondent.

In the *Phillips* case, treating of the question of rate of return, the Commission said, ". . . we are regulating not all of the integrated operations but only the results of producing operations so that some additional weight should be given to such operations." The Commission went on to say:

> In our opinion . . . statistical methods do not provide a complete basis for determining a rate of return for an independent producer of gas. It is clear that the risks of this business are greater than those of an electric utility or natural gas pipeline. . . . we . . . think that an allowance for common equity for a producer should be comparable to or greater than that for a pipeline company or an electric company.

The Commission then proceeded to list seven electric and natural-gas pipeline company cases wherein it had made allowances for common equity of 8.64%; 10.5%; 10.3%; 14.4%; 12.85%; 10.18%; and 10.12% (24 FPC at pp. 571–72.) Compared with these allowances, the allowance to respondent of a return on common equity of 12.56% is liberal. It also is to be noted that, by virtue of its contract with Southern Natural, respondent has an assured market for its entire production from the South Section 28 Field for what is virtually tantamount to the life of the field.

In its brief, respondent says that under the approach taken by the staff, "the question is how much money must be earned or generated by S.S. 28 in order to enable the over-all complex of companies to pay an actual effective 44.92% federal income tax and thereafter retain an over-all 8½% rate of return. This argument is wholly without merit. ". . . we are regulating not all of the integrated operations but only the results of producing operations . . . ." *Phillips* case, 24 FPC at pp. 571–72.

Respondent says, "Allowing Sepsco a 12.56% rate of return on equity before taxes (or without providing a tax component) as recommended by [the staff] would give Sepsco an actual return on equity of about half the recommended rate." This assertion is based on an incorrect premise. The staff recommendation is for the allowance of a 12.56% rate of return on equity after taxes. The record heretofore considered (*supra*, p. 996) justifies the conclusion, and the Examiner finds, that respondent would not be required to pay a federal income tax by reason of the operations in the South Section 28 Field, or at most only a minimal amount. This is true whether the tax be calculated on the basis of the income from the field for the test year, or whether the tax is arrived at by an allocation of a proper portion of the over-all tax to the South Section 28 production.

Reverting to the *El Paso* case, *supra*, page 995, in its reference to including in the rate, "compensation for consumption of the gas," this factor is adequately taken into account by the allowance for depletion herein made.

In the light of the facts and the cases above cited, the Examiner is of the view that 8.5%, plus an allowance as "an increment for incentive," is a fair and reasonable rate of return for respondent.

The staff say that they are opposed to "any arbitrary incentive allowance because a fair rate of return has a built-in or implied incentive in that return." Whatever be the merit of this position as a general proposition, we are here dealing with a special situation. On the basis of the historical experience of respondent, the Examiner made only a limited allowance for exploration and development expense. It seems fair that something more as an incentive to explore for gas should be allowed in the rate of return. It must, however, be recognized that where, as here, a producer has had the practice of purchasing developed properties instead of exploring and developing, the original cost of the properties, and consequently the net investment rate base, are higher than if the producer had acquired undeveloped properties. Under the circumstances, the Examiner is of the opinion that increasing the rate of return by .25% is adequate as an additional incentive to explore and develop.

The resulting overall rate of return of 8.75% represents an allowance for equity of 13.17%. The Examiner finds and concludes that such rate of return is fair and reasonable, and fixes it at 8.75%.

Miscellaneous—Acquisition Cost

In its brief respondent argues that as an alternative to an original cost basis for determining its rate, it should be allowed a rate predicated on the cost to it of acquiring the production properties. It has been noted that the acquisition cost exceeds the depreciated original cost by $849,019.

It would appear that the claim for a rate increase on the basis of the acquisition cost comes too late. Respondent either elected, or else under a mistaken construction of the Commission order of March 7, 1963, thought that it was obligated, to base its case in chief solely on the original cost. Respondent introduced "Cost of Service" exhibits based on original cost and supported these exhibits by the testimony it adduced. One of these exhibits included a statement of respondent's acquisition cost "for informational purposes." Respondent also introduced a one-sheet exhibit entitled "Summary of Costs Based on Acquisition Cost." This exhibit did not even include a return on investment; and was without any supporting schedules, except that some of the items were the same as those in supporting schedules of the original cost exhibits. Nor was an acquisition cost developed by the testimony of its witnesses. The staff in reliance upon the position assumed by respondent, presented evidence only in refutation of an original cost case.

As late as October 1, 1963, during the presentation of its case in rebuttal, respondent conceded that in its case in chief it had made no claim for an acquisition cost:

> PRESIDING EXAMINER. It is true, isn't it, that Southeastern makes no claim in its case in chief for an acquisition cost? Mr. MICKUM. No, sir. We were ordered not to.

And the next day its accountant witness testified, ". . . of course, we have not presented our case at this point on acquisition costs."

Regardless of these considerations, the claim of a rate based on acquisition cost is wholly without merit. From consideration of the record, the Examiner finds that the difference between the original cost and the acquisition cost represents a payment for intangibles—the prospect for high earnings and a long-term contract for the sale of the entire production to Southern Natural. ". . . if a new owner buys utility property devoted to public service and pays for such intangibles as going concern value, monopoly value and superior earning power in the price paid for the property over and above its original cost, he may not include this excess in his rate base with the expectation of creating an additional cost to be borne by customers." Kenneth L. Smith, Lecture No. 7, p. 9, Course in Ratemaking, *supra*. There are no extenuating circumstances such as special benefits resulting to the consumer which might justify departure from this rule. *United Gas Pipe Line Co.*, 25 FPC 26, 30, 50-51. The acquisition cost claim must be disallowed.

Result of Case in Chief

The foregoing findings respecting the claims made in respondent's case in chief result in a total cost of service for the sale to Southern Natural of $971,249 based on operations for the test year ending September 30, 1962; and in a unit cost per Mcf of 21.73¢, all as more particularly set out in Appendix 2 hereto, column (5). The Examiner finds and concludes that this unit cost is insufficient to justify the rate increase that respondent seeks, or any increase in its rate for the sale of gas to Southern Natural.

Staff Contention for Rate Reduction

The staff contend that respondent's existing rate of 23.25¢ should be reduced to an amount corresponding to the cost of service. Respondent contends (1) that in a section 4(e) proceeding, the rate cannot or at least should not be reduced; and (2) that the actual cost of service is such that no decrease in the rate is warranted.

Authority under Section 4(e)

The law is clear that the Commission possesses the authority, in a Section 4(e) proceeding, to order a decrease in an existing rate. The section contains the provision: ". . . after full hearings, either completed before or after the rate . . . goes into effect, the Commission may make such orders with reference [to the new proposed rate] as would be proper in a proceeding initiated after it had become effective."

The legislative history of the Natural Gas Act shows that Section 4(e) is essentially the same as Section 205(e) of the Federal Power Act, and that both, including the foregoing provision, were derived from Section 15(7) of the Interstate Commerce Act. Hearings, House Committee on Interstate and Foreign Commerce, on H.R. 5423, 74th Cong., 2d sess., pp. 392, 2170; Hearings, House Committee on Interstate and Foreign Commerce, on H.R. 11662, 74th Cong., 2d sess., pp. 10, 46. See Mann-Elkins Act of June 18, 1910, sec. 12, 36 Stat. 539, 551; Transportation Act of 1920, sec. 418, 41 Stat. 486-87, amending Interstate Commerce Act; sec. 15(7), Act March 4, 1927, 44 Stat. Part 2, pp. 1447-48, 49 U.S.C.A. Sec. 15(7).

Prior to 1935 and 1938, the times of adoption of the Federal Power Act and the Natural Gas Act, the Interstate Commerce Commission had repeatedly and uniformly construed the corresponding provision of the Interstate Commerce Act (since 1920 embodied in Section 15(7)) as giving authority to that Commission to reduce or otherwise modify an existing rate. *Advances in Rates—Western Case, supra*, 20 I.C.C. 307, 314; *Lignite Coal from N. Dakota*, 126 I.C.C. 243, 244-45 and cases cited.

In *Hope Natural Gas Co. v. Federal Power Commission*, 196 F. 2d 803, 807, the Court of Appeals, Fourth Circuit, treating of another provision of Section 4(e) of the Natural Gas Act, spoke of, "the settled construction by the Interstate Commerce Commission of the suspension provision of the Interstate Commerce Act"; and held:

> The rule applies, therefore, that where provisions of one statute have been adopted by another, the interpretation which has been authoritatively placed upon the former applies to the latter also.

In 1949, the Supreme Court held that the Interstate Commerce Commission's construction of the provision of Section 15(7) of the Interstate Commerce Act corresponding to the provision here in question was correct. The Court quoted the provision of Section 15(7); to-wit "after full hearing, whether completed before or after the rate . . . goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective"; and declared, "It seems too plain for argument that such broad authority is ample for the modification of either proposed or existing rates or both." *Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573, 582. Also see *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 340–41.

The Federal Power Commission has interpreted Section 4(e) of the Natural Gas Act in conformity with the foregoing decisions, both impliedly (*Delhi-Taylor Oil Corp.*, 18 FPC 704, 706) and expressly (*Humble Oil & Refining Co.*, 25 FPC 1173).

Respondent, in contending that the Commission lacks the power under Section 4(e) to reduce an existing rate, cites two analyses in House Committee reports. The first analysis concerns Section 4(e) of H.R. 12680, a predecessor bill to the Natural Gas Act (H. Rep. No. 12680, 74th Cong., 2d Sess., p. 4); and the second concerns Section 4(e) of H.R. 6586, the bill that became the Natural Gas Act (H. Rep. No. 709, 75th Cong., 1st Sess.). These analyses are of no assistance; neither treats of, or even mentions, the provision of Section 4(e) with which we are here concerned.

Respondent next notes that the Interstate Commerce Act is dissimilar to the Natural Gas Act in that it requires that a carrier's rates to all shippers be uniform. This distinction makes no material difference here.

Respondent argues that assuming the Commission has the power to order a rate reduction under Section 4(e), it is not obligated to do so. To be sure, the language of Section 4(e) is permissive—"the Commission *may* make such orders," etc. For good reason, the section imposes no mandate upon the Commission to modify an existing rate in case an increase is not granted. There may be insufficiency of evidence in the record in a particular proceeding to enable the Commission to make a finding as to the lawfulness of the existing rate, or to determine what rate would be just and reasonable. But where the record is sufficient for the Commission to make such determinations, it should do so. "All rates . . . received by any natural-gas company . . . shall be just and reasonable, . . ." Natural Gas Act, Sec. 4(a).

Respondent avers that it is "the Commission's consistent practice" to allow "the pre-existing rate to stand when an increase is denied," but does not cite a single case that supports its assertion. There is no such practice so far as the Examiner is aware. Want of time prevents the necessary research by the Examiner, but he knows of no Section 4(e) case where the facts, in the Commission's view, showed that the established rate should be decreased; and the question of a rate reduction under the applicable provision of such section having been raised, the Commission allowed the existing rate to stand. In the typical section 4(e) case throughout the years, either the Commission has found that at least some increase in rates is called for, or else the evidence has not been sufficient to permit the Commission to determine the lawfulness of the existing rate.

Respondent next asserts that if existing rates are to be reduced in Section 4(e) cases, they would become "*in terrorem* proceedings." In response, it is sufficient to quote from the *Western* case, *supra*, where, as early as 1911, the Interstate Commerce Commission said: " . . . the duty having been laid upon the carriers to fix reasonable rates, it was neither harsh nor oppressive to require them to make justification when such rates were to be increased." 20 I.C.C. at p. 314.

Lastly respondent argues that at a prehearing conference on April 23, 1963, staff counsel did not apprise respondent that the staff was to contend for a rate reduction; hence, that an order reducing the rate would be a denial of due process. This argument scarcely deserves serious consideration. It is true that the Examiner called the prehearing conference *inter alia* "for the purpose of considering . . . a delineation of the issues . . . ."; that at the conference no mention was made that the hearing would or might involve the question whether the rate should be reduced; and also, that in response to the Examiner's inquiries seeking to delineate the issues, the statements of staff counsel indicate to the Examiner that the staff did not then contemplate seeking a reduction in the rate. But these facts, in our opinion, are immaterial. At the time of the conference, the staff field investigation had not even been commenced. Counsel made a good faith attempt to specify the issues. The Examiner does not think that a prehearing conference has such finality that statements there made respecting issues are irrevocably binding under all circumstances. Section 1.18 of the Rules of Practice and Procedure merely provides that at a prehearing conference "there may be *considered* . . . the *possibility* of . . . (1) the simplification of the issues." Also, staff counsel could not abrogate the provisions of Section 4(e), or preclude the Commission from taking such action in accordance therewith as the evidence warrants.

Furthermore, respondent suffered no denial of due process or other prejudice as a result of the prehearing conference. Prior to the conference, respondent had of course already filed for a rate increase; and in so doing was chargeable with knowledge that its action, in the event of a hearing, could lead to a rate decrease. *Tagg Bros. & Moorehead* v. *United States*, 280 U.S. 420, 439–40. And on July 22, 1963, at the very first session of the hearing for cross-examination of the staff witnesses on their prepared testimony, written following the field examination, staff counsel announced that the staff was seeking a rate reduction.

Respondent's Claims in Rebuttal

Respondent offered evidence in rebuttal embodying several claims not covered in its case in chief. The Examiner received a portion of this evidence. The portion received was not admitted, however, for the purpose of enabling respondent to make out a new case in chief or to advance additional items justifying a rate increase. It was received solely for the purposes of rebutting staff claims and of contradicting the staff's affirmative plea that a rate reduction should be ordered. The items in the rebuttal case that purportedly offset a rate reduction are three; *viz*, Rate Case Expense; upward adjustment in Depreciation, Depletion and Amortization Expense; and decrease in Other Gas Revenues (Credit).

Rate Case Expense. This is a $10,648 item that represents one-fourth of the allocated portion of estimated rate case expense incurred in connection with the instant proceeding. The undisputed evidence establishes that the estimate is reasonable. It is proper that the item offset the rate reduction *pro tanto*.

Upward Adjustment in Depreciation, Depletion and Amortization Expense. In its case in chief, respondent computed the allowance for Depreciation, Depletion and Amortization Expense on the basis of the "unrecovered reserves" in the field. The staff used the same basis. But in its rebuttal case, respondent computed the allowance by utilizing the proved developed reserves instead of the aggregate proved developed and undeveloped reserves. Adoption of such computation would result in an upward adjustment, in the amount of $52,543,[4] in the staff allowance for such expense. Respondent's accountant witness said that the adjustment was required "since the staff insists on using the year-end rate base and on ignoring the necessity for future drilling and other investment in this property." In view of the fact that the Examiner has rejected the staff proposal of a year-end rate base, and agrees with respondent that the average net investment should be employed in arriving at the rate base, much of the reason that respondent's witness assigned for having changed his method of computing the depreciation and depletion allowance no longer obtains. However, in a footnote in its brief, respondent "submits that even if the average test year rate base is used, only proved developed reserves should be used to calculate depreciation and depletion." We do not agree. The record shows that the major cost of recovering the "proved undeveloped" reserves has already been incurred, and is now included in the net plant investment. Also, the net plant investment now includes the existing equipment, gathering system, and improvements on the lands subject to the leases. Further, the Examiner has already allowed, as workover expense, the cost "to exploit nonperforated intervals of presently producing sands." The Examiner rejects respondent's upward adjustment in the Depreciation, Depletion and Amortization Expense.

Decrease in Other Gas Revenues (Credit). In its rebuttal presentation, respondent determined to make an allocation of the cost of production between gas and condensates. Employing the Btu method of allocation respondent allocated $171,471 of costs to liquids, thereby reducing the credit item in the staff exhibit, Other Gas Revenues, by $36,798. It was proper for respondent to make an allocation of these costs, but respondent did not use the proper method. Where, as here, it is not possible, for want of a factual basis, to use the relative cost method, the gross revenues method is to be followed in making this allocation. *Continental Oil Co.*, 27 FPC 96, 104. The Examiner has accordingly allocated the over-all cost of service, $1,190,166 between gas and liquids on the basis of the gross revenues from gas and the gross revenues from liquids for the test period, as shown in Exhibit 15, schedules 9 and 11. The amount thereby allocated to gas is $991,408; and that allocated to liquids is $198,758. The Examiner finds that $198,758 is the proper amount to apply in the reduction of the over-all cost of service.

As a result of these determinations, the total cost of service for the sale of gas to Southern Natural becomes $991,408; and the unit cost per Mcf, 22.18¢, as more particularly set out in Appendix 2, column (4). The Examiner finds that these amounts represent, respectively, the total cost of such service (including a fair return) and the unit cost per Mcf, based upon respondent's operations in the South Section 28 Field during the test year ending September 30, 1962. The Examiner further finds that the company-wide unit cost for respondent is 22.31¢ per Mcf, based upon its operations during such test year, as shown in Appendix 2, column (3).

The Examiner finds and concludes that the existing rate for such sale of gas, from the South Section 28 Field, 23.25¢ per Mcf, is unjust, unreasonable, excessive, and violative of the provisions of the Natural Gas Act; and that it should be reduced to 22.18¢ per Mcf.

---

[4] $56,910, if adjusted to reflect the increase in plant of $70,926 relating to the Potier well.

The staff contend that refunds should be made from November 15, 1963 (the date that the proposed increased rate became effective under the undertaking to assure refund of excess charges), not only of the excess collected above the existing rate, 23.25¢ per Mcf, but also the difference between such rate and 22.18¢ per Mcf, the rate herein determined to be just and reasonable. The Examiner disagrees; and is of the view that a refund can only lawfully be ordered of the amount collected above 23.25¢ per Mcf. The staff finds support for their position in the provision of Section 4(e) that where increased rates are made effective pending the decision, the Commission "upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified." The governing provision of Section 4(e), in our opinion, is that, heretofore cited, conferring power on the Commission to make such orders with reference to the new proposed rate "as would be proper in a proceeding initiated after it had become effective." Under the settled construction of the Act, an order made in a proceeding initiated to determine the reasonableness of an effective rate can have only prospective application. The Supreme Court in the *Hope* case, *supra*, 320 U.S. 591, 618, said: "It is conceded that under the Act the Commission has no power to make reparation orders. And its power to fix rates admittedly is limited to those 'to be thereafter observed and in force.' § 5(a)."

FINDINGS AND CONCLUSIONS

Upon consideration of the evidence adduced and the briefs of counsel, it is further found and concluded that:

(1) The evidence establishes that the proposed increased rate of 25.25¢ per Mcf for the sale of gas by Southeastern Public Service Company to Southern Natural Gas Company (contained in Supplement No. 3 to Southeastern's FPC Gas Rate Schedule No. 2), on the date of the suspension was, is now, and in the future will be, unjust and unreasonable, and therefore unlawful.

(2) There is insufficiency of evidence to sustain a finding that the proposed increased rate, or any portion thereof, was, is now, or will be, just and reasonable, and therefore lawful.

(3) Southeastern has failed to sustain the statutory burden of proof upon it to show that the proposed increased rate is just and reasonable.

(4) No portion of the increase sought by Southeastern is justified.

(5) For the reasons stated in paragraphs (1), (2), (3), and (4), the proposed rate of Southeastern should be disallowed and denied.

(6) Southeastern should refund to Southern Natural all amounts charged and collected, on and after November 15, 1963, above 23.25¢ per Mcf, together with interest at the rate of 7% per annum as hereinafter ordered.

(7) Southeastern's existing rate of 23.25¢ per Mcf for Southeastern's sales of gas to Southern Natural from South Section 28 Field, St. Martin Parish, Louisiana, is unjust and unreasonable; the just and reasonable rate to be charged for such sale is 22.18¢ per Mcf; and the existing rate should be reduced accordingly.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The proposed increased rate specified in Supplement No. 3 to Southeastern Public Service Company FPC Gas Rate Schedule No. 2, be and the same is hereby disallowed and denied.

(B) Within 30 days from the date of issuance of this order, Southeastern shall refund to Southern Natural Gas Company all amounts charged and collected, on and after November 15, 1963, in excess of 23.25¢ per Mcf, together with interest at the rate of 7% per annum, from the respective dates of receipt of such excess amounts to the date of refund.

(C) Within 30 days from the date of issuance of this order, Southeastern shall file a notice of change in its FPC Gas Rate Schedule No. 2 providing for a rate of 22.18¢ per Mcf, which new rate shall be effective 30 days from the date of issuance of this order.

(D) Within 60 days from the date of issuance of this order, Southeastern shall report to the Commission, in writing and under oath, the details of its calculations resulting in the refund ordered by paragraph (B) hereof, together with a copy of a release from Southern Natural respecting such refund.

(E) Upon compliance by Southeastern with the provisions of paragraphs (B), (C), and (D) hereof, this proceeding be terminated.

HOWELL PURDUE,
Presiding Examiner.

APPENDIX 1

SOUTHEASTERN PUBLIC SERVICE CO.

COST OF SERVICE—SOUTH SECTION 28 FIELD

COMPARATIVE SUMMARY OF SOUTHEASTERN CASE IN CHIEF AND STAFF CASE (ADJUSTED) FOR THE 12 MONTHS ENDED SEPT. 30, 1962

Particulars	Southeastern		Staff (adjusted)	
	Total cost	Unit cost (cents)	Total cost	Unit cost (cents)
(1)	(2)	(3)	(4)	(5)
Operating expenses	$460,390	10.30	$310,708	6.95
Administrative and general expenses	68,860	1.54	68,860	1.54
Depreciation, depletion, and amortization expense	286,755	6.42	260,198	5.82
Exploration and development expenses	152,139	3.40	14,273	.32
Other taxes	109,410	2.45	109,410	2.45
Other gas revenues—Credit	(177,049)	(3.96)	(208,269)	(4.66)
Return	[1] 451,985	10.11	[2] 343,238	7.68
Total cost of service—Gas	1,352,490	30.26	898,418	20.10
Mcf produced for the 12 months	4,469,702		4,469,702	

[1] 10 percent.
[2] 8.5 percent.

APPENDIX 2

SOUTHEASTERN PUBLIC SERVICE CO.

Cost of Service

FOR THE 12 MONTHS ENDED SEPT. 30, 1962 (PER EXAMINER)

Particulars	Exhibit or appendix number	After rebuttal		Before rebuttal
		Total Southeastern Co.-wide	South Section 28 field	South Section 28 field
(1)	(2)	(3)	(4)	(5)
Operating expenses	Appendix 3	$1,163,435	$355,708	$355,708
Administrative and general expenses	Exhibit 23, Schedule 1; Exhibit 2, Schedule 1.	[1] 231,737	79,508	68,860
Depreciation, depletion, and amortization expense.	Appendix 4, Exhibit 15, Schedules 1 and 5.	[2] 533,586	260,198	260,198
Exploration and development expense	Exhibit 15, Schedule 6.	34,146	14,273	14,273
Other taxes	Exhibits 1 and 2, Schedule 1.	256,627	109,410	109,410
Return at 8.75 percent	Appendix 5	705,501	371,069	371,069
Total overall cost of service—Gas and liquids.		2,925,032	1,190,166	1,179,518
Allocation of overall cost of service to liquids.		(225,227)	(198,758)	(208,269)
Total allocated cost of service to gas		2,699,805	991,408	971,249
Mcf produced and purchased for 12 months		12,102,375	4,469,702	4,469,702
Unit cost per Mcf (cents)		22.31	22.18	21.73

[1] Increased $10,648 over amount shown on Exhibit 2, Schedule 1, to reflect increase in allowance applicable to South Section 28 field.

[2] Increased $3,624 over amount shown on Exhibit 15, Schedule 1, to reflect change in annual depreciation expense for South Section 28 field resulting from increase of $70,926 (Potier well) in net investment.

APPENDIX 3

SOUTHEASTERN PUBLIC SERVICE CO.

Operating Expenses

FOR THE 12 MONTHS ENDED SEPT. 20, 1962 (PER EXAMINER)

Particulars	Total Southeastern Co.-wide	South Section 28 field
(1)	(2)	(3)
Total operating expenses—Per company exhibits 1 and 2, Schedule 2	$1,268,117	$460,390
Examiner adjustments:		
Eliminate company workover expense as assigned to South Section 28 field, exhibit 1, Schedule 2	(174,682)	(174,682)
Examiner's allowance for workover expense for the South Section 28 field	70,000	70,000
Total operating expenses—As adjusted	1,163,435	355,708

APPENDIX 4

SOUTHEASTERN PUBLIC SERVICE CO.

DEPRECIATION, DEPLETION AND AMORTIZATION—SOUTH SECTION 28 FIELD

FOR THE 12 MONTHS ENDED SEPT. 30, 1962, AND CUMULATIVE TO DATE

Line	Particulars	South Section 28 field		
		Per Staff (Exhibit 15 Schedule 5)	Staff adjustment	Staff as adjusted
	(1)	(2)	(3)	(4)
1 2	Original cost from Aluminum Corp. of America at Oct. 1, 1961, Per Southeastern's Exhibit 1, Schedule 4A	$5,313,665		$5,313,665
3 4 5	Less—Workover expense on C. C. Potier well capitalized in 1957—$126,079, C. C. Potier in 1956—$101,605, and Oliver in 1957—$65,628	(293,312)	[1] $70,926	(222,386)
6	Adjusted original cost at Oct. 1, 1961	5,020,353	70,926	5,091,279
7	Percent of total reserves produced through Oct. 1, 1961	16.1		16.1
8	Depreciation, depletion, and amortization at Oct. 1, 1961	$808,277		$819,696
9	Original cost at Oct. 1, 1961, as adjusted	5,020,353		5,091,279
10	Additions to plant to Sept. 30, 1962 (Company Exhibit 1, Schedule 4)	250,455		250,455
11	Less: Workover expenses capitalized:			
12 13 14	Anna Barras well ($30,000) Levert—St. John and C. C. Potier wells ($99,800) John Barras well ($62,146)	(191,946)		(191,946)
15	Acquisition costs of Southeastern capitalized in 1962	(57,552)		(57,552)
16	Adjusted gross plant at Sept. 30, 1962	5,021,310		5,092,236
17	Depletable plant at Sept. 30, 1962 (line 16 less line 8)	4,213,033		4,272,540
18	Mcf reserves at Oct. 1, 1961, $73,407,500			
19	Mcf produced during test period, $4,469,702			
20	Percent produced during test period, 6.09 percent			
21	Depletion, depreciation, and amortization for test period—Line 17 + line 20	256,574		260,198
22	Plus prior depletion, line 8	808,277		819,696
23	Total cumulative to Sept. 30, 1962	1,064,851		1,079,894
24	Net plant South Section 28 field, at Sept. 30, 1962, line 16 less line 23	3,956,459		4,012,342
25	Net plant at Sept. 30, 1962, per Company Exhibit 1, Schedule 4	4,421,865		4,421,865
26	Total adjustment, line 25 less line 24	465,406		409,523

Examiner's Calculation of Average Net Plant

Original cost at 10/1/61	$5,091,279
Accumulated depreciation, depletion, and amortization at 10/1/61	819,696
	4,271,583
Original cost at 9/30/62	5,092,236
Accumulated depreciation, depletion, and amortization at 9/30/62	1,079,894
	4,012,342
Combined net balances	8,283,925
Average net plant for test period—$8,283,925 divided by 2 equals	4,141,963
Average net plant per company exhibit 1, schedule 4	4,440,015
Examiner's adjustment	298,052

---

[1] Cost item relating to C. C. Potier well (1956) incurred during a "completion" rather than a "workover" operation—see Staff Initial Brief, page 35, wherein Staff agree that this amount should be added back to net investment.

APPENDIX 5

SOUTHEASTERN PUBLIC SERVICE CO.

RATE BASE AND RETURN

FOR THE 12 MONTHS ENDED SEPT. 30, 1962 (PER EXAMINER)

Particulars (1)	Total Southeastern Co.-wide (2)	South Section 28 field (3)
Gas plant (net) average—Per company Exhibits 1 & 2, Schedule 4	$8,173,046	$4,440,015
Less—Examiner's adjustment—Appendix 4	298,052	298,052
Total gas plant in service (net) average, as adjusted	7,874,994	4,141,963
Percent	100.000	52.60
Working capital allowance:		
Operating expenses as adjusted (appendix 2)	1,163,435	
Less:		
Purchased gas (Exhibit 2, Schedule 2)	(315,872)	
Royalties (Exhibit 2, Schedule 2)	(292,359)	
Rentals (Exhibit 2, Schedule 2)	(61,856)	
Operating expenses as adjusted above	493,348	
Administrative and general (appendix 2)	231,737	
Exploration and development (Exhibit 15, Schedule 6)	34,146	
Total cash expenses	759,231	
12.5 percent of total cash expenses	94,904	
Materials and supplies (Exhibit 2, Schedule 10)	[1] 73,995	
Prepayments (Exhibit 2, Schedule 10)	[1] 18,980	
Total working capital allowance	187,879	[2] 98,824
Total rate base	8,062,873	4,240,787
Return at 8.75 percent	705,501	371,069

[1] Test year-end amounts. Averages for test period not available.

[2] Allocation to South Section 28 field based on the relationship of South Section 28 field net plant to company-wide net plant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2175

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued April 21, 1964)

Southern California Edison Company, Licensee for Project No. 2175[1] on March 24, 1960, filed its initial statement, pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act claiming as of March 1, 1959, the effective date of the license, an actual legitimate original cost of the project in the amount of $29,234,816.15.[2]

Commission's staff conducted a field examination of Licensee's books and records relating to the claimed initial cost of the project. As a result of that examination, staff has proposed, subject to Commission approval, certain adjustments, agreed to by the Licensee, effecting a net reduction of $12,470.55 in claimed cost as of March 1, 1959, as follows: (1) A reduction of $4,634.25 in Land and Land Rights, (2) an increase of $3,122.75 in Nonproject Plant, (3) a reduction of $485.38 in Unrecorded Retirement and (4) a reduction of $10,473.67 in transmission land Rights-of-Way.

In addition to the net credit adjustment of $12,470.55, to the claimed initial cost the staff proposed reclassifications in the gross amount of $406,422.93, to the recorded cost which effect no net change in over-all projects costs; and further net debit adjustments of $4,513,481.99 to project actual legitimate original costs to conform such recorded costs to the project actual legitimate original cost claimed by Licensee. The resulting net adjustment to actual legitimate original cost is the debit amount of $4,501,011.44. The adjustment of project accounts as of March 1, 1959, and the accounting disposition thereof are to be accomplished by the following composite journal entry:

---

[1] The project may be referred to as the "Big Creek No. 1 and No. 2 Project. "It is located on Big Creek, tributary to the San Joaquin River, in Fresno, Tulare, and Kern Counties, California. The license, authorizing the operation and maintenance of the constructed project was issued pursuant to Section 4(e) of the Federal Power Act for a period of 50 years, effective as of March 1, 1959 (21 FPC 419, 422–423).

[2] Article 22 of the license provides for Commission determination of the actual legitimate original cost of the project as of the effective date of the license, and changes therein.

Account No.	Title	Debit (credit)
	Adjustments	
101 (100.1) [1]	Electric plant in service—Project No. 2175	$4,511,114.51
271 (265.2)	Contributions in aid of construction—Federal	(10,103.07)
	Actual legitimate original cost	4,501,011.44
	Recommended Accounting Disposition	
101 (100.1)	Electric plant in service:	
	Project No. 67	(392.26)
	Nonproject	(4,767,574.87)
121 (110)	Nonutility property	15,182.37
108 (250.1)	Accumulated provision or depreciation of electric plant in service:	
	Project No. 2175	485.38
	Nonproject	228,501.83
271 (265.1)	Contributions in aid of construction	8,669.89
426 (538)	Other income deductions	14,116.22
	Total disposition	(4,501,011.44)

---

[1] Account references in parentheses are to account numbers prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

The staff did not undertake an examination of the adequacy of the claimed accrued depreciation of the project as of March 1, 1959, and proposes that this matter be deferred for later determination by the Commission.

By letter dated March 8, 1963, the Licensee confirmed its agreement with the adjustments proposed by the staff and resulting project costs, as set forth above.

The California Public Utilities Commission was advised by letter of this Commission dated March 19, 1963 as to the proposed staff adjustments and resulting project cost. By letter dated March 25, 1963, the California Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments including the accounting dispositions and resulting project costs, and the California Public Utilities Commission by its lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, March 1, 1959, the actual legitimate original cost of Project No. 2175 is $29,222,345.60, classified by plants and primary accounts as shown in attached Schedule I.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 2175 as of March 1, 1959 be reserved for future Commission consideration.

The Commission orders:

(A) The provisions of Sections 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee as shown in the attached Schedule II.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary project plant accounts showing the amount of $29,222,345.60 as the actual legitimate original cost of the project as of March 1, 1959, classified by plants and primary accounts as shown in the attached Schedule I.

(D) The matter of the Commission's determination of the amount of accrued depreciation applicable to in-service project properties of Project No. 2175 as of May 1, 1959, is hereby reserved for future Commission consideration and determination.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of FPC Form No. 7 as of March 1, 1959, showing compliance therewith, and shall submit two further copies thereof to the Regional Accountant, Federal Power Commission, San Francisco, California.

SCHEDULE I

SOUTHERN CALIFORNIA EDISON CO., PROJECT NO. 2175 (BIG CREEK NO. 1 AND NO. 2)

SUMMARY BY SUBSIDIARY PLANT ACCOUNTS OF CLAIMED INITIAL COST AS OF MAR. 1, 1959, WITH ADJUSTMENTS THERETO AND ALLOWED PROJECT COST

Account[1] No.	Account[1] Title	As claimed	Adjustments	Allowed cost
	Intangible plant			
302	Franchises and consents	$1,486.84		$1,486.84
	HUNTINGTON LAKE RESERVOIR			
	Hydraulic production plant			
320	Land and land rights	35,557.58	(4,634.25)	30,923.33
322	Reservoirs, dams, and waterways	5,486,561.61	(12,847.00)	5,473,714.61
325	Miscellaneous power plant equipment	631.92		631.92
	Total Huntington Lake Reservoir	5,522,751.11	(17,481.25)	5,505,269.86
	BIG CREEK NO. 1			
	Hydraulic production plant			
321	Structures and improvements	3,299,240.24		3,299,240.24
322	Reservoirs, dams, and waterways	3,568,849.90		3,568,849.90
323	Water wheels, turbines, and generators	1,074,277.35		1,074,277.35
324	Accessory electric equipment	1,127,308.49		1,127,308.49
325	Miscellaneous power plant equipment	272,277.27		272,277.27
326	Roads, railroads, and bridges	24,885.59		24,885.59
	Total hydraulic production plant	9,366,838.84		9,366,838.84
	Transmission plant			
343	Station equipment	981,802.72		981,802.72
	Total Big Creek No. 1	10,348,641.56		10,348,641.56
	BIG CREEK NO. 2			
	Hydraulic production plant			
321	Structures and improvements	1,378,383.63	(3,762.30)	1,374,621.33
322	Reservoirs, dams, and waterways	3,591,079.39		3,591,079.39
323	Water wheels, turbines, and generators	1,036,565.95		1,036,565.95
324	Accessory electric equipment	1,218,079.19		1,218,079.19
325	Miscellaneous power plant equipment	214,147.60		214,147.60
	Total hydraulic production plant	7,438,255.76	(3,762.30)	7,434,493.46
	Transmission plant			
343	Station equipment	1,137,824.54		1,137,824.54
	Total Big Creek No. 2	8,576,080.30	(3,762.30)	8,572,318.00
	BIG CREEK TO MAGUNDEN TRANSMISSION LINE			
	Transmission plant			
340	Land and land rights	183,262.86		183,262.86
341	Clearing land and rights-of-way	122,798.33	8,773.00	131,571.33
342	Structures and improvements	19,350.36		19,350.36
343	Station equipment	667,806.52		667,806.52
344	Towers and fixtures	1,706,634.28		1,706,634.28
346	Overhead conductors and devices	1,772,077.92		1,772,077.92
349	Roads and trails	36,932.45		36,932.45
	Total Big Creek to Magunden Transmission Line	4,508,862.72	8,773.00	4,517,635.72
	General plant			
370	Land and land rights	5,589.06		5,589.06
373	Transportation equipment	10,116.56		10,116.56
378	Communication equipment	271,391.07		271,391.07
	Total general plant	287,096.69		287,096.69
	Total electric plant in service	29,244,919.22	(12,470.55)	29,232,448.67
265.2	Contributions in aid of construction—Federal	(10,103.07)		(10,103.07)
	Total cost of project No. 2174	29,234,816.15	(12,470.55)	29,222,345.60

---

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

SCHEDULE II

PROJECT NO. 2175 (BIG CREEK NO. 1 AND NO. 2) SOUTHERN CALIFORNIA EDISON CO.

SUMMARY OF ADJUSTMENTS TO CLAIMED INITIAL COST AS OF MAR. 1, 1959, AND ACCOUNTING DISPOSITION THEREOF

Account ¹			To adjust recorded cost to claimed cost						Adjustments				
									Claimed initial cost				
										No. 1	No. 2	No. 3	No. 4
No.	Title	Total	Subtotal	Miscellaneous items	Transmission line costs recorded in nonproject accounts	Net transfers to nonproject plant	Retirement corrections	Reclassifications	Subtotal	Land and land rights	Nonproject plant	Unrecorded retirements	Reclearing transmission line rights-of-way
	Intangible plant												
302	Franchises and consents	$1, 486. 84	$1, 486. 84		$1, 486. 84								
	HUNTINGTON LAKE RESERVOIR												
	Hydraulic production plant												
320	Land and land rights	(18, 616. 45)	(13, 982. 20)			($13,981.31)	($0. 89)		($4, 634. 25)	($4, 634. 25)			
321	Structures and improvements	(9, 805. 58)	(9, 805. 58)			(6, 137. 27)	(3, 668. 31)						
322	Reservoirs, dams, and waterways	(59, 785. 22)	(46, 938. 22)	($247. 67)		(27, 741. 45)	(8, 881. 35)	($10, 067. 75)	(12, 847. 00)		($12, 361. 62)	($485. 38)	
325	Miscellaneous power plant equipment	(4, 725. 56)	(4, 725. 56)			(1, 162. 12)	(3, 563. 44)						
	Total Huntington Lake Reservoir	(92, 932. 81)	(75, 451. 56)	(247. 67)		(49, 022. 15)	(16, 113. 99)	(10, 067. 75)	(17, 481. 25)	(4, 634. 25)	(12, 361. 62)	(485. 38)	

	BIG CREEK NO. 1												
	Hydraulic production plant												
321	Structures and improvements	(70,286.30)	(70,286.30)	(1,336.59)	--------	(52.40)	20,654.92	(89,552.23)	--------	--------	--------	--------	--------
322	Reservoirs, dams, and waterways	(105,723.59)	(105,723.59)	--------	--------	4,430.72	(4,927.12)	(105,236.19)	--------	--------	--------	--------	--------
323	Water wheels, turbines, and generators	52,194.84	52,194.84	--------	--------	--------	(800.55)	52,995.39	--------	--------	--------	--------	--------
324	Accessory electric equipment	(7,625.93)	(7,625.93)	--------	--------	--------	(10,511.87	2,885.94	--------	--------	--------	--------	--------
325	Miscellaneous power plant equipment	25,906.74	25,906.74	--------	--------	--------	(27,765.53)	53,672.27	--------	--------	--------	--------	--------
326	Roads, railroads, and bridges	(6,181.81)	(6,181.81)	--------	--------	--------	(6,498.15)	316.34	--------	--------	--------	--------	--------
	Total hydraulic production plant	(111,716.05)	(111,716.05)	(1,336.59)	--------	4,387.32	(29,848.30)	(84,918.48)	--------	--------	--------	--------	--------
	Transmission plant												
343	Station equipment	89,626.00	89,626.00	--------	--------	--------	(6,940.31)	96,566.31	--------	--------	--------	--------	--------
	Total Big Creek No. 1	(22,090.05)	(22,090.05)	(1,336.59)	--------	4,387.32	(36,788.61)	11,647.83	--------	--------	--------	--------	--------
	BIG CREEK NO. 2												
	Hydraulic production plant												
321	Structures and improvements	(14,380.38)	(10,618.08)	--------	--------	--------	(7,087.00)	(3,531.08)	(3,762.30)	--------	(3,762.30)	--------	--------
322	Reservoirs, dams, and waterways	(274,464.60)	(274,464.60)	--------	--------	--------	(134,893.27)	(139,571.33)	--------	--------	--------	--------	--------
323	Water wheels, turbines, and generators	(32,178.64)	(32,178.64)	--------	--------	--------	(204.19)	(31,974.45)	--------	--------	--------	--------	--------
324	Accessory electric equipment	102,895.47	102,895.47	--------	--------	--------	(4,638.60)	107,534.07	--------	--------	--------	--------	--------
325	Miscellaneous power plant equipment	23,636.90	23,636.90	--------	--------	--------	(21,939.44)	45,576.34	--------	--------	--------	--------	--------
326	Roads, railroads, and bridges	(27,513.49)	(27,513.49)	--------	--------	--------	(1,023.59)	(26,489.90)	--------	--------	--------	--------	--------
	Total hydraulic production plant	(222,004.74)	(218,242.44)	--------	--------	--------	(169,786.09)	(48,456.35)	(3,762.30)	--------	(3,762.30)	--------	--------
	Transmission plant												
343	Station equipment	41,922.86	41,922.86	--------	--------	--------	(4,953.41)	46,876.27	--------	--------	--------	--------	--------
	Total Big Creek No. 2	(180,081.88)	(176,319.58)	--------	--------	--------	(174,739.50)	(1,580.08)	(3,762.30)	--------	(3,762.30)	--------	--------

SCHEDULE II—Continued

PROJECT NO. 2175 (BIG CREEK NO. 1 AND NO. 2) SOUTHERN CALIFORNIA EDISON CO.—Continued

SUMMARY OF ADJUSTMENTS TO CLAIMED INITIAL COST OF MAR. 1, 1959, AND ACCOUNTING DISPOSITION THEREOF—Continued

Account ¹			To adjust recorded cost to claimed cost						Adjustments				
										Claimed initial cost			
										No. 1	No. 2	No. 3	No. 4
No.	Title	Total	Subtotal	Miscellaneous items	Transmission line costs recorded in nonproject accounts	Net transfers to nonproject plant	Retirement corrections	Reclassifications	Subtotal	Land and land rights	Nonproject plant	Unrecorded retirements	Reclearing transmission line rights-of-way
	BIG CREEK TO MAGUNDEN TRANSMISSION LINE												
	Transmission Plant												
340	Land and land rights	$183, 262. 86	$183, 262. 86		$183, 262. 86								
341	Clearing land and rights-of-way	131, 571. 33	122, 798. 33		122, 798. 33				$8, 773. 00		$19, 246. 67		($10,473.67)
342	Structures and improvements	19, 350. 36	19, 350. 36		19, 350. 36								
343	Station equipment	667, 806. 52	667, 806. 52		667, 806. 52								
344	Towers and fixtures	1, 706, 634. 28	1, 706, 634. 28		1, 706, 634. 28								
346	Overhead conductors and devices	1, 772, 077. 92	1, 772, 077. 92		1, 772, 077. 92								
349	Roads and trails	36, 932. 45	36, 932. 45		36, 932. 45								
	Total Big Creek to Magunden Transmission Line	4, 517, 635. 72	4, 508, 862. 72		4, 508, 862. 72				8, 773. 00		19, 246. 67		(10, 473. 67)
	General Plant												
370	Land and land rights	5, 589. 06	5, 589. 06		5, 589. 06								
373	Transportation equipment	10, 116. 56	10, 116. 56		10, 116. 56								

378	Communication equipment	271,391.07	271,391.07	------	271,391.07	------	------	------	------	------	------	------	------
	Total general plant	287,096.69	287,096.69	------	287,096.69	------	------	------	------	------	------	------	------
	Total electric plant in service	4,511,114.51	4,523,585.06	($1,584.26)	4,797,446.25	($44,634.83)	($227,642.10)	------	(12,470.55)	($4,634.25)	3,122.75	($485.38)	(10,473.67)
265.2	Contributions in aid of construction—Federal	(10,103.07)	(10,103.07)	------	(10,103.07)	------	------	------	------	------	------	------	------
	Total adjustment	4,501,011.44	4,513,481.99	(1,584.26)	4,787,343.18	(44,634.83)	(227,642.10)	------	(12,470.55)	(4,634.25)	3,122.75	(485.38)	(10,473.67)
	Recommended Accounting Disposition												
100.1	Electric plant in service—Nonproject	(4,767,574.87)	(4,764,452.12)	1,182.13	(4,796,013.07)	30,653.52	(274.70)	------	(3,122.75)	------	(3,122.75)	------	------
100.1	Electric plant in service—Project No. 67	(392.26)	(392.26)	193.66	------	------	(585.92)	------	------	------	------	------	------
110	Other physical property	15,182.37	13,981.31	------	------	13,981.31	------	------	1,201.06	1,201.06	------	------	------
250.1	Reserve for depreciation of electric plant in service:												
	Project No. 2175	485.38	------	------	------	------	------	------	485.38	------	------	485.38	------
	Nonproject	228,501.83	228,501.83	------	------	------	228,501.83	------	------	------	------	------	------
265.1	Contributions in aid of construction	8,669.89	8,669.89	------	8,669.89	------	------	------	------	------	------	------	------
538	Miscellaneous income deductions	14,116.22	209.36	208.47	------	------	.89	------	13,906.86	3,433.19	------	------	10,473.67
	Total disposition	(4,501,011.44)	(4,513,481.99)	1,584.26	(4,787,343.18)	44,634.83	227,642.10	------	12,470.55	4,634.25	(3,122.75)	485.38	10,473.67

( ) Denotes credit.

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMERADA PETROLEUM CORPORATION, DOCKET NO. G-18346

DECLARATORY ORDER

(Issued April 22, 1964)

On January 30, 1964, Amerada Petroleum Corporation (Amerada) filed a letter with the Secretary requesting the Commission's informal opinion as to the effect of our order of October 29, 1963, conditionally approving Amerada's settlement of Docket No. G-18346,[1] on the future administration of Amerada's FPC Gas Rate Schedule No. 82, particularly in regard to prepayments and subsequent make-ups.

On February 10, 1964, Florida Gas Transmission Company (Florida Gas), the pipeline purchaser under Amerada's Rate Schedule No. 82 filed a letter with the Commission concerning the same matter. Florida Gas and Amerada agree as to the facts stated below, but disagree as to what our opinion should be as to Florida Gas' make-up rights.

Although both parties to the dispute have agreed to abide by our informal decision on the basis of their letters, we are of the view that this matter would more properly be handled in a formal Commission order. Accordingly, we shall treat Amerada's letter, *supra*, as a petition for a declaratory order under Section 1.7(c) of the Rules of Practice and Procedure and Florida Gas' letter as an answer to such petition under Section 1.9 thereof.

The facts are as follows:[2]

(1) Under Article V, Section 2, of the contract, as amended, the purchaser was required to begin receiving gas not later than July 1, 1962. If it did not do so, it was required to pay the seller each month thereafter and until deliveries commenced for a quantity of gas equal to the daily contract quantity times the number of days in each month at the prices provided in the contract (21.5¢ per Mcf exclusive of tax reimbursement), as if the gas were actually delivered, provided the seller's facilities were installed and the gas was available.

(2) Article V, Section 2 also provided that the buyer shall have a right to make up such prepaid-for gas in accordance with paragraph 8 of Article VII of the contract. That paragraph provides that the make-up period is two years (now extended to four years) and that ". . . . [a]ny payment which buyer has previously made for gas not received and which is being made up shall be credited against payment due hereunder for such make-up gas at the time of actual deliveries thereof."

(3) The purchaser, Florida Gas, did not begin taking deliveries until November 12, 1962, and accordingly paid Amerada for daily contract quantities totalling 402,000 Mcf, as contemplated by Article V, Section 2 of the contract.

(4) Amerada contends that Florida Gas is entitled to make up 402,000 Mcf of gas while Florida Gas contends that, since it paid for 402,000 Mcf of gas at the rate of 21.25¢ per Mcf inclusive of tax reimbursement (conditioned in the temporary certificate from the 21.5¢ plus tax reimbursement contract price) and the rate in effect during the rate settlement moratorium period (April 1, 1963, through March 31, 1968) is 20.625¢ per Mcf, Florida Gas should be allowed

---

[1] *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* 30 FPC 1130.

[2] The facts and controversy are practically identical to the facts and controversy considered in our declaratory order issued this date in Phillips Petroleum Company, Docket No. G-18375.

to recoup such prepaid-for gas during the moratorium period at the moratorium period price of 20.625¢ per Mcf.

The Amerada-Florida Gas contract, the pertinent terms of the Amerada settlement proposal and the pertinent terms of our order approving the Amerada settlement proposal are for all practical purposes identical to the comparable documents and terms described in detail in our declaratory order in Docket No. G–18375, *supra*, so we shall not repeat such description here.

Upon consideration of the facts and arguments presented by Amerada and Florida Gas and for the same reasons expressed in our declaratory order in Docket No. G–18375, we conclude that Florida Gas is entitled to make-up during the make-up period for gas paid for but not taken prior to April 1, 1963, the same amounts of gas which it stored with Amerada under the take-or-pay and make-up provisions of the contract.

The Commission finds:

Under the terms of the contract dated March 23, 1959, between Amerada Petroleum Corporation and Coastal Transmission Corporation (predecessor of Florida Gas Transmission Company), as amended by the settlement proposal filed by Amerada Petroleum Corporation on August 5, 1963, and conditionally approved by the Commission on October 29, 1963, Florida Gas Transmission Company is entitled to receive during the four year make-up period as make-up gas for gas paid for prior to April 1, 1963, but not received, a quantity of gas which, when multiplied by 21.25¢ per Mcf, will equal the amount of money paid by Florida Gas Transmission Company and its predecessor under Article V, Section 2 of such contract, as amended, for gas not taken.

The Commission orders:

It is hereby declared and ordered that, under the terms of the contract, dated March 23, 1959, between Amerada Petroleum Corporation and Coastal Transmission Corporation (predecessor of Florida Gas Transmission Company), as amended by the settlement proposal filed by Amerada Petroleum Corporation on August 5, 1963, and conditionally approved by the Commission on October 29, 1963, Florida Gas Transmission Company is entitled to receive during the four year make-up period as make-up gas for gas paid for prior to April 1, 1963, but not received, a quantity of gas which, when multiplied by 21.25¢ per Mcf, will equal the amount of money paid by Florida Gas Transmission Company and its predecessor under Article V, Section 2 of such contract, as amended, for gas not taken.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MIDHURST OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. RI60-468

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDING

(Issued April 22, 1964)

On March 9, 1964, Midhurst Oil Corporation (Operator), *et al.* (Midhurst) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to Tennessee Gas Transmission Company (TGT) by Midhurst. The offer relates to a sale made under Supplement No. 6 to Midhurst's FPC Gas Rate Schedule No. 7 in Jim Wells County, Texas (Texas R.R. Com. District #4). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective by Midhurst on December 10, 1960. The increased rate was charged and collected, subject to refund from December 10, 1960, to March 1, 1962, on which date Graridge Corporation succeeded to Midhurst's interest. On August 1, 1963, this Commission accepted an offer of settlement filed by Graridge for sales made by it as successor to Midhurst.[1]

Midhurst, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate of 14.6¢ per Mcf, which is the rate accepted in the Graridge settlement. The estimated total dollars to be refunded approximates $8,600, exclusive of interest. No protests or objections have been filed to the offer.

We have in the past granted the predecessor the same settlement rate as the successor where the predecessor and successor filed a joint offer. While the failure of a predecessor to join in the offer of a successor might preclude our approval of a similar offer subsequently filed by the predecessor, it appears that in the instant case the predecessor, Midhurst, was not aware of the successor's offer. Accordingly, there is justification for Midhurst's failure to join in Graridge's offer. We therefore find it appropriate to approve the subject settlement proposal.

The proposed settlement is consistent with the provisions of the Second Amendment to the *Commission's Statement of General Policy No. 61–1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Midhurst on March 9, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Midhurst on March 9, 1964, is hereby approved in accordance with the provisions of this order.

(B) Midhurst shall refund to TGT to March 1, 1962, the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest at 7% computed to the date of refund, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(C) Upon notification by the Secretary of the Commission that Midhurst has complied with the terms and conditions of the order, the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(D) The acceptance by the Commission of Midhurst's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Midhurst, including area rate or other similar proceedings.

---

[1] *Graridge Corporation (Operator), et al.*, Docket Nos. CI63–369 and RI60–468.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PHILLIPS PETROLEUM COMPANY, DOCKET NO. G-18375

DECLARATORY ORDER

(Issued April 22, 1964)

On March 2, 1964, Phillips Petroleum Company (Phillips) filed a petition for declaratory order in Docket No. G-18375 requesting that the Commission, after hearing, issue an order providing that the quantity of gas which Florida Gas Transmission Company (Florida Gas) is entitled to receive as make-up gas because of payments made by Florida Gas prior to April 1, 1963, is, under Phillips' Rate Schedule No. 372, limited to a quantity of gas which, when multiplied by 21.25¢ per Mcf,[1] will equal the amount of money heretofore paid by Florida Gas for gas not taken.

Phillips states that subsequent to the Commission's approval of a settlement of the matters in Docket No. G-18375[2] a controversy has arisen between it and Florida Gas, the latter contending that Florida Gas is entitled to receive as make-up of volumes of gas previously paid for but not taken that quantity of gas which, when multiplied by the rate of 20.625¢ per Mcf, will equal the amount of money previously paid by Florida Gas for gas not taken.

Florida Gas does not dispute Phillips' statement of facts and controversy.[3] The facts are as follows:

(1) Under Article V, Section 2, of the contract as amended (Phillips F.P.C. Gas Rate Schedule No. 372) the purchaser was required to begin receiving gas not later than July 1, 1962. If it did not do so, it was required to pay the seller each month thereafter and until deliveries commenced for a quantity of gas equal to the daily contract quantity times the number of days in each month at the prices provided in the contract (21.5¢ per Mcf exclusive of tax reimbursement), as if the gas were actually delivered, provided the seller's facilities were installed and the gas was available.

(2) Article V, Section 2 also provided that the buyer shall have a right to make up such prepaid-for gas in accordance with paragraph 8 of Article VII of the contract. That paragraph provides that the make-up period is two years (now extended to four years) and that ". . . [a]ny payment which buyer has previously made for gas not received and which is being made up shall be credited against payment due hereunder for such make-up gas at the time of actual deliveries thereof."

(3) The purchaser, Florida Gas, did not begin taking deliveries until November 12, 1962, and accordingly paid Phillips for daily contract quantities totalling 904,500 Mcf, as contemplated by Article V, Section 2 of the contract.

---

[1] Unless otherwise stated, all rates expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.

[2] See order issued November 29, 1963, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 1381.

[3] Florida Gas' answer, filed on April 6, 1964, after the time allowed for filing had elapsed, so states.

(4) Phillips contends that Florida Gas is entitled to make up 904,500 Mcf of gas while Florida Gas contends that, since it paid for the 904,500 Mcf of Gas at the rate of 21.25¢ per Mcf (conditioned in the temporary certificate from the 21.5¢ plus tax reimbursement contract price) and the rate in effect during the rate settlement moratorium period (April 1, 1963, through March 31, 1968) is 20.625¢ per Mcf, Florida Gas should be allow to recoup such prepaid-for gas during the moratorium period at the moratorium period price of 20.625¢ per Mcf.

Although Phillips requests that a hearing be held on these matters, we are of the view that a hearing is neither required nor desirable. The facts, all of which are in the Commission's files, are undisputed. Our function here is to interpret the contract, the settlement proposal and our order conditionally approving the settlement proposal.

It is the Commission's opinion that the quantity of gas which Florida Gas is entitled to receive as make-up gas because of payments by Florida Gas prior to April 1, 1963, is, under Phillips' Rate Schedule No. 372, limited to a quantity of gas which, when multipled by 21.25¢ per Mcf, will equal the amount of money heretofore paid by Florida Gas for gas not taken.

Insofar as relevant to the issue here in question, the settlement proposal drafted and submitted by Phillips and conditionally approved by the Commission provided:

> 1. That from April 1, 1963, through March 31, 1968 (the "moratorium period"), the total amount per Mcf paid by the respective pipeline purchasers for natural gas delivered pursuant to . . . Phillips' FPC Gas Rate Schedule * * * 372 shall be 20.625 cents per Mcf, inclusive of reimbursement for Louisiana State taxes. [Footnote omitted.]
>
> * * * * * * *
>
> 4. Upon the issuance of an order by the Commission approving this Settlement Proposal, * * *. Phillips agrees to file promptly as supplements to its Rate Schedules * * *. 372 true copies of this Settlement Proposal, together with the order of the Commission approving same. Upon the acceptance for filing of such supplements and issuance of permanent certificates of public convenience and necessity by the Commission to * * *. Phillips as herein provided, according to the original applications as modified by the terms of this Settlement Proposal, the terms of the original rate schedules of * * *. Phillips as they may have been heretofore amended or supplemented shall be amended only to the extent that the terms and provisions of this Settlement Proposal are inconsistent with the terms and provisions of the original rate schedules as heretofore amended or supplemented. In all other respects the terms and provisions of the original rate schedules, as heretofore amended or supplemented, and the rights and obligations of the parties hereto shall be unaffected by this Proposal, and nothing contained herein shall be deemed to amend the respective contracts.

The Commission's order of November 29, *supra*, stated (p. 1382):

> The temporary authorizations under which the * * * Phillips sales are presently being made do not contain express refund conditions and, except as noted above, * * * Phillips * * * [does] not propose to make refunds of any amounts collected prior to April 1, 1963, the effective date of the proposed rate reductions.

The order further specifically provided (p. 1382):

> In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken

during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

Although neither the settlement proposal nor the Commission's order conditionally approving the proposal expressly state what effect they have on the existing prepayment account, the settlement proposal and the Commission's order conditionally approving the same certainly indicate no intent to adjust the prepayment account. The proposal is prospective, from April 1, 1963.

The settlement proposal states that the total amount per Mcf paid by the respective purchasers for natural gas "delivered" during the moratorium period shall be 20.625¢ per Mcf. To include gas paid for prior to April 1, 1963, not taken at the time paid for but which is physically delivered during the moratorium period, would mean that the purchaser would receive more gas than it would have been entitled to receive had it actually taken such gas prior to April 1, 1963, as required by the contract. Such a view would impose the greatest risks upon the producers whose contracts provide the broadest make-up privileges. The make-up provision is a device designed to alleviate the burden of take-or-pay-for requirements and is the subject of bargaining by the purchasers. While the extension of this provision was the subject of our approval of the settlement proposal, it was not our intention to condition the provision to require that the seller subject himself completely to the actions of the purchaser who would otherwise have been required to take gas. Were we to interpret the settlement as Florida Gas would desire here, we would require that it pay less for gas which it was under a contractual obligation to take prior to the settlement than it would have paid had it actually taken the gas. We think that under the provision quoted above "delivered" will mean in the future that the purchaser pay only 20.625¢ per Mcf for gas which it will pay for during the moratorium period, but will not take at that time. Whenever the purchaser does take that gas it will pay no more than the 20.625¢ price.

In summary, we are of the view that under the original contract, the settlement proposal, and our order conditionally approving the settlement proposal, Florida Gas is entitled to make-up during the make-up period for gas paid for but not taken prior to April 1, 1963 the same amounts of gas it stored with Phillips under take-or-pay and make-up provisions of the contract.

In its petition for declaratory order, Phillips states that because of the dispute discussed above, Florida Gas has refused to sign the release which is required to be filed by Phillips by ordering paragraphs (E) and (F) of our order of November 29, 1963, *supra*. Phillips requested that we order and declare that Phillips has complied with such ordering paragraphs.

Since the controversy between Florida Gas and Phillips is resolved by this order, there is no reason to expect that Florida Gas will continue to refuse to sign the release tendered by Phillips. Thus, Phillips will be able to comply with paragraphs (E) and (F) of the aforementioned order. Therefore, Phillips' request in this regard will be denied.

The Commission finds:

Under the terms of the contract dated March 23, 1959, between Phillips Petroleum Company and Coastal Transmission Corporation (predecessor to Florida Gas Transmission Company), as amended by the settlement proposal filed by Phillips Petroleum Company on July 25, 1963, and conditionally approved by the Commission on November 29, 1963, Florida Gas Transmission Company is entitled to receive during the four year make-up period as make-up gas for gas paid for prior to April 1, 1963, but not received, a quantity of gas which, when multiplied by 21.25¢ per Mcf, will equal the amount of money paid by Florida Gas

Transmission Company and its predecessor under Article V, Section 2 of such contract, as amended, for gas not taken.

The Commission orders:

(A) It is hereby declared and ordered that, under the terms of the contract, dated March 23, 1959, between Phillips Petroleum Company and Coastal Transmission Corporation (predecessor of Florida Gas Transmission Company), as amended by the settlement proposal filed by Phillips Petroleum Company on July 25, 1963, and conditionally approved by the Commission on November 29, 1963, Florida Gas Transmission Company is entitled to receive during the four year make-up period as make-up gas for gas paid for prior to April 1, 1963, but not received, a quantity of gas which, when multiplied by 21.25¢ per Mcf, will equal the amount of money paid by Florida Gas Transmission Company and its predecessor under Article V, Section 2 of such contract, as amended, for gas not taken.

(B) The petition for declaratory order filed by Phillips Petroleum Company in Docket No. G-18375 on March 2, 1964, is hereby denied except insofar as it is granted hereinabove.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TOWN OF ROXIE, MISSISSIPPI, DOCKET NO. G-20260

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued April 22, 1964)

Southern Natural Gas Company (Southern Natural) filed on February 24, 1964, in Docket No. G-20260, an application to amend the order of the Commission issued April 7, 1960, which directed Southern Natural to establish physical connection of its facilities with the facilities of the Town of Roxie, Mississippi, and to sell and deliver up to 232 Mcf of natural gas daily to the Town of Roxie for distribution and resale in the Town of Roxie and environs (for service only to residential and commercial customers). The application to amend seeks removal of the volumetric limitation in the Commission's order so as to permit the Town of Roxie to serve Southern Pine Superior Stud Corporation natural gas for wood processing purposes, all as more fully set forth in the application on file with the Commission.

Southern Natural and the Town of Roxie have entered into a new service agreement dated February 10, 1964, and filed with the Commission on February 17, 1964, providing for gas service under Southern Natural's Rate Schedule CD-1, which agreement supersedes the present service agreement dated September 12, 1963, providing for gas service under Southern Natural's Rate Schedule G-1.

On March 2, 1964, the Town of Roxie filed an answer in support of Southern Natural's motion to amend.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 19, 1964 (29 F.R. 3551). No protest or petition to intervene concerning the aforesaid application to amend has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued April 7, 1960, in Docket No. G-20260 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued April 7, 1960, in Docket No. G-20260, directing Southern Natural to establish physical connection of its facilities with the facilities of the Town of Roxie and to sell and deliver natural gas to said Town be and is hereby amended so as to remove the volumetric limitation of 232 Mcf of natural gas daily imposed by said order upon Southern Natural.

(B) The service agreement between Southern Natural and the Town of Roxie dated February 10, 1964, and filed with the Commission on February 17, 1964, is hereby accepted for filing, to be effective on the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

E. E. FOGELSON, DOCKET NO. G-19013; JAMES G. BROWN & ASSOC., OPER., ET AL., DOCKET NO. CI60-750; YUCCA PETROLEUM CORPORATION, DOCKET NO. CI60-768; JAMES G. BROWN & ASSOC., OPER., ET AL., DOCKET NO. CI60-770; MONSANTO CHEMICAL COMPANY, DOCKET NO. CI61-94; ARMOUR PROPERTIES, DOCKET NO. CI61-102; MARATHON OIL COMPANY (PLYMOUTH), DOCKET NO. CI61-169; CREE DRILLING COMPANY, INC., DOCKET NO. CI61-193; WESTERN OIL FIELDS, INC., OPER., ET AL., DOCKET NO. CI61-273; ANCHOR OIL COMPANY, DOCKET NO. CI61-292; CONTINENTAL OIL COMPANY, DOCKET NO. CI61-375; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI61-438; IRVIN PRODUCING COMPANY, DOCKET NO. CI61-579; STUBBLEFIELD BROTHERS, DOCKET NO. CI61-605; CAROLINE HUNT SANDS & LLOYD B. SANDS, DOCKET NO. CI61-643; CRICKET OIL CO., ET AL., DOCKET NO. CI61-650; UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. CI61-715; HAMILTON BROTHERS, LTD., DOCKET NO. CI61-849; CHAMPLIN OIL & REFINING COMPANY, DOCKET NO. CI61-888; PETRO-ASSOCIATES, INC. (OPERATOR), ET AL., DOCKET NO. CI61-936; D. D. FELDMAN, DOCKET NO. CI61-1452; FOREE DRILLING CO., OPER., ET AL., DOCKET NO. CI61-1726; SCHAFER OIL CORPORATION, DOCKET NO. CI61-1774; CARL M. ARCHER, DOCKET NO. CI61-1782; DAN E. ARCHER, CI61-1783; TRANSWESTERN PIPELINE COMPANY, DOCKET NO. G-20464, ET AL.; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G-18201; A. G. HILL, DOCKET NO. CI61-497

ORDER ON APPLICATION FOR REHEARING FURTHER CONSOLIDATING PROCEEDINGS

(Issued April 23, 1964)

Cree Drilling Company, Inc., by application filed March 30, 1964, has applied for rehearing and reconsideration of our order issued March 4, 1964, in Docket No. G-19013, *et al.*, in which we granted producer applications for certificates but denied certain others including Cree in Docket No. CI61-193, where it was not shown that the pipeline receiving the gas, Transwestern Pipeline Company, had permanent certificates for all of the necessary facilities. We thereupon consolidated these dockets, including CI61-193, with Transwestern's Docket No. G-20464, *et al.*

Cree now contends that its interest in leases in Roberts County, Texas, which are involved here, is shared with Phillips Petroleum Company (which has a temporary certificate in Docket No. G-18201), A. G. Hill (who has a temporary certificate in Docket No. CI61-497) and Shell Oil Company, which it points out has a permanent certificate issued November 19, 1962, in Docket No. CI61-737, and that the gas from all of these owners, including Cree, is sold to Transwestern and passes through the same facilities. Cree asks the Commission for a permanent certificate or in the alternative that the temporary certificate previously granted to Cree remain outstanding and that the Commission consolidate its application with those of A. G. Hill and Phillips.

While we granted Shell a permanent certificate, this reflected a rate settlement, *Shell Oil Company, et al.*, Docket No. G-9446, *et al.*, 28 FPC 257. We do not believe it proper to grant a permanent certificate to Cree for the reasons stated in our order of March 4, 1964. We will, however, grant Cree's alternative request and consolidate the applications of A. G. Hill and Phillips with Docket No. G-20464 for consideration therein along with Cree's application. The temporary certificate issued to Cree in Docket No. CI61-193 will, of course, remain outstanding.

The Commission orders:

The proceedings in Phillips Petroleum Company, Docket No. G-18201, and A. G. Hill, Docket No. CI61-497, are hereby consolidated with those in Docket No. G-20464, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DELEGATION OF AUTHORITY, ACCEPTANCE OR REJECTION OF JOURNAL ENTRY FILINGS, DOCKET NO. R-261

ORDER NO. 283

AMENDING SECTION 3.5 OF THE COMMISSION'S GENERAL RULES

(Issued April 23, 1964)

The Commission has delegated to the Chief Accountant the authority to accept or reject certain journal entry filings relating to the purchase or sale of electric or gas plant tendered by public utilities, licensees, or natural gas companies. This delegation of final authority should be reflected in the description of the Commission's organization as required by section 3 of the Administrative Procedure Act.

The Commission finds:

(1) The amendment to the Commission's General Rules herein adopted is necessary and appropriate to carry out the provisions of the Federal Power Act and the Natural Gas Act.

(2) Since the amendment herein adopted involves matters of Commission organization and procedures, the notice, hearing and effective date provisions of section 4 of the Administrative Procedure Act are not applicable.

(3) The amendment herein adopted will effect economies, conserve manpower, and expedite the processing of journal entry filings, and should be made effective forthwith.

The Commission, acting pursuant to authority granted by the Federal Power Act, particularly section 309 thereof (49 Stat. 858, 16 U.S.C. 825h), and the Natural Gas Act, particularly section 16 thereof (52 Stat. 830, 15 U.S.C. 717o), and in accordance with section 3 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1002), *orders:*

(A) Paragraph (b) of § 3.5 of Part 3, Organization, Subchapter A, General Rules, Chapter I of Title 18 of the Code of Federal Regulations, is amended to read as follows:

§ 3.5 *Delegations of final authority.* The Commission has authorized:

* * * * * * *

(b) The Chief Accountant, or in his absence, the Acting Chief, to:

(1) Issue interpretations of the Uniform Systems of Accounts for Public Utilities, Licensees, and Natural Gas Companies.

(2) Accept for filing proposed journal entries relating to the purchase or sale of electric or gas plant tendered by a public utility, licensee, or natural gas company which he determines to be consistent with applicable statutory requirements and the Commission's rules, regulations or orders thereunder, including the Commission's Uniform Systems of Accounts for Public Utilities, Licensees, and Natural Gas Companies, or to reject any such proposed journal entries which do not conform therewith; provided that, where the proposed journal entries involve unusually large transactions or unique or controversial features, the Chief Accountant shall present same to the Commission for consideration.

[Sec. 309, 49 Stat. 858, U.S.C. 825h; Sec. 16, 52 Stat. 830, 15 U.S.C. 717o; Sec. 3, 60 Stat. 238, 5 U.S.C. 1002.]

(B) The amendment herein adopted shall become effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COASTAL STATES GAS PRODUCING COMPANY, DOCKET NOS. CI64–237 AND CI64–269

FINDINGS AND ORDER GRANTING MOTION FOR WAIVER OF INTERMEDIATE DECISION PROCEDURE, GRANTING MOTION FOR LEAVE TO WITHDRAW INTERVENTION AND PERMITTING ABANDONMENT

(Issued April 24, 1964)

On August 21, 1963, Coastal States Gas Producing Company (Coastal) filed in Docket Nos. CI64–237 and CI64–269, applications for permission and approval to abandon, pursuant to Section 7(b) of the Natural Gas Act, its sales of gas to Trunkline Gas Company (Trunkline) as heretofore authorized in Docket Nos. G–14329, G–16542, G–16935 and G–18838, from reserves of gas located in Bee County and San Patricio County, Texas.

Notice of both applications was issued by the Commission and was published in the Federal Register.[1]

---

[1] 28 F.R. 9830, September 7, 1963.

On September 23, 1963, United Gas Pipe Line Company (United) filed a petition to intervene in both dockets, and an order was issued by the Commission March 12, 1964, permitting said intervention.

On February 20, 1964, these proceedings were consolidated and the matters were set for hearing to commence on April 14, 1964.

On March 23, 1964, Commission Staff filed a motion for a pre-hearing conference, which motion was granted by the Presiding Examiner on March 31, 1964.

On March 30, 1964, United filed a letter indicating its intention to withdraw its petition to intervene in both dockets.

On April 7, 1964, a pre-hearing conference was held, at which time Coastal and the Commission Staff agreed and stipulated as follows:

1. That in the language of Section 7(b) of the Natural Gas Act the present or future public convenience or necessity permits the abandonment of the sales as requested in Docket Nos. CI64–237 and CI64–269.

2. That this consolidated proceeding should be disposed of pursuant to the Commission's shortened procedure as set forth in Section 1.32 of the Commission's Rules of Practice and Procedure.

3. That each agrees to waive a formal hearing in the consolidated proceedings.

4. All participants request that the intermediate decision procedure be omitted and that the Commission render the final decision herein, and for that purpose all participants waive their opportunity for presenting oral argument of filing briefs before the Presiding Officer or Commission; waive their opportunity for presenting findings and conclusions with supporting reasons therefor; and the parties reserve only their rights to apply to the Commission for rehearing and to petition for judicial review of the Commission's decision or orders as may be provided for by the statute under which the proceeding was initiated and conducted.

5. That no participant objects to United Gas Pipe Line Company withdrawing from this case.

On April 8, 1964, United filed a motion for leave to withdraw its petition to intervene in both dockets.

The abandonment of service to Trunkline is requested because the well pressures in the areas from which Coastal purchases the gas have declined to the extent that Coastal finds it infeasible to continue to deliver the gas. Coastal cannot provide the necessary compression economically to take the gas.

Dedicated acreage has been depleted to the extent that reserves total only approximately 7.5 million Mcf.

To assure Trunkline a continued supply, Coastal has entered into a contract for the sale of gas from the Hayes Field, Calcasieu and Jefferson Davis Parishes, Louisiana. Certificate authorization to make this sale was granted in Docket No. CI64–133 on September 6, 1963, at a rate of 15.0 cents per Mcf. This rate compares favorably with the rate at which Coastal sold gas from the acreage being abandoned. The rate covering the sales of gas authorized in Docket No. G–14329 was 14.750 cents per Mcf and in Docket No. G–16542, G–16935 and G–18838 was 13.3748 cents per Mcf. Since the Louisiana Gas (Docket No. CI64–133) is located 300 miles closer to Trunkline markets than these reserves located in Texas, Trunkline will save, by accepting the substitution, approximately 4.5 cents per Mcf in transportation costs.

The Commission finds:

(1) These proceedings should be disposed of pursuant to Section 1.32 of the Commission's Rules of Practice and Procedure. (18 C.F.R. 1.32).

(2) Coastal States Gas Producing Company is a "natural-gas" company within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(3) The present and future convenience and necessity permit the abandonment of the sales by Coastal to Trunkline authorized in Docket Nos. G-14329, G-16542, G-16935 and G-18838, and the cancellation of related rate schedules.

The Commission orders:

(A) The request for the omission of the intermediate decision procedure is hereby granted.

(B) The motion of United Gas Pipe Line Company for leave to withdraw its petition to intervene in these proceedings is hereby granted.

(C) Coastal States Gas Producing Company is hereby permitted to abandon the sales authorized in Docket Nos. G-14329, G-16542, G-16935 and G-18838, all as more fully set forth in its applications.

(D) The certificates heretofore issued in Docket Nos. G-14329, G-16542, G-16935 and G-18838 are hereby terminated.

(E) All FPC Gas Rate Schedules relating to the abandonment of service permitted and approved in this order are cancelled and the notices of cancellation thereof are accepted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

A. S. GENECOV, TRUSTEE, ET AL., DOCKET NO. G-19862

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUESTING CONTRACT AMENDMENT, CANCELLING BOND, AND TERMINATING PROCEEDING

(Issued April 24, 1964)

On March 23, 1964, A. S. Genecov, Trustee, *et al.*, (Genevoc) submitted an Offer of Settlement in the above-designated proceeding, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, covering his jurisdictional sale of natural gas to Tennessee Gas Transmission Company (Tennessee) from properties in Panola County, Texas Railroad Commission District No. 6. The pertinent details are as follows:

Rate schedule	Supplement No.	Effective date	Approved rate	Suspended rate	Settlement rate
1	3	May 1, 1960	12.62¢	14.4248¢	14.4248¢

Under the terms of the offer, Genecov proposes to delete the favored-nation and price redetermination provisions from the rate schedule, and to adjust his periodic escalations in conformity with Second Amendment[1] to the Commission's *Statement of General Policy No. 61-1*,[2] in return for a settlement rate of 14.4248¢

---

[1] Issued December 20, 1960, 24 FPC 1107; amended by Order No. 264, in Docket No. R-234, issued March 27, 1963, 29 FPC 589.

[2] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.55).

per Mcf at 14.65 psia, inclusive of tax reimbursement. In his offer, future escalations would be limited to 1.0¢ per Mcf on the first day of November 1964, 1969 and 1974 with a provision for three-fourth reimbursement of any future tax increases. No refunds would be required as the settlement rate is at the same rate level as the suspended rate. Tennessee has concurred in the subject offer and no protest has been filed.

Since the proposed settlement rate is acceptable under the provisions of the aforementioned Second Amendment for jurisdictional sales of natural gas in Texas Railroad Commission District No. 6, it is believed that the public interest will best be served by accepting Genecov's proposed settlement as hereinafter set forth. The proposed settlement rate should be made effective as of the date of issuance of this order.

We desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rates proposed by Genecov under the periodic escalation provisions and tax reimbursement provision contained in the instant rate schedule, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate or similar proceedings involving Genecov's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Genecov with the Commission on March 23, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Genecov with the Commission on March 23, 1964, is hereby approved in accordance with the provisions of this order.

(B) Genecov shall file, within 30 days from the date of issuance of this order a contractual amendment to his FPC Gas Rate Schedule No. 1, which Genecov shall execute with Tennessee in conformity with Genecov's Offer of Settlement in all respects. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Genecov has complied with the terms and conditions of this order, the rate and charge of 14.4248¢ per Mcf, including present tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the bonded refund obligation shall be cancelled, and the above-designated proceeding shall be deemed terminated.

(D) The Acceptance of this Offer of Settlement is without prejudice to any finding or determinations that may be made in any proceeding now pending or hereafter instituted by or against Genecov, including area rate and other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-71 (PHASE II)*

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 24, 1964)

On September 23, 1963, as amended and supplemented on October 18, 1963, and February 20 and 27, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-71 (Phase II) an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities in order to enable Applicant to purchase and receive from Humble Oil & Refining Company (Humble) and Pan American Petroleum Corporation (Pan American) [1] natural gas produced from the Sal del Ray, La Coma, Cerda and Willamar Fields in Hidalgo and Willacy Counties, Texas, all as more fully set forth in the application, as amended and supplemented (Phase II).

Specifically, Applicant proposes the following in Phase II:

1. To construct and operate 18.9 miles of 16-inch pipeline in Kenedy and Brooks Counties, Texas;
2. To construct and operate 31.5 miles of 12-inch pipeline in Willacy and Kenedy Counties, Texas;
3. To acquire from Humble and operate 14.19 miles of 10-inch pipeline in Hidalgo and Kenedy Counties, Texas, and,
4. To construct and operate metering and miscellaneous appurtenant facilities.

The application indicates the total estimated cost of Applicant's Phase II proposals to be approximately $2,139,000. Of this amount, approximately $269,000 is applicable to the acquisition cost of the Humble facilities. Applicant will finance the cost of Phase II facilities by short term borrowing pending permanent financing.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements, amendments and exhibits (Phase II), submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

---

*The application in this docket is divided into two Phases. This order pertains exclusively to Phase II of said application. By Commission order issued December 24, 1963, in Phase I hereof, Applicant was authorized to construct and operate certain facilities in order to receive gas produced by Texaco Inc. from the Kelsey and Encinitas Fields, Brooks County, Texas.

[1] Humble in Docket Nos. CI64-297 and CI64-299 and Pan American in Docket No. CI64-377 were granted unconditioned temporary certificates by letters dated April 17, 1964, to make the related sales of natural gas to Applicant.

(2) The facilities proposed to be constructed, acquired and operated by Applicant, as hereinbefore described and as more fully described in the application, as supplemented and amended, in this proceeding (Phase II), are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, acquisition and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction, acquisition and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter to Applicant and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct, acquire and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as amended and supplemented, in this proceeding (Phase II), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the acquisition hereby authorized shall be consummated and operation begun by Applicant, all as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP64–172

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 28, 1964)

On January 31, 1964, Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP64–172 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in deliveries of firm gas from 100 Mcf per day to 250 Mcf per day by Applicant to the City of Dover, Delaware, McKee Run Electric Generating Plant, all as more fully set forth in the application.

Applicant states that the proposed increased volumes of gas will be used for the same purpose as the presently authorized 100 Mcf per day, namely, in the City of Dover boilers for pilot and main flame stabilization purposes during hours of minimum electric load and will serve as an added safety factor. Applicant states that no new facilities will be required to render the proposed increased service. Applicant has sufficient gas supply to support the proposal.

Applicant and the City of Dover have entered into an amendatory agreement, dated October 22, 1963, providing for the increased service at present rates.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation, having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 29, 1957, in Docket No. G-12200 (18 FPC 710).

(2) The proposed increased transportation and delivery of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed increased transportation and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed increased transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Eastern Shore Natural Gas Company, to transport and deliver a total maximum of 250 Mcf of natural gas per day, on a firm basis, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The increased transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within two months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-265

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUED MAY 16, 1963

(Issued April 28, 1964)

On February 24, 1964, El Paso Natural Gas Company (Applicant) filed an application to amend further the Commission's order Adopting Initial Decision of Presiding Examiner, issued May 16, 1963, 29 FPC 984, as amended, in Docket No. CP62-265 by deleting therefrom authorization to install 320 compressor horsepower at Applicant's proposed Portland Station, all as more fully set forth in the application to amend.

The order of May 16, 1963, as amended, authorized Applicant to construct and operate, among other facilities, three (3) 1,440 horsepower compressor units (for a total of 4,320 horsepower) at a new compressor station to be known as the Portland Compressor Station and to sell and deliver natural gas to California-Pacific Utilities Company for resale and distribution by the latter in southwestern Oregon.

Applicant states that upon re-evaluation it has been determined that a total of 4,000 horsepower at said Portland Station will be capable of handling the designed volumes, and, therefore, two (2) 2,000 horsepower units have been installed in lieu of the three (3) 1,440 horsepower units hereinbefore authorized.

Therefore, Applicant requests that the order of May 16, 1963, as amended, be further amended accordingly.

Due notice of the filing of the application to amend and opportunity for hearing hereon has been given by publication in the Federal Register on March 26, 1964 (29 F.R. 3790). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 16, 1963, in Docket No. CP62-265, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 16, 1963, in Docket No. CP62-265, as amended, be and the same is hereby further amended by deleting therefrom authorization to install 320 compressor horsepower at Applicant's proposed Portland Compressor Station, all as hereinbefore described and as set forth in the February 24, 1964, application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INTERSTATE POWER COMPANY, DOCKET NO. E-7159

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued April 28, 1964)

Interstate Power Company (Applicant), a corporation organized under the laws of the State of Delaware and domesticated in the States of Illinois, Iowa, Minnesota and South Dakota, with its principal place of business at Dubuque, Iowa, filed an application on March 23, 1964, for authorization pursuant to Section 204 of the Federal Power Act, to issue unsecured, short-term Promissory Notes in a principal amount not exceeding $8,800,000.

In accordance with a Loan Agreement dated March 12, 1964, Applicant proposes to issue $1,800,000 in notes to two Minnesota banks and seven Iowa banks. An additional $7 million in Promissory Notes is proposed to be issued pursuant to a Loan Agreement of March 13, 1964, with The Chase Manhattan Bank and Manufacturers Hanover Trust Company, both New York banks. Under both Loan Agreements, notes are proposed to be issued to mature one year from the date of respective issuance but not later than September 30, 1965, and each note is to bear interest at the prime commercial rate of The Chase Manhattan Bank for unsecured borrowings prevailing five business days prior to the date of each such note. The application indicates that none of the notes proposed to be issued will be resold to the general public, and that no finders fee or other fee, commission or remuneration is to be paid in connection with the issuance of the notes to any third person for negotiating the transactions.

Although the Loan Agreements described above permit the Applicant to borrow up to $8,800,000, the Applicant anticipates that not more than $7,000,000 notes will be outstanding at any one time. According to the Applicant, the larger credit authority has been requested to provide the company more "maneuverability" in the event that this should be desirable or necessary because of conditions which may prevail in the securities market in the Spring of 1965 which is when Applicant presently anticipates it will do its next permanent financing.

Applicant states that the net proceeds to be received by the company from the issuance of notes evidencing bank loans, together with depreciation accruals, cash on hand and retained earnings, will be used to carry out the company's 1964 construction program estimated at $11,996,000.

Included in the 1964 construction budget is the Clinton Beaver Channel Plant Unit No. 2 rated at 154,000 kilowatts. The total cost of this unit is estimated at $19,078,000 of which $2,220,000 will be expended in 1964.

For the Applicant's portion (55 miles) of the Twin City-St. Louis 345 kv line, Applicant has budgeted $250,000 in 1964 and $500,000 in 1965. Total estimated cost for this line, which will be in service in 1967, is $2,750,000. Raising voltage on transmission ties in the Dubuque area from 69 kv to 161 kv and the start of a 69 kv loop around Dubuque will require $1,250,000 in 1964 and $125,000 in 1965. Expenditures in 1964 to raise voltage on the Illinois 69 kv transmission lines to 161 kv and make additions to the Savannah and Galena substations are estimated at $346,000 and $215,000 is budgeted for additions to the Clinton Beaver 161 kv substation. New construction and rebuilding a portion of the 69 kv transmission grid will require $1,095,000 in 1964 and $300,000 in 1965. Expenditures in 1964 for electric distribution facilities are estimated at $3,984,000 and for gas and hot water heat distribution and general facilities are estimated at $1,125,000.

Written notice of the application has been given to the Commerce Commission of Illinois, the Minnesota Railroad and Warehouse Commission, the South Dakota Public Utilities Commission, and the State Commerce Commission of Iowa. Notice has also been given by publication in the Federal Register on April 4, 1964 (29 F.R. 4840), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 15, 1964, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission order, issued May 12, 1959, *In the Matter of Interstate Power Company*, Docket No. E-6877 (21 FPC 678).

(2) The proposed issuance of Promissory Notes in the principal amount not exceeding $8,800,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,800,000 outstanding at any one time, all as described above will be in excess of 5 percent of the par value of the other securities of Applicant, and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,800,000 upon the terms and conditions and for the purposes set forth in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto, being not later than September 30, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission or any other Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any security to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-153

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 28, 1964)

On January 3, 1964, as supplemented and amended on February 10, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-153 an application pursuant to Section 7 of the Natural Gas Act for authority to abandon three 1,350 horsepower compressor units at its Spraberry Compressor Station, Midland County, Texas, and for a certificate of public convenience and necessity authorizing the relocation and installation of the said compressor units at three gathering stations located in the Hugoton Field, Morton and Steven Counties, Kansas, all as more fully set forth in the application, as supplemented and amended.

Applicant states that the volumes of low pressure gas delivered to it by Phillips Petroleum Company at the Spraberry Station have declined and will continue to decline in future years; therefore, the available horsepower at said station is greater than required. Furthermore, Applicant states that due to the fracturing of wells, deliverability has been increased and additional horsepower is needed in the Kansas Hugoton Field. Applicant proposes to relocate and install the three 1,350 horsepower units at its Stevens County Nos. 1 and 2 gathering stations and its Morton County No. 1 gathering station, all in the Hugoton Field.

The total estimated cost of the proposed project is $855,330, which total costs include $398,294 for material and supplies transferred from the Spraberry Station. The estimated cost will be financed from cash-on-hand, reserve accruals and retained earnings.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented and amended, has been filed.

At a hearing held on April 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and amendment, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented and amended, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the relocation, installation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The relocation, installation and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to relocate, install and operate the proposed facilities, as hereinbefore described, all as more fully described in the application, as supplemented and amended, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be relocated, installed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented and amended, in this proceeding, be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment within ten days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–185

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 28, 1964)

On February 20, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64–185 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Hillside Gas Company, Inc. (Hillside) for resale and distribution by the latter in the communities of Garrison, Nacogdoches County, Texas, and Joaquin, Shelby County, Texas, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate the following facilities:

(a) Approximately 50 feet of 2-inch pipeline, positive meter and regulator station and appurtenant facilities, on its Acme Brick Company lateral, Nacogdoches County, Texas, and

(b) Approximately 60 feet of 2-inch pipeline, positive meter and regulator station and appurtenant facilities, on its 10-inch Joaquin Field Lateral, Shelby County, Texas.

The total third-year peak day and annual natural gas requirements for the two communities to be served are estimated to be 700 Mcf and 79,835 Mcf, respectively.

The total estimated cost of the proposed facilities is $16,594, which cost will be financed out of current working funds.

By letter dated March 6, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1962, in Docket No. G-216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–186

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 28, 1964)

On February 24, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64–186 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 1.06 miles of 4-inch pipeline in Jones County, Mississippi, looping an existing 2-inch line, together with appurtenant equipment, all as more fully described in the application.

Applicant states that the proposed facilities will be used for the sale and delivery of additional quantities of natural gas to United Gas Corporation for resale by it in the Town of Ellisville, Mississippi, to meet the increased requirements of that community.

The estimated total cost of the proposed facilities is $25,200, to be financed from funds on hand.

The maximum daily capacity of the existing 2-inch pipeline is 1735 Mcf of gas, which is not sufficient to meet the increasing peak day demand. The capacity of the looped lines will be 9620 Mcf per day.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate facilities and to deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62-1544, ET AL.

ORDER PARTIALLY GRANTING REHEARING FOR FURTHER CONSIDERATION, DISPOSAL OF MOTIONS TO DEFER, AND DEFERRING ACTION ON MOTIONS FOR EVIDENTIARY HEARING

(Issued April 30, 1964)

On March 23, 1964, 31 FPC 623, the Commission issued its Opinion No. 422 in the above-entitled proceedings. A number of the parties, as listed below, have submitted applications for rehearing or reconsideration of our decision, the first application being filed April 1.[1] In addition, various motions for leave to reopen the proceedings for the introduction of further evidence or for stay of certain actions required in the order accompanying Opinion No. 422 also have been submitted.[2] Since the statutory period under Section 19(a) of the Natural Gas Act is insufficient to permit a timely and proper disposition of these pleadings, it is necessary and appropriate to grant rehearing for the purpose of enabling further consideration of the arguments and allegations adduced.

---

[1] On April 1 jointly by Long Island Lighting Co., Philadelphia Electric Co. and The United Gas Improvement Co.; on April 8 by the Public Service Commission of the State of New York; on April 13 jointly by Texaco Inc., Humble Oil & Refining Co., Gulf Oil Corp., Sohio Petroleum Co., Union Producing Co., Jake L. Hamon, George H. Coates, Edwin L. Cox, Sunray DX Co. and Lamar Hunt; on April 13 by Amerada Petroleum Corp.; on April 16 by Standard Oil Co. of Texas; on April 20 severally by The Brooklyn Union Gas Co. and Clark Fuel Producing Co.; and on April 22 by Sun Oil Co.

[2] Texaco Inc., *et al.;* Clark Fuel Producing Co.; Sun Oil Co.; Texaco Inc., *et al.*, Motion For Evidentiary Hearing; Sun Oil Co., Motion to Reopen Proceedings, etc.

Although the limited rehearing herein granted will, during its pendency, have the effect of extending the time limitation set out in Ordering Paragraphs (C),[3] (D), (E) and (F), we do not believe that the period specified in Paragraph (G) for the filing of briefs on the issue of whether refunds should be ordered in those dockets where the prices charged under non-refund conditioned temporary authorizations were in excess of the in-line price should be indefinitely extended. Clark Fuel, in particular, has moved to defer the filing of briefs on this issue, or alternatively to reopen the proceedings for the presentation of evidence on the equities involved in the refund question, on the ground that the Court of Appeals for the District of Columbia has stayed its remand in *P.S.C.* v. *F.P.C.*[4] (Skelly) pending the filing by the producers of a petition for certiorari in the Supreme Court. Our requirement for briefs on this issue in these proceedings is a procedural determination. As brought out in the Opinion, no decision has yet been made as to whether refunds should or should not be required from the producers here. The "equitable considerations" detailed in the briefs will assist us in deciding the issue and, also, whether it is necessary to reopen the proceedings to permit the introduction of further evidence bearing thereon. The fact that a petition for a writ of certiorari has been filed[5] seeking higher appellate review of the threshold questions regarding the legalities involved or that, based thereon, the mandate of the Circuit Court on Opinion No. 362 has been stayed does not, we believe, constitute adequate basis to delay this preliminary step in this proceeding. If the petition is denied by the Supreme Court, or review accepted and the decision upheld,[6] we will be in a position to proceed in this case without unnecessary delay. Accordingly, this order will not serve to stay the provisions of the aforementioned Paragraph (G). Action on the motions for an immediate evidentiary hearing on the refund issue will be deferred pending consideration of the briefs and replies thereto, and the disposition by the Supreme Court of the petition for certiorari. Although the original 30-day period expired April 22, 1964, an extension of time to and including May 7, 1964, for the filing of briefs, with replies due on or before May 18, 1964, was granted by the Secretary.[7] In our opinion such extension was warranted and should be adequate for preparation of the desired filings. The requests for indefinite extension are denied.

The Commission orders:

(A) Rehearing in this proceeding is hereby granted for the sole purpose of further consideration of the said pending applications and motions.

(B) The rehearing herein granted does not stay the provision for the submission of briefs pursuant to Paragraph (G) of the order accompanying Opinion No. 422. The extension of time granted by the Secretary is confirmed. Action on the motions for evidentiary hearing is deferred until further order of the Commission.

---

[3] By Notice issued April 16, 1964, the time for compliance with Paragraph (C) was extended to and including May 22, 1964.

[4] No. 17582, *et al.*, decided January 23, 1964; stay issued February 27, 1964.

[5] *Prado Oil & Gas Co.* v. *F.P.C., et al.*, Oct. Term 1963, No. 987.

[6] In the event the petition is granted by the Supreme Court, further consideration of the issue in this case will be suspended.

[7] Notice of extension of time issued April 20, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CHICAGO DISTRICT PIPELINE COMPANY, DOCKET NO. RP64-5

ORDER APPROVING SETTLEMENT AGREEMENT AND TERMINATING PROCEEDING

(Issued April 30, 1964)

Chicago District Pipeline Company (CDP) on September 9, 1963, pursuant to the provisions of Section 4 of the Natural Gas Act, tendered for filing its FPC Gas Tariff, Fourth Revised Volume No. 1, proposing to change its rate form from a cost-of-service rate to a demand-commodity rate with a two-block commodity charge. By order issued October 31, 1963, the tendered tariff was suspended until April 1, 1964, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act. CDP has not moved to place the suspended tariff in effect.

CDP, its customers, and Commission staff have participated in two formal prehearing conferences pursuant to orders of the Commission and Presiding Examiner. CDP, two of its three customers, and the Staff have filed their direct testimony and exhibits in this proceeding. Additionally, the parties held informal conferences looking toward a settlement of the issues in this proceeding. As a result thereof, CDP, on April 9, 1964, filed a Settlement Agreement and a motion to terminate this proceeding, which was agreed to by all parties, except staff. On April 14, 1964, staff filed objections to the Settlement Agreement and the motion to terminate. Subsequent thereto, the Staff and CDP held an additional conference seeking to settle their differences. As a result of this conference, CDP filed on April 24, 1964 an amendment to its Settlement Agreement with the Commission. The Staff has interposed no objection to the proposed settlement as amended.

The Settlement Agreement, as amended, provides that CDP will compute its rates on a monthly cost-of-service basis. The rates so computed will be collected under a demand-commodity form of rate with a two-block commodity charge. In computing its monthly cost of service, CDP will use a depreciation rate of 3.1 percent on its transmission plant. CDP, also, requests the Commission to waive the notice provision of our Regulations to permit the settlement rates to become effective as of May 1, 1964, and to terminate this proceeding.

The Commission finds:

(1) The settlement of this proceeding on the basis of the aforementioned agreement, as amended, is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such agreement should be approved and made effective as hereinafter ordered, and this proceeding should be terminated.

(2) Good cause has been shown that the 30-day notice provision of our Regulations be waived with respect to the filing of the revised tariff by CDP and that it be permitted to become effective as hereinafter ordered.

The Commission orders:

(A) The settlement of this proceeding as proposed by the agreement filed herein on April 9, 1964, and amended on April 24, 1964, is approved in accordance with the terms and conditions of this order.

(B) Within 30 days after the date of issuance of this order, CDP shall file a revised tariff, satisfactory to the Commission, giving effect to the terms of the Settlement Agreement, as amended, to be effective as of May 1, 1964. Unless CDP is notified to the contrary within 15 days from the date that the revised tariff is filed with the Commission, the revised tariff shall be deemed accepted by the Commission.

(C) The notice provision of our Regulations is hereby waived with respect to the revised tariff required to be filed by Paragraph (B) hereof, and such revised tariff is hereby permitted to take effect as of May 1, 1964.

(D) Upon full compliance by CDP of all the terms and conditions of this order and acceptance by the Commission of the revised tariff required by paragraph (B) hereof, the proceeding in Docket No. RP64–5 shall be deemed terminated.

(E) This order is without prejudice to any findings or orders which have been, or may hereafter be made by the Commission, and is without prejudice to any claims or contention which may be made by the Commission, CDP, or any affected party herein in any proceeding now pending or hereafter instituted by or against CDP or any other company or person.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLUMBIA RIVER BASIN, HEADWATER BENEFIT INVESTIGATION, DOCKET NO. E–6384

FINDINGS AND ORDER

(Issued April 30, 1964)

This order, under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f), determines payments to the United States for benefits provided by its headwater improvements to certain non-Federal projects in the Columbia River basin between January 1, 1949, and December 31, 1956. We previously issued several orders concerning headwater benefits payments in this basin. First, we found that no headwater benefits had accrued before 1949.[1] Second, we made interim determinations of payments for headwater benefits received at one project during part of the period now under consideration.[2] Third, we determined payments for benefits received from Federal headwater improvements and approved settlements for benefits provided by licensed projects to non-Federal projects between September 1, 1961, and August 31, 1963, the period of the first and second Pacific Northwest Coordination Agreements.[3] Determination of payments for headwater benefits received between January 1, 1957, and August 31, 1961, has yet to be made.

This order is based upon investigations which we initiated in 1950.[4] The staff tendered its first proposed report, including recommendations for payments, in September 1960. The staff's 1960 report was served upon the interested parties and their comments were solicited.

The non-Federal parties on May 19, 1961, responded with their own proposal for determining payments. Although they used a different method of computation, they estimated a total payment to the United States in an amount approximately seven-tenths of a percent less than the staff's estimate of the payment due. The Corps of Engineers advised on July 18, 1961, that it had no objection to the payments recommended by either the staff or the non-Federal parties, provided that the procedures followed in the reports would not be used as precedent. The Department of the Interior responded to the staff's 1960 report on March 16, 1962. The interested parties answered the Department of the Interior's comments by August 15, 1962.

---

[1] Order of February 25, 1952, in Docket No. E–6404.

[2] Orders of December 27, 1956, December 31, 1957, and December 11, 1958, in Docket No. E–6384 required the Puget Sound Power & Light Company and Public Utility District No. 1 of Chelan County, Washington, to pay the Montana Power Company, Washington Water Power Company, and the United States for headwater benefits received at the jointly-owned Rock Island Project, Project No. 943, between January 1, 1949, and December 31, 1955.

[3] Order of February 6, 1963, in Docket No. E–6384.

[4] Order of June 28, 1950, in Docket No. E–6404. Investigations in Docket No. E–6384 were conducted under orders of February 4, 1952, December 5, 1952, and January 16, 1956.

The staff prepared its second proposed report in October 1963 for the 1949–1956 period. The non-Federal parties and the Department of the Interior submitted comments upon this report on February 14, 1964. The Corps of Engineers advised on April 2, 1964, that it had no objection to the staff's recommended payments to the United States for headwater benefits.

The Department of the Interior maintains that during 1949 through 1956 the United States gave to the non-Federal parties the assurance—even in the absence of an agreement—of full storage releases from its headwater improvements in the event of a recurrence of critical water conditions.

This assurance, it says, was given principally by statutory and administrative directives that it operate the Federal projects as an integrated system—a mode of operation which coincidentally would assure water releases to the non-Federal parties during a recurrence of a critical water year. The assurance, according to the Department, also was provided by its having to make water releases during adverse streamflow conditions in order to produce enough power at its downstream projects to fulfill contractual obligations to its customers. The Department adduces various contracts and documents to show that it both gave assurance of water release and that the non-Federal parties relied upon the assurance.

The Department's position is that this assurance was immensely valuable to the non-Federal parties because it assured them of achieving maximum power benefits under minimum streamflow conditions. The Department accordingly proposes a method of determining payment for coordinated operation benefits similar to that in the first Pacific Northwest Coordination Agreement, which governed river operations for the period of September 1, 1961, through August 31, 1962.

The non-Federal parties deny that the United States gave assurance of scheduled water release until such assurance was provided in the first Pacific Northwest Coordination Agreement in 1961. They note that this agreement recites that the parties thereto, of which the United States was one, "have in the past voluntarily cooperated in the coordinated operation of their facilities" and that "the coordination of the facilities of all parties under a formal firm contract will result in . . . substantial additional firm power resources." They observe that if the Department of the Interior could collect, without a formal agreement, full payment for firm power provided by its headwater improvements, the Department would not have had such a strong incentive to enter into one.[5]

---

[5] A similar statement was made by the Department of the Interior on August 27, 1962, in commenting on the Staff headwater benefit report for the period September 1, 1961, through August 31, 1962, which was the one-year period covered by the first coordination agreement:

> The present one-year agreement is, in effect, a pilot coordination effort which looks forward to a long-term contract. The great advantage offered by coordination is in the creation of firm power, and since Federal system firm power is marketable only if available for a long period of time, the Department is devoting intensive efforts to working out a long-term coordination agreement. If the Commission gives no weight to any agreement by the parties on Section 10(f) payments, and instead makes a separate and independent calculation of these payments each year, then the parties may well be unable to reach a long-term coordination agreement.

The Department, they conclude, operated the Federal projects for the benefit of the United States without obligation to release water to the non-Federal project owners.

Having carefully considered the several submissions of the various interested parties, we conclude that non-Federal parties were not given assurance of scheduled water releases from Federal reservoirs and did not have assurance of full storage releases in the event of a recurrence of critical water conditions. In addition, the non-Federal parties were not in a position to require the release of water from upstream Federal reservoirs to meet their load requirements during the 1949–1956 period. Therefore, we approve the staff's recommended payments, based upon annual energy gains.

In their comments submitted on February 14, 1964, the non-Federal parties requested additional time to file for Commission approval under section 13.1 of the Regulations under the Federal Power Act a settlement among themselves involving headwater benefits accruing between January 1, 1949, and December 31, 1956. These parties may make such a filing within ninety days of the issuance of this order.

The Commission finds:

(1) The purpose of the present investigation is to determine what payments should be made to the United States in accordance with the provisions of subsection 10 (f) of the Federal Power Act, for headwater benefits received during the period of January 1, 1949, through December 31, 1956, from its headwater improvements in the Columbia River basin.

(2) The three Federal headwater improvement projects included in the present determination are Hungry Horse and Grand Coulee, operated by the Bureau of Reclamation, and Albeni Falls, operated by the Corps of Engineers.

(3) Each of the above-mentioned reservoir projects includes a hydroelectric plant which is benefited by at-site, and in some instances by upstream, storage. In addition, eight other power projects situated downstream from one or more of the three Federal headwater improvements, are affected by the release of water from one or more of the Federal reservoirs. Of the eight, three are owned by the United States and operated by the Corps of Engineers, and five belong to non-Federal entities. The names of downstream projects and their owners are shown in the tabulation below.

Federal		Non-Federal		
Owner	Project	Owner	Project	FPC Project No.
United States	Chief Joseph	The Montana Power Co.	Kerr	5
Do	McNary	do	Thompson Falls	1869
		The Washington Water Power Co.	Cabinet Gorge	2058
Do	Bonneville	Public Utility District No. 1 of Pend Oreille.	Box Canyon	2042
		Puget Sound Power & Light and Public Utility District No. 1 of Chelan County.	Rock Island[6]	943

(4) The dam and reservoir facilities at a headwater improvement project provide two power functions. The first is a regulatory or storage function, which is beneficial to the at-site power plant and each power plant downstream. The second is a head function, which is beneficial to the at-site power plant only. Therefore, in this study, the annual cost of interest, maintenance, and deprecia-

---

[6] Public Utility District No. 1 of Chelan County became the sole owner of this plant effective Jan. 6, 1956.

tion—subsection 10(f) costs—pertinent to the dam and reservoir of each headwater improvement project, to be borne by power both at site and downstream, is apportioned to storage and head functions. The cost subdivision is made annually by dividing the cost in proportion to the energy available from storage releases and the energy made available by the head at the storage site during the year being studied. Since, as previously noted, the head function provides only at-site benefits whereas the storage function provides both at-site and downstream benefits, the cost allocated to the storage function is the cost to be apportioned among the projects, at-site and downstream. This apportionment is made in direct proportion to the energy available at each plant from storage at the headwater improvement during the year being studied. The cost attributable to the storage function is determined by the following formula:

$$C_s = C_p \frac{E_s}{E_s + E_h},$$

In which C_s = annual 10(f) costs of the dam and reservoir to be apportioned to the storage function,
C_p = annual 10(f) costs of the dam and reservoir to be borne by power both at site and downstream,
E_s = energy at site and downstream from at-site storage, and
E_h = energy at site from natural flow and from at-site and upstream storage.

The annual subsection 10(f) costs of each headwater improvement thus apportioned to the storage function are distributed among the power plants at site and downstream in proportion to the energy each produced from the storage in the reservoir being considered. The annual costs thus apportioned to a downstream non-Federal plant represent the annual payment to be made by the owner of that plant for headwater benefits.

Deductions are made for interim payments ordered by the Commission to be made by the Puget Sound Power & Light Company and the Public Utility District No. 1 of Chelan County.

(5) The charges computed by the method described in section (4) of these findings to be payable to the United States by owners of non-Federal hydroelectric projects for the period between January 1, 1949, through December 31, 1956, under subsection 10(f) of the Federal Power Act, less interim payments[7] under previous orders of the Commission, are as follows:

The Montana Power Co.	$367,100
The Washington Water Power Co.	185,200
Public Utility District No. 1 of Pend Oreille County	27,600
Puget Sound Power & Light Co. and Public Utility District No. 1 of Chelan County	19,900
Public Utility District No. 1 of Chelan County	35,900
Total	635,700

(6) The charges assessed in this proceeding for benefits conferred by headwater improvements are equitable, based upon all of the facts and circumstances existing during the period of January 1, 1949, through December 31, 1956.

(7) Subsection 10(f) of the Federal Power Act requires that the owners of projects benefiting from headwater improvements shall pay to the United States the cost of making headwater benefits determinations as fixed by the Commission. All salaries and other expenses incurred in connection with this investigation

---

[7] Such payments total $90,400 which amount has been paid in full.

are estimated to be $43,300.[8] A reasonable and equitable apportionment of these costs is:

The Montana Power Co	$23,300
The Washington Water Power Co	12,400
Public Utility District No. 1 of Pend Oreille County	1,750
Puget Sound Power & Light Co. and Public Utility District No. 1 of Chelan County	2,100
Public Utility District No. 1 of Chelan County	3,750
Total	43,300

The Commission orders:

(A) The payments for headwater benefits to be made to the United States by the owners of the non-Federal hydroelectric projects for the period January 1, 1949, through December 31, 1956, less interim payments under previous orders of the Commission, are assessed under subsection 10(f) of the Federal Power Act as follows:

The Montana Power Co	$367,100
The Washington Water Power Co	185,200
Public Utility District No. 1 of Pend Oreille County	27,600
Puget Sound Power & Light Co. and Public Utility District No. 1 of Chelan County	19,900
Public Utility District No. 1 of Chelan County	35,900
Total	635,700

(B) The several parties shall pay to the Federal Power Commission, to defray the cost of making this determination, the sum of $43,300, to be divided as follows:

The Montana Power Co	$23,300
The Washington Water Power Co	12,400
Public Utility District No. 1 of Pend Oreille County	1,750
Puget Sound Power & Light Co. and Public Utility District No. 1 of Chelan County	2,100
Public Utility District No. 1 of Chelan County	3,750
Total	43,300

(C) The payments specified in paragraphs (A) and (B) shall be paid within sixty days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DILLARD & WALTERMIRE DRILLING COMPANY, DOCKET NO. G-19455

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued April 30, 1964)

On March 23, 1964, Dillard & Waltermire Drilling Company (D&W) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to Tennessee Gas

---

[8] This figure does not include the $3,400 cost of interim investigations, which amount has been paid in full.

Transmission Company (TGT) by D&W. The offer relates to a sale made under Supplement No. 2 to D&W's FPC Gas Rate Schedule No. 1 in Willacy County, Texas (Texas R.R. Com. District #4). The proposed increased rate of 15.0952¢ was suspended by order of the Commission for the statutory period, and was made effective by D&W on April 1, 1960.

Under the terms of the offer, D&W proposes to establish a 14¢ per Mcf rate for the subject sale, and to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $1,500, exclusive of interest. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, and its acceptance would serve the public interest.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by D&W on March 23, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by D&W March 23, 1964, is hereby approved in accordance with the provisions of this order.

(B) D&W shall refund to TGT to the date of issuance of this order the difference between the rate collected subject to refund under the rate schedule herein and the settlement rate, with simple interest at the applicable rate, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(C) Upon notification by the Secretary of the Commission that D&W has complied with the terms and conditions of this order the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(D) The acceptance by the Commission of D&W's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against D&W, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

F. JULIUS FOHS (OPERATOR), ET AL., DOCKET NO. G-17123

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued April 30, 1964)

On March 17, 1964, F. Julius Fohs (Operator), *et al.* (Fohs) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the

---

[1] D&W recently filed an application, in Docket No. CI64-1121, for authorization to abandon the subject sale.

Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to Tennessee Gas Transmission Company (TGT) by Fohs. The offer relates to a sale made under Supplement No. 1 to Fohs' FPC Gas Rate Schedule No. 5 in LaVaca County, Texas (Texas R.R. Com. District #2). The proposed increased rate of 15.3333¢ was suspended by order of the Commission for the statutory period, and was made effective by Fohs on June 1, 1959.

Under the terms of the offer, Fohs proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Fohs' annual revenues will be decreased about $360 from the presently effective rate. No protests or objections have been filed to the offer.

Fohs, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $2,000, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Fohs' offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Fohs' rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Fohs on March 17, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Fohs on March 17, 1964, is hereby approved in accordance with the provisions of this order.

(B) Fohs shall file, within 30 days from the date of issuance of this order, notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 5 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Fohs shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, with simple interest at the applicable rate, making account for proper charges, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

---

[1] Fohs' FPC Gas Rate Schedule No. 5 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

(D) Upon notification by the Secretary of the Commission that Fohs has complied with the terms and conditions of this order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Fohs' offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Fohs, including area rate or other similar proceedings.

OPINION NO. 418-A

PACIFIC NORTHWEST POWER COMPANY, PROJECT NO. 2243 AND WASHINGTON PUBLIC POWER SUPPLY SYSTEM, PROJECT NO. 2273

OPINION AND ORDER ON REHEARING AND DENYING MOTIONS FOR STAY AND TO STRIKE

(Issued April 30, 1964)*

Syllabus

1. Commission *reaffirms* conclusion that purpose of preliminary permit is to encourage development of nation's waterways by giving reasonable protection to party [whether private or public] investigating development of given reach of river. P. 1055.
2. Noting present move toward large scale generation and integration, Commission *observes* that priority provisions of Act will assume greater significance for municipal bodies as between themselves. P. 1055.
3. Commission *rejects* argument that its interpretation of priority may trigger race for preliminary permits for purpose of tying up all major undeveloped water resources of country. P. 1056.
4. Contention that decision on scope of permit would deprive Washington Public Power of statutory notice *rejected*. P. 1057.
5. Request for stay should be denied since, (1) postponement would be injurious to public interest; (2) issuance thereof would substantially harm Pacific Northwest; (3) Petitioner would not be irreparably injured and (4) Petitioner is unlikely to prevail on the merits. P. 1060.
6. Upon rehearing, Commission *reaffirms* prior order, as herein modified; *denies* applications for rehearing and stay.

Chairman Swidler and Commissioner Black *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

Ross, *Commissioner*:

Applications for rehearing and stay were filed on March 6, 1964 by the Department of the Interior, the Department of Conservation of the State of Washington, and the Washington Public Power Supply System (WPPSS) with respect to our Opinion and Order No. 418 issued February 5, 1964, 31 FPC 247. Pacific Northwest Power Company (PNPC) filed a motion to strike the applications of Interior and WPPSS on March 16, 1964. Thereafter on March 26, 1964, Interior filed a motion to strike or, in the alternative, to reopen the record. Responsive pleadings to the above applications and motions have also been filed.[1]

In our Opinion and Order we determined that the proposed hydroelectric project at the High Mountain Sheep Site is best adapted to a comprehensive plan for developing that reach of the Snake River above the mouth of the Salmon River, as opposed to the Nez Perce site below the mouth of the Salmon River. We also granted a license to the Pacific Northwest Power Company (PNPC) rather than to WPPSS, and refused to recommend federal development. We are of the opinion that the points raised have been largely covered by our original opinion, but will add the following comments to clarify our position.

Interior initially reargues that "there is no present regional need for the power to be generated by the High Mountain Sheep project which would balance the probable damage to the fish resource." In our original opinion we took cognizance of developments affecting the power generating capability of the Pacific Northwest which occurred since the close of the record. Specifically, we considered the power to be generated by Hanford, Wells and from Canadian Storage. On the basis of the record, including the recent developments, we found a regional need for the power HMS would generate by 1970–1971, and that PNPC particularly would need additional power by 1967–1968. While Interior disagrees with our conclusion, it alludes to no facts to support its position. We have nevertheless reexamined this issue and find that HMS power will be needed on a regional basis by 1970–1971 as we originally concluded, to which PNPC and WPPSS both agree.

Interior also argues that the Commission erred in not recommending federal development under Section 7(b) of the Federal Power Act. Section 7(b) provides that, "Whenever, in the judgment of the Commission, the development of any water resources for the public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development." The Department interprets this section to mean that once there are Federal projects on a river, all projects possibly affecting them must be undertaken by the United States. The Department states that on the Columbia River system, the choice has been made for us by the Congress.[2] For the reasons stated in our original opinion, we disagree with this interpretation.

In addition, Interior argues that federal development is necessary to achieve that coordination necessary to obtain maximum use of HMS for flood control, navigation and power purposes. We disagree.

With respect to flood control, Article 51 requires PNPC to operate HMS in a manner consistent with optimum flood control purposes at no cost to the government for the loss of any power resulting from such operation.[3] The specific terms of the operation of HMS for flood control purposes are made subject to agreement between Corps of Engineers and the licensee in accordance with principles contained in the Article. This article is consistent with PNP's unqualified commitment to operate HMS in such manner.[4] Upon our own motion, we are eliminating the last sentence of Article 51 since it is ambiguous and adds nothing of substance to the Article.

---

[1] On April 4, 1964, the Chief of the Forest Service, Dept. of Agriculture, filed a letter in which he requested amendment of Article 53. While the propriety of this filing is open to question, we have duly considered it but believe the amendment he suggests is not appropriate.

[2] The Department states on p. 8: "Thus, as to the water resource through Asotin, the 'judgment' of the Commission has been replaced by the judgment of Congress."

[3] *Article No. 51.* In the interests of flood control downstream from the project, the Licensee shall operate the project in accordance with an agreement to be entered into by the Licensee and the United States Corps of Engineers for the purpose of determining detailed operating procedures for use during flood periods, in accordance with the following principles:

a. The total live storage space of about 2,250,000 acre-feet between elevation 1337

In addition, Article 52 requires PNPC to maintain a minimum flow of not less than 13,000 cfs when determined to be required—not by PNPC—but by the Corps of Engineers.[5] PNPC is not entitled to reimbursement for operating in this manner despite the fact that power benefits may accrue to the downstream federal plant. The minimum flow specified conforms precisely to that recommended by the Corps of Engineers. (FPC Ex. 37)

Article 14 constitutes the provision requiring the licensee to coordinate electrically and hydraulically for power purposes.[6] This Article presupposes, as does the coordination of any endeavor, the willingness to plan cooperatively in order to serve the region in the most effective and enlightened manner. Certainly, the object of providing the optimum firm load carrying ability and of producing

---

and elevation 1510 mean sea level will be made available for flood control use if and as required.

b. The reservoir level will be no higher than elevation 1475 by 1 March each year to provide about 600,000 acre-feet of storage space for flood control use at that time each year. Additional storage space will be made available between 1 March and the beginning of the flood period to insure the availability on 1 May of the total capacity needed for flood control as estimated by the Corps of Engineers.

c. The space made available as set forth above will be retained until capture of flood flows is requested by the Corps of Engineers, subject to involuntary storage as may be required due to excess of inflows over outlet capacity, or until refilling is authorized by the Corps of Engineers. In the event of involuntary storage during flood control operations, full storage capability will be regained as soon as possible.

d. During the flood storage period controlled outflows will be as warranted by the flood control requirements as determined by the Corps of Engineers with due regard to the requirements for the optimum multiple purpose operations of the project. When the Columbia River discharge at The Dalles is 600,000 cfs or higher the daily outflow may be reduced to a minimum of 10,000 acre-feet; except that during years of severe flood conditions the daily outflow may be reduced to a minimum of 4,000 acre-feet; below 600,000 cfs discharge at The Dalles, the outflow will be determined with due consideration given to all purposes of the project.

e. A discharge capacity of 65,000 cfs at minimum pool elevation 1382 is to be provided by the Licensee. This discharge capacity is based on the gated outlet capacity plus one half of the ultimate turbine hydraulic capacity.

The agreement will be subject to review from time to time as requested by the Licensee or the Corps of Engineers.

[4] We have said to you positively we will produce flood control storage from this project as requested by the Corps of Engineers, without compensation, at any time, with or without Canadian storage at any time, without reservation, we will do it. (Tr. 14,770–1)

[5] *Article 52.* In the interest of navigation the project shall be operated in accordance with the following requirements:

a. Minimum flow of not less than 13,000 cfs will be maintained at Lime Point, Idaho, during annual storage refill season when determined to be required by the Corps of Engineers in the interest of navigation. Flows of up to 16,500 cfs may be required at other times when determined by the Corps of Engineers to be necessary in the interest of navigation.

b. River fluctuations in the reach between Lewiston and Lime Point resulting from project operation shall not exceed a rate of one and a half feet per hour on the rising stage, and one foot per hour on the falling stage unless otherwise approved by the Corps of Engineers.

[6] *Article 14.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

the maximum amount of usable secondary energy for the region could be frustrated by any participant, be he federal, public or private. However, it is beyond reasonable belief that any responsible agency, whether federal, public or private, would in the face of enlightened public opinion deliberately seek to sabotage the object of Article 14 which was designed to secure for the Northwest benefits heretofore recognized but, until recently, seldom obtainable for a mixed river basin system.

Interior for the first time in its application for rehearing, questions the adequacy of Article 14 which, until now, enjoyed the support of all the parties in the case. Interior's objective and purpose, namely, "to optimize regional power production consistent with other water resource development and purpose", is the same as ours. We, like Interior, recognize that "coordination may permit storage of water in one party's reservoir for the benefit of another. It may permit an exchange of winter energy from one system for summer energy of another thereby increasing the firm capabilities of both systems. It may reduce the requirement of reserve capacity to the benefit of both systems. It may permit the joint use of transmission facilities or the exchange of energy between systems so as to reduce transmission requirements."[7] In addition, coordination may include the planning of new generating resources and scheduled maintenance and the sharing of resources.

We believe that, in keeping with the spirit referred to above plus the legal effect of Article 14, we will achieve the notable results sought by us all. However, we do not believe that the Article proposed by Interior, insofar as it refuses to recognize an equitable sharing of benefits in the context of a mixed system of plants in a common basin, will result in the maximum economic benefit to the region.[8] Only by recognizing the contributions of each system in providing for an equitable sharing of benefits will the optimum development of our resources envisioned by the framers of the Water Power Act become a reality. This represents nothing novel to this region. As a matter of fact, this approach is entirely consistent with the principles underlying the Pacific Northwest Coordinating Agreement, an agreement to which Interior (BPA), PUD's and private power companies are parties.

We do agree with Interior that the licensee should be obliged to provide transmission facilities necessary to effectuate the desired coordination. It had been our understanding that this requirement was implicit in Article 14. In view of Interior's concern, it is apparent that this understanding is not shared by all interested parties. We will therefore amend the Article to expressly include this requirement in order to obviate any debate in the future. We are also modifying the Article to clarify our original idea that this Article is designed to maximize power production and other beneficial public uses.

Beyond the changes noted above, we are satisfied that Article 14 requires no further modification. We have described the general principles applicable thereto and do not consider it feasible to reduce them into concrete terms at this time. By the time HMS will be ready for operation, the factual situation and the consequent requirements may be substantially different from those prevailing at this time.

WPPSS's principal objection relates to our interpretation of the priority afforded by a permit. WPPSS misunderstands the significance of the preference and priority provisions of the Act. The priority provisions were not designed to counter-balance the preference rights of public bodies. To the contrary, the priority sections have independent significance and are not directed to the public-private power controversy. The purpose of the priority provisions is to encourage development of the nation's waterways by giving reasonable protection to a party investigating the development of a given reach of the river. Obviously, there would be little incentive to conduct costly and time-consuming studies of a particular reach if another party could, after the studies were completed, file a competitive application and have at least equal rights with the party making the investigation. The priority provisions were drawn to afford protection to one who makes such investigations, irrespective of whether the party involved is a private or public agency.

---

[7] Comments of Interior, March 13, 1964, p. 22–23, Project No. 1971.

[8] This is not to say, as Interior alleges, that Article 14 requires the federal government to pay for headwater benefits—a payment precluded by Section 10(f) of the Act. As we have earlier stated, Article 14 does not require 10(f) payments. *P.U.D. No. 1 of Douglas County, Project No. 2149*, 28 FPC 128.

During the present age which is witnessing a move toward large scale generation and integration, it is evident that the priority provisions of the Act will assume greater significance for municipal bodies as between themselves. No longer are such agencies restricted to a relatively small area. WPPSS, a Washington municipality, for example, is here applying for a project on the Idaho-Oregon boundary. Future cases will undoubtedly witness competitive license applications by local and distant municipal bodies. Needless to say, the question of priority could be decisive in such cases.

WPPSS argues that our decision disregards and completely reverses policies, interpretations and practices of the Commission, established and consistently followed for over forty years. Specifically, WPPSS charges that our finding that PNPC has priority under its preliminary permit is contrary to a General Counsel's opinion issued in 1923 (and not heard from again for all practical purposes until this case). As we stated initially, the General Counsel was issuing an opinion in response to the question whether priority could survive a three-year period if a license application were filed before the term of the permit expired. Our decision herein is consistent with this opinion.

The General Counsel's opinion does contain extraneous language. However, for us to rely, as a binding precedent, upon a gratuitous dictum remark of a General Counsel made years ago—untested by the sharp exchanges of learned opposing counsel whose clients have much at stake as in this case, is carrying the doctrine of reliance upon dicta to an extreme which twists a legal principle beyond recognition. Moreover, WPPSS has admitted that we are dealing with "a purely legal issue not heretofore decided by either the Commission or the Courts."[9]

On page 29 of its application WPPSS states its position with respect to the protection afforded by a permit. Because this position is identical to that we have adopted we cite it in full:

> "Reasonable security" under a permit is not insubstantial. It consists of:
>
> (a) Protection pending investigation against the acceptance for filing of license *applications* by others *affecting the same reach* (FPC Reg. § 4.30); [Application for Rehearing, p. 29; emphasis added.]

The regulation cited by WPPSS reads as follows:

> § 4.30. An application for license may be filed by any citizen, association of citizens, corporation, State, or municipality desirous of obtaining a license pursuant to the act: *Provided, however*, That if a preliminary permit has been issued, no action on applications by others than the permittee *covering in whole or in part the same reach* of stream or streams shall be taken that

---

[9] WPPSS application for stay, p. 3. The minority also agree that this is a case of first impression. Dissent, p. 19.

> might infringe on the rights of the permittee under sections 5 and 7 of the Federal Power Act. [Emphasis added.]

Both WPPSS and our regulations thus confirm our view that the scope of a permit extends beyond the incredibly narrow confines of mileage location, exact to the tenth of a mile, and project description including the height of the dam to the foot, as described therein. We are satisfied that permits provide a priority to the reach of the river encompassed by the project described in the permit.[10]

WPPSS argues that the result of our interpretation of priority may be to trigger a race for preliminary permits for the purpose of tying up all major undeveloped water resources of the country. This is reminiscent of the fears expressed during the hearings and debate on the Water Power Act by some members of Congress to the effect the private power companies would immediately file for all the good sites. The flood did not occur. The same is true regarding WPPSS's concern. Whatever the basis for WPPSS's insight, it seems unjustified. There has not been a single application for a preliminary permit filed since the time our original decision was released.

WPPSS also argues that a permittee must apply for an amendment if it desires to construct a project different from that described in the permit. Whether amended permits would be granted would depend, in WPPSS's view, upon undescribed "facts" and whether a preference agency filed a competitive application. Under this view, a permittee would have no flexibility to develop the best project on the reach involved. In effect, the permittee would have an assurance of protection exclusively for the project described in the permit, which is really no protection at all. As we stated in our decision, there has never been a project constructed exactly as initially described in a permit to our knowledge.

In this connection, it is interesting to note that the minority also rejects this view. Actually, the minority essentially agrees with our position on priority, with the sole exception noted below. This should not be surprising because the minority recognizes the obvious need "that an applicant be allowed flexibility and be encouraged to study all reasonable alternatives, including those not known at the time of an application for a permit." The minority suggests that "the way to obtain this flexibility, however, is by allowance of needed amendments."

The meaning of the minority approach can best be understood by the following examples. Municipality A after conducting studies under a two-year permit[11] covering a certain reach of the river X—Y discovers that a site one-tenth of a mile downstream would permit increased power generation at lesser costs and at the same time more fully develop the recreational, flood control, navigation and other uses of the river. Municipality A therefore files for an amendment to its permit describing the site. However, before the Commission acts on the application for amendment, Municipality B files for a permit describing the same project. If, for any reason, the minority would deny Municipality A's application for amendment to its permit, then the flexibility the minority concedes is required by permittees is not achieved.

Rather than assuming this position, it seems safe to conclude that the minority, having urged the filing of amendments, would grant them. Thus, the minority would grant A's application for amendment to its permit and deny B's application for permit. As Commissioner Black states: "An applicant would obviously be entitled to routine approval of an amendment to his permit. . . ."

---

[10] Throughout its application WPPSS attempts to inject an element of confusion as to exactly what reach is covered by PNPC's permit. The stipulation entered at the prehearing conference in this case resolves any alleged confusion on that score. See original decision, note 10, *Supra*, p. 254.

[11] The usual term of permits currently granted by the Commission is two years.

The full significance of this approach becomes apparent when A is not a municipality but a non-preference body such as a co-op. Again, we assume that Co-op A was granted a two-year permit, describing project 1 which would develop given reach of the river X—Y. Immediately after the grant, A conducts studies of X—Y and confers with the several interested federal and state agencies concerned with water development, as required by the specific terms of the permit. As a result, it becomes apparent one year later that site 2, 500 feet downstream, in addition to other engineering changes would best develop reach of the river X—Y. So, according to the Minority, Co-op A would file for an amendment. Before the Commission acts on A's application for amendment, Municipality B files an application for a permit, describing the same project as that identified by A in A's application for amendment. Thus, the Commission has two mutually exclusive applications before it.

Section 7(a) of the Power Act requires the Commission to give preference to municipalities in granting applications for permits. And here is the rub. Which application would the minority grant: A or B's? If, for *any* reason, the minority would not grant A's application, it would not give permittees the flexibility and encouragement it states is required. However, the only way the minority could grant A's application without violating the flat command of Section 7(a) is to hold that A's priority and consequently its flexibility derives from its original permit. But if A's flexibility derives from its initial permit, why all the fuss about filing for amendments?

Thus, the only difference between our position and that of the minority is that the latter would insist on paper filings of extremely dubious significance.

WPPSS also argues that our decision would deprive it of statutory notice so it would be unable to exercise its preference rights.[12] Since at least 1954, WPPSS and its predecessor in interest, the Northwest Public Power Association have actively participated in all of the proceedings involving this reach for the purpose of advocating the advantages of Nez Perce over alternative sites on the Snake. At the public hearings held in Lewiston, Idaho on the preliminary report in S.D. 51,[13] then proposing what is now High Mountain Sheep, Mr. Gus Norwood, Executive Secretary of the Northwest Public Power Association, filed a protest because High Mountain Sheep would pre-empt Nez Perce. He did the same thing when PNPC filed its application for preliminary permit, and intervened for the purpose of again urging Nez Perce during the previous hearing on the Mountain Sheep-Pleasant Valley license proceedings. As pointed out by the Examiner herein, the managing director of WPPSS testified:

> I am sure had [PNPC] * * * seen fit to make a filing on the Nez Perce project, in my opinion the public agencies wouldn't have made a filing on the Nez Perce project. (Tr. 4448)

WPPSS was never really misled or deprived of notice. To the contrary, WPPSS knew exactly what was going on but apparently had to change horses in midstream. Its early interest was directed to promoting the Nez Perce site, assuming all the while that Interior would undoubtedly want to construct the project or, at the very least, could be induced into it. When WPPSS realized that it would not be bailed out by Interior and that the grains of sand were running short, then it became necessary for WPPSS to change its strategy. It therefore entered a claim for Nez Perce. Only after that hearing concluded did WPPSS come to realize that the preservation of the fish runs on the Salmon River would unquestionably be the determining factor in the case and preclude construction of Nez Perce. Only at that late stage did WPPSS take its pride in hand and assert a claimed preference for the HMS site, distasteful as it must have been—and still is—to its concept of what is the proper development of this reach of the river. We have no sympathy for WPPSS's alleged deprival of notice.

---

[12] See also dissent, *Supra*, p. 298–299.

[13] Senate Document 51, June 14, 1955, comprises a report of the Corps of Engineers on its studies of the Middle Snake River, in which it recommends construction of a dam at the Mountain Sheep site in contrast with the Nez Perce site.

In addition, WPPSS criticizes our reliance upon the legislative history of the Water Power Act with respect to land withdrawals as explaining why FPC permits describe specific projects. WPPSS erroneously states that Congress was unconcerned with the extent of land withdrawals in its consideration of the Water Power Act.

The legislative history is to the contrary. Mr. Raker stated:

> The committee and those who appeared before the committee had this in view, that while we want to conserve the public domain and the public property for uses that might be made for the purpose of developing hydroelectric power in all its forms for ditches, houses, plants or reservoirs, it should be done, but at the same time we are beginning to realize that a reservation simply to mark imaginary lines around a large tract of land and saying that is conservation, but not using it, means nothing. It is absurd; it is ridiculous.[14]

Mr. Mondell criticized land withdrawals:

> We have a lot of lands withdrawn for water-power purposes. In the nature of things they could not have been withdrawn very intelligently, because they were withdrawn hurriedly. The best lands for the development of water power were not always withdrawn. That was not with intent; that was out of ignorance. Other lands were withdrawn simply because they lay along streams, and without much regard to the possibility of power development. The withdrawals were wise and otherwise—and largely otherwise.[15]

Still later, we read:

> I can see a man filing an application in my district covering a million acres under this law whereby every improvement on that land in the way of future homesteading, future desert-land entries, future mining entries, would be absolutely blocked until the land was released by the commission or by Congress. I can see myself working here for the next 40 years in getting homestead and desert-land claims and mining claims released from this kind of application for the good, honest citizens of this country who want to go there and live and develop it as they ought to.
>
> * * * * * * *
>
> (Mr. Johnson) The gentleman from California [Mr. Raker] is quite right. We have tied up too much.[16]

Congress was concerned with undue land withdrawals and clearly expressed its concern. In the light of this history, it is not surprising that the Commission historically has followed a policy of requiring the filing of applications for permits to describe a project with particularity. Since, under § 24 of the Act, a reservation is automatically effected by filing for a permit, the Commission's continuous practice in this regard represents a satisfactory compromise between the necessity to preserve valuable power sites and the need to make valuable land areas available for public entry.

---

[14] Cong. Rec.—House, August 20, 1914, Vol. 51, p. 14062.

[15] 65th Cong., 2nd Sess., Hearings, House Committee on Water Power, May 13, 1918, p. 624.

[16] Cong. Rec.—House, Sept. 5, 1918, Vol. 56, p. 10035.

WPPSS also quarrels with our findings as to the power requirements of WPPSS and PNPC. WPPSS does not contest our finding that PNPC will have a need for the power by the time HMS is constructed. To the contrary, WPPSS recognizes PNPC's deficiency and suggests that PNPC must find some manner of offsetting this deficiency during the period HMS is being constructed. We agree. However, we are confident that PNPC will find some satisfactory method of serving its customers in the interim period. In view of this situation and because our selection of PNPC is based on its priority, it is unnecessary to treat this matter further. It is sufficient for us to note that WPPSS has failed to show we made any material error in this area.[17]

WPPSS complains that we have ignored the difference between its proposal for HMS and that of PNPC. This is incorrect. However the differences between the two proposals are of such a technical engineering nature that they must await the submission of final plans. It is impossible at this point to determine the precise nature of the project which will eventually be constructed at HMS. We recognized this situation in our decision. On page 252, we stated that a complete geological study carried out by a more elaborate program of borings is required before construction can be authorized at any HMS site. On page 255 we noted that final plans may differ from what we characterized as the estimates submitted herein. We therefore specifically refused to find that the data submitted respecting these plans precisely represent the ultimate development of either plan. In order to assure that the complete potential of this reach of the river is fully developed by PNPC, *i.e.*, that development required by Section 10(a) of the Act, we specifically included Articles 39 through 44 in the license.

However, to avoid any possible ambiguity, we are modifying our order to describe the project works at the HMS site; which, on the basis of present information, we find to be best adapted to a comprehensive plan of development under the test set forth in Section 10(a) of the Act.

All three applicants for rehearing have requested a stay of our opinion and order granting a license to PNPC pending appeal. Under Section 313(a) of the Federal Power Act a stay does not result automatically from the filing of application for rehearing. *In Virginia Petroleum Jobbers* v. *F.P.C.*, 259 F. 2d 921 (CADC 1958) the court prescribed four tests which must be satisfied in order to justify a stay of an administrative order: (1) Petitioner must be likely to prevail on the merits; (2) Petitioner will be irreparably injured;[18] (3) Issuance of the stay will not substantially harm other interested parties; and (4) The public interest would not be adversely affected.[19]

---

[17] WPPSS currently notes that, on the basis of average energy resources during the winter control storage period, as shown by the record, with the addition of the Wells and Hanford projects, PNPC might not require all of the HMS energy until 1969–1970. WPPSS also points out correctly, contrary to our statement that it does not own or operate any electric facilities, that since the close of the record it has constructed the Packwood Project (No. 2244) with 26,000 KW of normal capacity and has under construction steam generating facilities associated with the Hanford nuclear project.

[18] As to this element, the court stated: "The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against claim of irreparable harm." 259 F. 2d 925.

Treating these tests in reverse order, we have unanimously found that HMS power certainly will be required by the time construction is completed. Thus, any postponement would be injurious to the public interest. PNPC, particularly, has an urgent need for the power and our refusal to allow it to proceed with its plan to construct this economical project would clearly be to its economic disadvantage. On the other hand, WPPSS has singularly failed to allege *any* injury to it resulting from a refusal to stay, much less irreparable injury. Finally, for the reasons stated herein and in our original opinion, we believe that our decision will be affirmed if appealed.

In addition, it is significant that PNPC will not begin actual construction of HMS until completion of additional studies required by our order. Article 42, as amended, provides:

> The Licensee shall submit, in accordance with the Commission's rules and regulations, revised Exhibit L drawings and Exhibit M for the project structures and Licensee shall not begin construction of the project works until the Commission approves the exhibit.

These activities will not be completed before our order becomes subject to the jurisdiction of the court, and thus would not preclude the use of the site by another party. There is no reason to fear that a federal court would distort its judgment because of these investigative activities, particularly since PNPC would be proceeding at its own risk.

PNPC on March 16, 1964, filed a motion to strike the application for rehearing filed by WPPSS on the ground that it was not filed under oath in accordance with Section 1.34(a) of the Commission's rules, and filed a similar motion to strike the application of the Department of the Interior for this reason and for the further reason that under the Commission's order of December 14, 1962 the Secretary is a limited participant and was not authorized to file a petition for rehearing. Verifications for the two applications were filed on March 16, 1964, and, while this was not in strict conformity to our rules, our Secretary by accepting the applications for rehearing properly waived the failure to make the filings under oath in accordance with his authority delegated by Section 3.5 (9) of the Rules. In this connection, our order of December 14, 1962 was intended to permit the Department of the Interior to participate in the remaining procedural steps in this case. Accordingly, that order does not limit Interior in contesting the order adopted.

The Commission further finds:

The applications and motions hereinabove described present no new facts or principles of law which warrant any change in the order of February 5, 1964, except to the extent noted in ordering paragraph (A) below.

The Commission orders:

(A) The Commission's order entered in this matter on February 5, 1964 is modified in the following respects:

(i) Paragraph (A) (ii) is amended to read as follows:

All project works consisting of a concrete arch dam approximately 670 feet high, creating a reservoir extending about 58 miles upstream to Hells Canyon tailwater (Project No. 1971) on the Snake River and about 10 miles upstream on the Imnaha River with normal water surface area of about 17,300 acres and gross storage capacity of 3,600,000 acre-feet at normal water surface elevation 1510, of which 2,250,000 acre-feet would be usable with a draw down of 173 feet; a chute-type radial-gate controlled spillway located at the right abutment; low level intakes; an outdoor type powerhouse, immediately downstream of the dam, having an initial installation of six units with each turbine rate 321,000 horsepower at 550-foot head and each generator rated 200,000 kw (210,000 kva at 0.95 power factor); with provisions in the plans for the addition of four additional units, and appurtenant electrical and mechanical facilities; the location, nature, and character of which are subject to the Commission's approval under Article 42.

---

[19] "In litigation involving the administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial." *Ibid.*

(ii) Article 14 is amended to read as follows:

The licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner including the construction of additional transmission facilities as the Commission may direct in the interest of maximizing power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the licensee as the Commission may order.

(iii) Article 42 is amended to include "and Exhibit M" after the word drawings in the second line.

(iv) Article 51 is amended to eliminate the last sentence.

(v) Article 56 a. is amended by changing "1,166,700" to "1,600,000" in the fourth line.

(B) The applications for rehearing and for stay filed by WPPSS, the Secretary of the Interior, and the Department of Conservation of the State of Washington are hereby denied.

(C) The motions of PNPC to strike the applications for rehearing filed by the Secretary of the Interior and WPPSS are hereby denied, except to the extent heretofore described.

(D) In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of the issuance of this order.

Chairman Swidler and Commissioner Black *dissenting*.

Commissioner Black filed a *dissenting* statement.

BLACK, Commissioner, *dissenting:*

I dissent to the majority's order on rehearing for the reasons already stated in the dissenting opinion to the licensing decision of February 5, 1964.

The Commission's rather labored defense of its position presents nothing new and does not require any extended restatement of the views expressed by the Chairman in which I have concurred. The majority neglects for the most part even to discuss the competing applications with which we are concerned and the principles of law which apply to the facts before us. Instead, we are treated to a little fantasy in which hypothetical parties are engaged in a controversy unrelated to the case at issue. This Commission can strain with its A's and B's, its X's and Y's, its fictitious municipalities and co-ops, and move its fanciful projects 500 feet up and down stream until the Salmon and Snake Rivers both begin flowing uphill; for the fact situation posited by the majority completely misses the point. Here PNPC did not seek to change its Low Mountain Sheep-Pleasant Valley project as a result of site explorations. It applied for HMS, because the Commission rejected its license application for the LMS–PV project. An applicant would obviously be entitled to routine approval of an amendment to his permit, in appropriate cases, where his exploration at the project site indicated that changes in the project were desirable.

Try as they will by discussing cases which are not before us, my colleagues of the majority cannot change the facts that (a) the Commission had precisely defined the scope of PNPC's preliminary permit; (b) PNPC's license application within the scope of that permit was denied by the Commission; (c) only after the expiration of the preliminary permit originally issued in this docket did PNPC conduct the necessary investigations to support this new site; and (d) WPPSS is a preference entity under Section 7(a) of the Federal Power Act which provides that "the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region."

These factors are dispositive of the case; but lest silence on the remaining aspects of this controversy might imply that the minority no longer adheres in toto to its position, it should be restated that (a) the effect of the preliminary permit issued PNPC terminated upon the Commission's denial of its original license application and (b) PNPC failed in any event to perfect its application for the High Mountain Sheep project within the three-year statutory limit. No useful purpose would be served by repeating here the arguments which support these positions already set forth at length in the Chairman's dissent to the February 5 order and opinion.

I also dissent to the Commission's refusal to grant a stay of the order pending appeal. As the Supreme Court has stated, the granting of stay "is an exercise of judicial discretion. The propriety of its issue is dependent upon the circumstances of the particular case."[1] The case cited by the majority, involving an issue of the right of competing fuel interests to intervene in certificate cases arising under the Natural Gas Act, is not in point. Further, it relates to the standards applicable to judicial stay of administrative actions which are not the same as the standards which administrative bodies must apply to their own decisions. At any rate, we should note the Court's observation that "injury held insufficient to justify a stay in one case may well be sufficient to justify it in another, where the applicant has demonstrated a higher probability of success on the merits."[2] Surely we can take into account the fact that difficult and closely controverted questions of law of the most far reaching significance are presented by and go to the very heart of this case.

To grant a stay does not constitute an admission of error—it only bespeaks a certain degree of caution and prudence which it might behoove this Commission to exercise. The majority implicitly acknowledges that the review process may not be completed before construction would normally commence and that a stay would delay construction. However, if the wrong party moves in and begins development of the site or otherwise incurs costs associated with such development our problems are greatly complicated in the event of a remand by the court. More importantly, by failing to stay the effect of the order, we are permitting and encouraging the expenditure of perhaps large sums of money

---

[1] *Scripps Howard Radio* v. *F.C.C.*, 316 U.S. 4, 10, 11; 86 Lawyers edition 1229, 1234.
[2] *Virginia Petroleum Jobbers Association* v. *F.P.C.*, *Op. Cit.*, page 925.

which will be reflected in the cost of service of those utility companies comprising PNPC. This result is hardly protective of the public interest. I feel strongly that we should do everything in our power to preserve the status quo until the strenuously contested legal issues in this case are properly disposed of by the courts. The damage to the parties and to the public interest which will result from premature construction activities, should this case be remanded to the Commission, in my opinion greatly outweighs the detrimental effect of delay pending judicial review.

Chairman Swidler joins in these views.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PUBLIC SERVICE COMPANY OF INDIANA, INC., DOCKET NO. E-7163

ORDER INITIATING INVESTIGATION AND HEARING

(Issued May 1, 1964)

Public Service Company of Indiana, Inc. (PSCI), a corporation organized under the laws of the State of Indiana, having its principal business office at Plainfield, Indiana, in prior orders of this Commission has been found to be a "public utility" within the meaning of that term as used in the Federal Power Act.[1]

From information presently available to the Commission it appears that PSCI owns and operates interconnected electric production and transmission facilities in the State of Indiana, which facilities also are interconnected with electric facilities of Louisville Gas & Electric Company in Kentucky and The Cincinnati Gas & Electric Company in Ohio. PSCI is also interconnected in Indiana with Indianapolis Power & Light Company, Northern Indiana Public Service Company, Southern Indiana Gas & Electric Co., and Indiana & Michigan Electric Company, all of whom own facilities which in turn are interconnected with electric utilities or facilities located outside of the State of Indiana. It also appears that PSCI regularly delivers to and receives electric power and energy from each of these utility systems. In addition, the PSCI system is interconnected with and sells power to a number of municipal and cooperatively-owned electric systems.

Rate Schedules Filed With The Commission

During the years 1942 to 1947, PSCI submitted to the Federal Power Commission contracts and rate schedules providing service to eleven municipalities in Indiana: Bainbridge, Covington, Ladoga, Middletown, Montezuma, Paragon, Pendleton, Rockville, Tipton, Veedersburg and Etna Green.[2] In submitting these contracts and schedules, PSCI sent a covering letter in each instance which stated that the schedules were "enclosed for [FPC's] information" and took the place of earlier schedules which had been "heretofore sent you at your request and . . . designated by you as [rate schedules.]" The Secretary of the Commission in each instance sent a letter to PSCI acknowledging receipt of the letter, contract and rate schedule from PSCI, stating that the rate schedule and contract had been designated as a PSCI Rate Schedule, and further stating the F.P.C. Number assigned to the rate schedule and contract.

---

[1] *Indiana & Michigan Electric Co.* and *Public Service Co. of Indiana, Inc.*, 9 FPC 617, 619 (1950); *Public Service Co. of Indiana, Inc.*, 10 FPC 1096, 1098(1951); *Public Service Co. of Indiana, Inc.* and *Madison Light and Power Company*, 10 FPC 1206, 1207 (1951); *Indiana & Michigan Electric Company* and *Public Service Co. of Indiana, Inc.*, 10 FPC 1315, 1316(1951). Section 201(e) states: "the term 'public utility' when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part."

[2] Section 205(c) provides:

> Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications and services.

These rate schedules for service to these eleven municipalities in Indiana are currently designated in the files of this Commission as follows:

PSCI Rate Schedule FPC No.:	*Purchaser*
27	Town of Middletown
29	Town of Rockville
30	Town of Veedersburg
31	City of Tipton
33	Town of Montezuma
34	Town of Bainbridge
36	Town of Paragon
37	Town of Etna Green [3]
38	Town of Ladoga
40	Town of Pendleton
41	City of Covington

[3] Etna Green reports, however, that it is currently served by Northern Indiana Public Service Company.

By the terms of these rate schedules, 60 cycle, alternating current was supplied to these municipalities for their own use and for resale to their customers.

Interconnection Agreements

PSCI also has a number of interconnection agreements on file with this Commission as rate schedules.

PSCI Rate Schedule FPC No. 35-A (including Supplement Nos. 1, 2, 3 and 4) is an interconnection agreement between PSCI and Indiana & Michigan Electric Company. The agreement by its terms states that the companies have been interconnected at numerous points and have interchanged electric power and energy for many years, and that such interchanges have resulted in mutual advantages and benefits to the parties and their consumers, such as: conservation of materials, economies in cost, and improvement to the continuity and quality of service. The agreement states that the parties desire to increase these benefits. Accordingly, the parties agree therein to continue the interconnections, maintain their systems in continuous synchronous operation, render mutual emergency and standby assistance, coordinate spinning and standby reserve capacity, coordinate maintenance schedules, and interchange economy energy and diversity capacity and energy. The agreement sets up a planning committee to coordinate the planning, expansion and development of the companies' generation and transmission systems in order to secure maximum mutual savings in investment and operating costs. The agreement also sets up an operating committee to fully coordinate the operations of the respective generation and transmission systems in order to secure the maximum mutual savings possible in operating costs.

Indiana & Michigan Electric Company is one of six operating subsidiaries of the American Electric Power System, which operates in seven states. Indiana & Michigan Electric Company operates in the States of Indiana and Michigan and regularly exchanges electric energy with companies in Ohio and Illinois.

Exhibit A of Rate Schedule 35-A contains a certificate of concurrence by PSCI in a four-party interconnection agreement between PSCI, Indiana & Michigan Electric Company, The Cincinnati Gas & Electric Company, and Louisville Gas & Electric Company. The four-party interconnection agreement is designated Exhibit A of Rate Schedule FPC No. 14–A filed by Indiana & Michigan Electric Company. It recognizes that the four companies together embrace a geographical area of operations in Indiana, Kentucky, and Ohio and are interconnected at various points in Indiana and at the Indiana-Ohio and Indiana-Kentucky borders. This four-party agreement states that numerous bi-party agreements exist between the companies having particular interconnections; that the four systems have operated in continuous synchronism for a number of years resulting in many advantages and benefits to themselves and their consumers, such as savings in capital and operating costs and improved continuity and quality of service; and that in order to continue the benefits from such coordinated operation of their respective interconnected systems, it is necessary to set up an operating committee for the four systems. This operating committee is to coordinate the operations of all four systems and the terms and conditions of the bi-party agreements. The operating committee is then established by the agreement.

PSCI Rate Schedule FPC No. 35–B is an interconnection agreement between Indiana & Michigan Electric Company, PSCI and Northern Indiana Public Service Company. The provisions of this agreement are similar to Rate Schedule No. 35–A.

PSCI Rate Schedule FPC No. 48 (including Exhibits I-VIII, and Supplement Nos. 1-4) is an interconnection agreement between PSCI and Indianapolis Power and Light Company, which is interconnected in turn with Indiana & Michigan Electric Company. This agreement is similar to Rate Schedule FPC Nos. 35–A and 35–B, and specifically seeks to realize, through interconnections, mutual benefits from firm power sales and purchases, emergency assistance, economy exchange, coordination of maintenance schedules of generating and transmission facilities, and seasonal diversities.

PSCI Rate Schedule FPC No. 46 is an interconnection agreement between PSCI and Louisville Gas and Electric Company, which owns and operates generation, transmission, and distribution facilities in Indiana and Kentucky. The interconnection point between the two parties is at Paddy's Run on the Indiana-Kentucky border. The parties agree to operate in parallel and to render emergency energy to each other. The agreement states "that in continuously interconnected operation of their respective systems energy being received by one party from another portion of its system or from another interconnected company, or energy being delivered by one party to another portion of its system or to another interconnected company, may flow by existing parallel lines over the transmission facilities of the other party as a natural result of the interconnected network of transmission lines", and the parties agree to permit such energy transfers over their respective transmission facilities. The agreement sets up an operating committee which is to meet "in order to obtain the greatest mutual benefits from the interconnection." The operating committee is to arrange for the following classes of interchange transactions: firm capacity and energy, emergency energy, economy energy, and unintentional energy.

PSCI Rate Schedule FPC No. 32, contains a certificate of concurrence by PSCI in the four-party interconnection agreement above-mentioned and in Cincinnati Gas and Electric Co. (CG&E) Rate Schedule FPC No. 10, which is an agreement between CG&E and PSCI.

This CG&E-PSCI agreement provides for maintenance of the interconnections between the two systems at the Ohio-Indiana border, for the coordination of the two systems, for the interchange of electric energy including emergency energy, and the sale of firm and surplus capacity by CG&E to PSCI. The agreement also sets up an operating and engineering committee to coordinate planning, expansion, and development of their respective generation and transmission systems to maximize savings in investment and operating costs and to arrange for emergency, economy, and diversity exchange of energy between the systems. The agreement further provides for operating reserve capacity to be carried by the party who can do so most cheaply.

PSCI's Annual Report to Stockholders

The Annual Report of PSCI for 1963 to its stockholders indicates that PSCI is engaged in a power pooling program which has enabled it to defer completing construction of a large generating unit until 1968, thereby allowing the building of a larger unit at that date than would have been practical at the time of the Report. The Annual Report states that "[t]he larger unit size will result both in lower capital costs per kilowatt of capacity and in lower operating cost due to increased efficiency. Without such pooling arrangements, additional capacity would be required at an earlier date". The Annual Report further states that "substantial progress has been made toward the formation of a regional power pool in which the Company will participate. The establishment of such a pooling arrangement is expected to achieve important financial and operating advantages for the participating companies by permitting the construction of larger generating units at lower capital costs per kilowatt; by lowering required reserve generating capacity margins; by realizing the lower operating costs of larger, more efficient generating units; and by taking maximum advantage of savings available through short-term exchanges of economy power."

F.P.C. Form Nos. 1 and 12

In addition to filing the Interconnection Agreements and its Annual Report, PSCI files annually with the Federal Power Commission certain information on FPC Form Nos. 1 and 12. This information shows that in the year 1962 PSCI received 290,635,000 kwh from and delivered 4,566,000 kwh to Cincinnati Gas & Electric Company; received 43,459,000 kwh from and delivered 128,703,000 kwh to Louisville Gas & Electric Company; received 108,364,000 kwh from and delivered 11,188,000 kwh to Southern Indiana Gas and Electric Company; and received 213,298,000 kwh from and delivered 528,568,200 kwh to Indiana & Michigan Electric Company.

It also appears that in the year 1962 the PSCI system, in addition to making the interchanges above, delivered 887,033,766 kwh to 31 Rural Electric Member Cooperatives, 358,113,076 kwh to 47 municipalities,[4] and 17,095,000 kwh to Southern Indiana Gas and Electric Company for which no rate schedules are on file with this Commission, except the rate schedules for the eleven municipalities listed above. For those eleven municipalities no subsequent filings have been made since 1947.

The information supplied by PSCI in its Form Nos. 1 and 12 also shows that in the year 1962 PSCI's net generation was 6,513,500,600 kwh and its net energy for load, 6,431,416,047 kwh. At the time of PSCI's system peak the combined net demand on PSCI's generating plants was 1,196,300 kilowatts; its system peak load, 1,171,400 kilowatts; and its system peak load responsibility,

---

[4] These municipalities and cooperatives are included in Exhibit A attached hereto.

1,185,300 kilowatts. PSCI's net assured system capacity for 1962 was reported as 1,467,000 kilowatts.

The foregoing circumstances indicate that whether or not PSCI's generating capacity is greater than its Indiana load, PSCI's total operations, including all of its wholesale sales, may be in interstate commerce.

Correspondence and Court Proceedings

On December 11, 1963, the Secretary of the Federal Power Commission sent a letter to PSCI,[5] stating that PSCI during the years 1942 to 1947 had filed with the Federal Power Commission rate schedules providing service to the municipalities of Bainbridge, Covington, Ladoga, Middleton, Montezuma, Paragon, Pendleton, Rockville, Tipton, Veedersburg and Etna Green; that PSCI had made no submittals of any rate schedules that superseded, supplemented, cancelled or otherwise changed any provisions of rate schedules applicable to service to these eleven municipalities; that according to the 1962 Form No. 1 Annual Report, filed by PSCI with the Federal Power Commission, wholesale electric service was provided to many other municipal and cooperative purchasers for which no rate schedules were on file with this Commission; and that PSCI was interchanging energy with other utilities. The letter concluded by suggesting that PSCI complete all appropriate rate schedule filings within a period of 30 days in the manner provided in Part 35 of the Federal Power Commission's Regulations under the Federal Power Act.

On January 10, 1964, PSCI responded to the Commission Secretary's letter of December 11, 1963, and refused to recognize the jurisdiction of the Federal Power Commission over the rates and contracts to the municipal and cooperative purchasers. PSCI asserted that it operates solely within Indiana, and produces all of the energy furnished to its customers, and that therefore these sales were wholly contracts for the sale of electric energy in intrastate commerce subject to jurisdiction by the Public Service Commission of Indiana. The letter further stated, "we feel that this matter should be straightened out in the federal courts."

On that same day, January 10, 1964, PSCI filed a complaint in the United States District Court, Southern District of Indiana, Indianapolis Division, seeking a declaratory judgment and an injunction against the Federal Power Commission. *Public Service Company of Indiana, Inc.*, v. *Federal Power Commission, et al.* Case No. IP 64–C–10. The Court over the objection of the Commission subsequently entered an order enjoining the Federal Power Commission and its agents "from taking any further action against [PSCI] because of the failure of [PSCI] to comply with the aforesaid letter of December 11, 1963".

In its findings of fact and conclusions of law filed with its injunction, the Court made clear that the basis for its action was its conclusion that the Commission could not lawfully authorize its Secretary or its staff to send the December 11, 1963 letter to PSCI, and that therefore any Commission action against PSCI because of the failure of PSCI to comply with the letter should be enjoined pending further order of the Court.

The Court also concluded, however, that PSCI "has not made a prima facie case for an injunction pending the litigation concerning the right of the Federal Power Commission to assume jurisdiction and determine such jurisdiction."[6]

---

[5] As we made clear in the minutes of our meeting of February 6, 1964, the Staff had the authority to prepare and the Secretary to sign and mail this letter.

The Commission finds:

In view of the foregoing circumstances, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, Sections 201, 205 and 206 thereof (16 U.S.C. §§ 824, 824d, 824e) that an investigation and hearing be initiated pursuant to Sections 301, 307, 308 and 309 (16 U.S.C. §§ 825, and 825f-h) to determine whether the sales at wholesale to the purchasers referred to in Exhibit A, attached hereto and made a part of this order, are sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which PSCI must file appropriate rate schedules in the manner provided in Part 35 of the Commission's Regulations under the Act.

The Commission orders:

(A) At a time and place and before a hearing examiner to be specified, a public hearing shall be held to find and determine:

(1) whether the sales by Public Service Company of Indiana, Inc. to the purchasers listed in Exhibit A attached hereto are sales at wholesale in interstate commerce, subject to the provisions of Sections 201, 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(2) whether Public Service Company of Indiana, Inc. should be ordered to file rate schedules for service to the purchasers listed in Exhibit A attached hereto in accordance with the provisions and requirements of Section 205 of the Act and Part 35 of the Commission Regulations thereunder;

(3) whether other orders or other actions may be necessary and appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) In order that the foregoing issues may be properly determined, an investigation is hereby initiated and Public Service Company of Indiana, Inc., is hereby directed pursuant to the provisions of Section 301(b) of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours free access to its property and access to and the right to inspect and examine all of its accounts, records, and memoranda.

(C) Petitions to intervene and notices of intervention shall be filed on or before June 15, 1964, in accordance with the Commission's Rules of Practice and Procedure.

---

[6] The Commission has filed an appeal to the United States Court of Appeals for the Seventh Circuit from the injunction order. *Public Service Company of Indiana, Inc., plaintiff-appellee, v. Federal Power Commission, et al., defendants-appellant,* Case No. 14612. [Suit dismissed and injunction order vacated on November 18, 1964, upon order of Court of Appeals for the Seventh Circuit.]

EXHIBIT A

Southern Indiana Gas and Electric Company

Municipalities

- **Advance**
- **Bargersville**
- **Bainbridge**
- **Brooklyn**
- **Centerville**
- **Clayton**
- **Coatesville**
- **Covington**
- **Crawfordsville**
- **Crothersville**
- **Darlington**
- **Dublin**
- **Dunreith**
- **Edinburg**
- **Etna Green**
- **Flora**
- **Frankfort**
- **Greendale**
- **Greenfield**
- **Hagerstown**
- **Jamestown**
- **Knightstown**
- **Ladoga**
- **Lebanon**
- **Lewisville**
- **Linton**
- **Logansport**
- **Middletown**
- **Montezuma**
- **New Ross**
- **Paoli**
- **Paragon**
- **Pendleton**
- **Peru**
- **Pittsboro**
- **Rising Sun**
- **Rockville**
- **Rushville**
- **Scottsburg**
- **South Whitley**
- **Spiceland**
- **Straughn**
- **Thorntown**
- **Tipton**
- **Veedersburg**
- **Vevay**
- **Waynetown**
- **Williamsport**

Rural Electric Membership Cooperatives

- **Bartholomew County**
- **Boone County**
- **Carroll County**
- **Clark County**
- **Daviess-Martin County**
- **Decatur County**
- **Dubois County**
- **Fayette-Union County**
- **Fulton County**
- **Hancock County**
- **Harrison County**
- **Hendricks County**
- **Henry County**
- **Huntington County**
- **Jackson County**
- **Johnson County**
- **Knox County**
- **Kosciusko County**
- **Miami-Cass County**
- **Morgan County**
- **Orange County**
- **Parke County**
- **Rush County**
- **Shelby County**
- **Southeastern Indiana**
- **Sullivan County**
- **Tipmont**
- **Wabash County**
- **Warren County**
- **Wayne County**
- **Utilities District of Western Indiana**

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CUMBERLAND AND ALLEGHENY GAS COMPANY, DOCKET NO. CP64-145

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1964)

On December 24, 1963, Cumberland and Allegheny Gas Company (Applicant) filed in Docket No. CP64-145 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 45 feet of 2-inch pipeline together with the necessary measuring and regulating equipment in order to render natural gas service to a new plant of Cumberland Charcoal Corporation (Cumberland) in the community of Beryl, Mineral County, West Virginia, all as more fully set forth in the application on file with the Commission.

The application shows that Cumberland will use natural gas in the manufacture of charcoal. Applicant states that Cumberland's requirements are estimated to be 150 Mcf per day and 48,000 Mcf annually. Applicant states further that deliveries to Cumberland, an industrial customer, are subject to curtailment, if necessary, in order to maintain service to domestic customers.

Cumberland and Applicant have entered into an industrial service agreement dated December 5, 1963, providing for the proposed service.

The total estimated cost of the proposed facilities is $3,369, which cost will be financed from funds on hand.

By letter of April 3, 1964, Applicant was issued a temporary certificate to construct and operate the proposed facilities for testing purposes only.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cumberland and Allegheny Gas Company, a West Virginia corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-387 (4 FPC 472).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cumberland and Allegheny Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP64–128

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1964)

On December 4, 1963, Michigan Gas Storage Company (Applicant) filed in Docket No. CP64–128 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of existing facilities and the transportation of natural gas in Michigan for and in behalf of Consumers Power Company (Consumers), all as more fully set forth in the application.

Specifically, Applicant proposes to transport for and in behalf of Consumers up to 200,000 Mcf of natural gas per day commencing April 1, 1964, and up to 225,000 Mcf per day commencing November 1, 1964.

In Docket No. CP63–221 Applicant was authorized to transport 200,000 Mcf of natural gas per day for Consumers commencing in the fall of 1964. Said gas was to be supplied by Trunkline Gas Company (Trunkline). Applicant states that Consumers and Trunkline have entered into a new agreement providing for the sale and delivery to Consumers of 200,000 Mcf per day commencing April 1, 1964, and 225,000 Mcf per day commencing November 1, 1964.[1] Accordingly, Applicant requests herein authorization to transport for Consumers these increased sales from Trunkline to Consumers.

Applicant states that the proposed increased transportation service will be provided without any additional facilities and that all costs arising from said service will be passed on to Consumers pursuant to Applicant's cost of service tariff.

---

[1] By Commission order issued March 20, 1964, 31 FPC 621, in Docket No. CP64–114 Trunkline was authorized to render the increased service to Consumers.

On December 20, 1963, the Michigan Public Service Commission filed a notice of intervention in support of the subject application, which notice requests that the subject application be heard and disposed of under the shortened procedure provided for by the Commission's Rules.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The transportation and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and delivery by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to transport and deliver natural gas for and in behalf of Consumers Power Company as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; GEORGE R. BROWN (OPERATOR), ET AL., CI63-523

ORDER GRANTING MOTION FOR SEVERANCE AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1964)

On February 24, 1964, George R. Brown (Operator), *et al.* (Brown or Applicant), filed a motion for severance of Docket No. CI63-523 from the consolidated proceeding Union Texas Petroleum, *et al.* Docket No. G-13221, *et al.* (the Union Texas Proceeding), and for the issuance of a certificate of public convenience and necessity in accordance with Brown's application in Docket No. CI63-523. Brown pointed out that the proposed total initial price in its contract (on file as its F.P.C. Gas Rate Schedule No. 12) is 20.625¢ per Mcf[1] and that there is no provision for escalation above the initial price. (The contract also provides for life-of-contract take-or-pay make-up and contains what could be described as a limited *downward* favored-nation clause.)[2] Brown contended that its application as originally filed is in the public interest, citing the numerous settlements which have provided for an initial price of 20.625¢ per Mcf for sales from South Louisiana with a 5-year moratorium on rate increase filings and extension of take-or-pay make-up periods to four years, and which have heretofore been approved by the Commission in the Union Texas Proceeding.

On March 20, 1964, the Pennsylvania Public Utility Commission (Pennsylvania) filed an answer in opposition to Brown's motion. However, on April 24, 1964, Pennsylvania withdrew its opposition to Brown's motion. Now other answers have been received.

By order issued December 26, 1963, we conditionally approved the settlement of Brown's Docket Nos. G-18131 and CI60-580.[3] The initial prices approved in that order were 20.625¢ per Mcf[4] and 20.25¢ per Mcf in Docket Nos. G-18131 and CI60-580 respectively. Other terms of the Brown settlement proposal, which was filed on November 8, 1963, included a 5-year moratorium or rate increase filings. (The contract involved in Docket No. G-18131 has a take-or-pay make-up period of 5 years and the contract involved in Docket No. CI60-580 does not contain a take-or-pay provision).

A comparison of the terms of the Brown settlement proposal in Docket Nos. G-18131 and CI60-580, which was conditionally approved by us, with the terms of the original contract in Docket No. CI63-523 makes it apparent that the latter sale should be certificated as proposed. It has generally been the practice in Union Texas Proceeding settlements to treat all sales of an applicant alike, without regard to the dates of contracts, insofar as it is practical to do so. Since we permitted settlement of the two other Brown sales which were consolidated in the Union Texas Proceeding, it seems fair to us that this additional sale by the same seller should be approved under substantially similar terms and that Brown should be granted a certificate in Docket No. CI63-523 at the contractual initial price of 20.625¢ per Mcf.[5]

---

[1] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[2] A temporary certificate was issued to Brown on November 16, 1962, authorizing this sale without price condition.

[3] *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 1597.

[4] The initial price originally proposed in Docket No. G-18131 was 23.55¢ per Mcf.

In accordance with the above and since no party has objected we shall grant Brown's motion for severance and issue a certificate in Docket No. CI63-523.[6]

The Commission finds:

(1) Applicant is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in Paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

---

[5] As noted above, this is also the maximum price over the life of the contract.

[6] The hearing in this proceeding concluded on July 25, 1963. The remaining contested matters are presently before the Commission on exceptions to the examiner's decision issued January 14, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP64-180

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 5, 1964)

On February 13, 1964, American Louisiana Pipe Line Company (Applicant) filed in Docket No. CP64-180 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period following June 12, 1964, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed $2,000,000 and no single project will exceed a cost of $500,000. The application states that the proposed facilities will be financed with cash generated from operations, and that it will not be necessary to undertake any new financing for this purpose.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order accompanying Opinion No. 276 in Docket No. G-2306, *et al.*, issued October 1, 1954 (13 FPC 380).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period following June 12, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, American Louisiana Pipe Line Company, to construct during the 12-month period following June 12, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period following June 12, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64–197

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 5, 1964)

On March 6, 1964, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64–197 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Cimarron County, Oklahoma, and the sale and delivery of natural gas to the Town of Keyes, Oklahoma, for resale and distribution, all as more fully set forth in the application.

Applicant proposes to construct and operate a meter station on its main line in order to serve Keyes. Applicant proposes to sell and deliver a maximum of 400 Mcf of natural gas per day to Keyes under Applicant's FPC Gas Rate Schedule SG–1.

The cost of the proposed facilities is estimated to be $4,016, which cost will be financed from current working funds on hand.

Applicant states that it presently sells gas to Keyes from Applicant's gathering system in the Keyes Field. Applicant proposes herein to sell gas to Keyes from its main transmission line at the same rate as gas sold from the gathering system. However, the application shows that gas from the main line is of a higher Btu content than the gas which is presently available to Keyes from the gathering system in the Keyes Field. Hence, the proposed sale of the higher Btu gas, at no increase in price, will be to the benefit of the ultimate consumer.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

OPINION NO. 426

CONTINENTAL OIL COMPANY, DOCKET NO. CI63-979

OPINION AND ORDER ON SHOW CAUSE ORDER

(Issued May 5, 1964)*

Syllabus

1. Cessation of gas purchases with concomitant non-use of jurisdictional facilities, where there is no present intent to renew such purchases, constitutes abandonment within scope of Section 7(b) of the Natural Gas Act. P. 1080.
2. Once jurisdictional facilities are placed in operation, justifiable public reliance attaches to their continued operation. P. 1081.
3. "Abandonment" can occur regardless of whether facilities have been salvaged and removed, left in place or merely altered beyond scope of Section 2.55(b) of Commission's General Policy and Interpretations. P. 1082.
4. Commission has regulatory responsibility to assure that gas once dedicated to interstate market will continue to be so available so long as public interest demands. P. 1082.
5. Non-use of facilities constitutes abandonment as effectively as if they had been disconnected and removed. P. 1083.
6. "Service" in Section 7(b) is not co-extensive with "sales" in Sections 7(c) and (e). P. 1083.
7. If Commission is to assure continued adequacy of reserves dedicated to interstate market, indefinite cessation of purchases from sources previously dedicated must be interpreted as an abandonment of service. P. 1084.
8. Since 1938 there has never been any question but that prior Commission approval was a prerequisite for abandonment of any jurisdictional facility or service rendered thereby. P. 1084.
9. If power to compel continuation of sales is not to be reduced to mere illusion, power to compel continuation of purchases must be its correlative. P. 1085.
10. In show cause proceeding, Commission *finds* pipeline in violation of Section 7(b) of the Natural Gas Act and *orders* renewal of operations of gas purchase facilities. P. 1086.

Commissioner Woodward *dissenting*.

Tom Burton and *Bruce R. Merrill* for Continental Oil Company.

Vernon W. Woods, W. O. Crain, Saunders Gregg, David Klotz, and *Willis L. Meadows* for United Gas Pipe Line Company.

Jack D. Head, Keith M. Pyburn, and *Joseph F. Weiler* for Texas Eastern Transmission Corporation.

C. Louis Knight for the Staff of the Federal Power Commission.

---

*Initial decision appears on P. 1090. Order issued May 7, 1964, granting stay, *infra* p. 1132. Opinion No. 426-A, issued July 2, 1964, denied rehearing and stay, 32 FPC 8. Affirmed, *sub nom. United Gas Pipe Line Co. v. F.P.C.*, 350 F. 2d 689 (CA5-1965); 385 U.S. 83 (1966).

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

O'CONNOR, *Commissioner:*

The question presented in this case is whether the cessation of gas purchases with the concomitant non-use of jurisdictional gas purchasing facilities,[1] where there is no present intent to renew such purchases, constitutes an "abandonment" within the scope of Section 7(b) of the Natural Gas Act.[2] If it does, United's action of January 31, 1963, done without the prior approval of this Commission, was in violation of the Natural Gas Act. This is the only question properly before the Commission and the only one we herein decide.

The facts leading to this controversy are not disputed. On January 22, 1953, Continental Oil Company (Continental) and United Gas Pipe Line Company (United) executed a contract for the sale and purchase of gas from the Johnson Bayou Field in Cameron Parish, Louisiana. The contract provided for a primary term of 10 years, effective as of January 31, 1953. Article XIII gave either party the right to terminate the contract at the end of the 10-year term upon 90 days prior written notice to the other party. If neither party terminated at the end of this term, the contract was to continue in effect on an annual term basis until properly terminated. A price of 8.0973 cents per Mcf plus tax reimbursement at 15.025 psia was provided until January 31, 1958 at which time it was to escalate to 8.9970 cents per Mcf tax reimbursement. Continental filed this contract with the Commission on November 30, 1954 as its FPC Gas Rate Schedule No. 115, and on January 4, 1956 was issued a certificate of public convenience and necessity in Docket No. G–6949.

The Johnson Bayou Field is adjacent to United's 16-inch Mud Lake transmission line which extends westward from Southwest Louisiana into the Beaumont, Texas area. Continental agreed to deliver its Johnson Bayou Field gas to a central point located adjacent to this previously constructed line. In order to effectuate the delivery, Continental constructed 4,400 feet of 2½-inch line, 2 separators and several storage tanks. For the sole purpose of taking Continental's gas into its line, United constructed a separator, a meter station, 55 feet of 4-inch line and valves at a total cost of $6,884. Once in the line, the gas was transported to the Beaumont area where it was sold both directly to industrial customers and to distributors for resale.

On October 23, 1962 Continental advised United that it had elected to terminate the contract at the end of the primary term. On November 21, however, representatives of Continental met with representatives of United in an attempt by the former to execute a new 20-year contract. Its terms were to have included a base rate of 14 cents per Mcf at 15.025 psia plus a 1.75 cent tax reimbursement for the first five years with a periodic increase of 1 cent for each succeeding five year period. Continental was also to be allowed to increase its rate up to the just and reasonable rate to be set in AR61–2 in the event it exceeded that set by the contract.

On December 17, United rejected Continental's offer but agreed to support Continental in an abandonment proceeding. By letter of December 20, however, United agreed to continue purchases after the expiration of the primary term on a day-to-day basis at the then effective rate, and on December 26, proffered to Continental a contract which would have effectuated this post-term offer.

---

[1] The facilities constructed and operated by United for the sole purpose of receiving Continental's Johnson Bayou Field gas are concededly facilities used for the "transportation of natural gas in interstate commerce" within Section 1(b). Inasmuch as the scope of Section 7(b) has been held to be coextensive with that of Section 1(b), these facilities are likewise "subject to the jurisdiction of the Commission" within Section 7(b). *F.P.C. v. J. M. Huber Corp.*, 133 F. Supp. 479 (D.N.J. 1955); *Argo Oil Corp., et al.*, 15 FPC 601, 625 (1955).

[2] *Infra*, note 4.

On December 28, Continental acknowledged receipt of the December 26 offer, but notified United that it had elected to file for a rate increase. The same day, Continental filed a supplement to its FPC Gas Rate Schedule No. 115 providing for a unilateral increase in price to 14 cents per Mcf plus a 1.75 cent tax reimbursement and requested an effective date of January 31, 1963.[3]

Over United's objection of January 18, 1963, the Commission, on January 25, accepted Continental's filing as Supplement No. 7 to become effective on January 31. On January 28, United notified Continental that purchases from the Johnson Bayou Field would cease as of 7:00 a.m., January 31, 1963. On that date United ceased purchases, and has since refused to renew them.

Continental, on February 1, petitioned the Commission to direct United ". . . to show cause why it should not be required to continue to take deliveries of gas produced by Continental in the Johnson Bayou Field, . . ., at the currently filed and effective rate therein provided, and order United to take such gas pending action on the order to show cause." The Commission declined to issue this order but on May 1 directed United to appear and show cause ". . . why it should not be required to apply for and obtain the permission and approval of the Federal Power Commission before ceasing the operation of all or any portion of the facilities heretofore operated by United to purchase natural gas from Continental Oil Company from Johnson Bayou Field, Cameron Parish, Louisiana." Hearing was initiated June 3, 1963, and on October 28 an initial decision was rendered which dismissed and vacated the Commission's show cause order. On February 4, 1964, oral argument on the dismissal was heard by the Commission.

United argues first that there has been no abandonment of facilities within 7(b) because they have been neither removed nor disconnected; and second, that there has been no abandonment of service because sales to the ultimate consumer have not been interrupted.[4]

United's first argument overlooks the consequences of dedicating, and placing into operation, natural gas facilities for public use.[5] First, once facilities are placed into operation, justifiable public reliance attaches to their continued operation. Thus, it matters little to the consuming public that these facilities are physically unaltered if their operation has ceased. Secondly, natural gas companies which dedicate their facilities to the public use have the right to receive a fair return on their net investment from the consumer served by these facilities. Correspondingly, the consumer is entitled to the assurance that this Commission will exercise its statutory responsibilities to prevent abuses of this right. Such abuses would undoubtedly occur if natural gas companies, in the exercise of their own discretion, were allowed to cease to utilize fully depreciated facilities prior to the termination of their actual useful life, and subsequently enter into the construction of expensive new facilities. In short, a whole body of public rights and responsibilities arises upon the dedication of such facilities to the public use. These rights cannot be protected nor these responsibilities be acquitted by the individual natural gas companies. Congressional realization of this fact resulted in the enactment of Section 7(b) of the Natural Gas Act.

---

[3] It has been suggested that if a pipeline needs Commission authority to abandon purchase facilities at the end of the contract period, a producer would be able to file for and collect, subject to refund, a triggering rate until that rate was ultimately determined to be unjust and unreasonable. We do not believe this spectre is real, for in such a case the pipeline could be expected to file immediately for an abandonment and, even if the Section 4(e) proceeding could not be completed within the statutory suspension period, the abandonment proceeding would be completed.

[4] Section 7(b), written disjunctively, reads as follows: "No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, *or* any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience and necessity permit such abandonment." 52 Stat. 824 (1938) (Emphasis added.)

[5] Although certification usually precedes dedication, it is indisputable that dedication does not depend upon certification. Thus, although United concedes that no certificate was ever applied for, or granted, for the Johnson Bayou Field purchase facilities (Record, Vol. 3, p. 161) these facilities are nevertheless dedicated to the public use and cannot be abandoned absent a showing under Section 7(b). *J. M. Huber* v. *F.P.C.*, 236 F. 2d 550 (3rd Cir. 1956) cert. denied 352 U.S. 971 (1957).

Commission precedent makes it abundantly clear that the applicability of this section has never depended upon the act of physical removal. On the contrary, the Commission has consistently held that "abandonment" can occur regardless of whether facilities have been salvaged and removed, left in place,[6] or merely altered beyond the scope of Section 2.55(b) of our General Policy and Interpretations.[7] Further, it is clear to us that the act of disconnection, like the act of removal, cannot be considered determinative of the applicability of Section 7(b), for to do so would limit its scope only to those cases of physical alteration. Our interest goes beyond this. We have a regulatory responsibility to assure that gas once dedicated to the interstate market will continue to be available to that market so long as the public interest demands,[8] and, as the instant proceeding unmistakably reveals, this responsibility cannot be adequately met if we are powerless to assure that facilities certificated to transport this gas will not continue to operate.

In cases where there has been no physical alteration in jurisdictional facilities, the applicability of Section 7(b) to these facilities must be determined by whether their use has been terminated. In the instant proceedings, United's action on January 31, when read in light of its letters of December 20 and January 28, as well as the oral argument by its counsel,[9] makes it abundantly clear that so long as Continental's Supplement No. 7 remains in effect, United will cease to purchase Continental's Johnson Bayou Field gas. There is no evidence which indicates that United has other than these intentions. The facts before us do not present a case of mere alteration of use, which pipelines, legitimately varying their purchase patterns, effect daily. What we are faced with is total cessation of use, and we are convinced that by rendering facilities dedicated for use operationally dormant for a period of indefinite duration, United has "abandoned" them within the meaning of Section 7(b) as effectively as if they had been altogether disconnected and removed. As expressly stated in *Willmut Gas & Oil Co.* v. *United Gas Pipe Line Co.*, abandonments can be accomplished by a manipulation of valves as well as by a severance of facilities.[10]

---

[6] *El Paso Natural Gas Co.*, 27 FPC 30 (1962) (2,118 feet of 3½-inch O.D. pipe); *Manufacturers Light & Heat Co.*, 25 FPC 775 (1961) (2.3 miles of 24-inch line); *Lone Star Gas Co.*, 24 FPC 1088 (1960) (1.95 miles of pipe remain in use as distribution facilities); *Ohio Fuel Gas Co.*, 23 FPC 698 (1960) (1 mile of 2⅜-inch O.D. line, 1.6 miles of 3½-inch O.D. pipe); *Ohio Fuel Gas Co.*, 22 FPC 643 (1959) 2.3 miles of 4½-inch O.D. pipe); *Manufacturers Light & Heat Co.*, 22 FPC 482 (1959) (1.03 miles of 8-inch transmission line); *Manufacturers Light & Heat Co.*, 20 FPC 120 (1958) (4.9 miles of 6 and 8-inch pipe); *Northern Natural Gas Co.*, 17 FPC 906 (1957) (2.3 miles of 2-inch line): *Northern Natural Gas Co.*, 17 FPC 479 (1957) (16.03 miles of 6⅝-inch O.D. pipe); *Ohio Fuel Gas Co.*, 16 FPC 1233 (1956) (2.2 miles of 3½-inch pipe); *Cities Service Gas Co.*, 6 FPC 747 (1947) (abandonment authority conditioned on in-place abandonment of intracity facilities).

[7] Section 2.55(b) excludes from the certification requirement of Section 7(c) facilities which are to replace existing facilities where no reduction in service will result. In instances where the act of replacing does not demand compliance with Section 7(c), *a fortiori* it does not demand compliance with Section 7(b).

[8] *Shell Oil Co.*, 25 FPC 1316, 1320 (1961).

[9] In response to a question from the bench, counsel for United admitted that he couldn't reasonably anticipate whether operation of the Johnson Bayou Field purchase facilities would be renewed. Record, Vol. 3, p. 207. Earlier he stated that ". . . if it gets cold enough and we need this gas we *probably* will [renew operations]." (Emphasis added.) Record, Vol. 3, p. 163. In view of this earlier emphasis on United's prepayment of $22,000,000 worth of South Louisiana gas, this need appears remote. Record, Vol. 3, p. 148.

In addition, we find United's second argument, that no abandonment of service has occurred because no sales to ultimate consumers have been diminished, to be legally insupportable. First, it attempts to read "service" in Section 7(b) as being co-extensive with "sales" in Sections 7(c) and (e), a reading which was specifically and repeatedly rejected by the Supreme Court in *Sunray Mid-Continent Oil Co.* v. *F.P.C.*[11] There the whole Court concurred that the "service" rendered by a pipeline includes far more than its sales to distributors.[12] It is clear to us that included in "service" are all the elements upon which these sales depend particularly the maintenance, in an unimpaired condition, of reserves previously dedicated to the interstate market and upon which the pipeline may have relied for certification. Were we to allow pipelines to make, unilaterally, the decision of whether particular gas sources should be abandoned for indeterminate periods, these reserves could not possibly be protected in a manner commensurate with our responsibility.[13] This follows from the fact that most production fields are shared by numerous producers. Thus, in all but the rarest cases, where one producer is shut-in, drainage results,[14] and the abandoned producer suffers irreparable harm. If the gas was previously dedicated by the pipeline to a particular jurisdictional customer, that customer also suffers irreparable harm by the steady erosion of reserves previously dedicated to his use. Even absent dedication to particular customers, if drainage is to the intrastate market, the interstate market, previously assured of these reserves, becomes permanently deprived of a valuable source. Although the immediate effect of any individual decision might be *de minimis*, the long-range effect of a policy of allowing pipelines to make them would be detrimental. Clearly it would be no answer to say that an abandonment of service occurred only at the time their cumulative effect had exhausted, or substantially endangered, a pipeline's gas supply, because then the Commission would be powerless to remedy it. If we are to assure the continued adequacy of reserves dedicated to the interstate market, the indefinite cessation of purchases from sources, previously dedicated to that market, must be interpreted as an abandonment of service within Section 7(b).

---

[10] 12 FPC 132 (1953).

[11] 364 U.S. 137 (1960).

[12] *Id.* at 149–51 (Brennan, J.), 162–65 (Harlan, J. dissenting).

[13] This should not be interpreted as tacit approval of a unilateral decision to "partially" abandon, *i.e.*, the unilateral reduction of a pipeline's takes below the minimum either as specified in contracts underlying the original certificate, or determined by applicable state rateable purchase statutes. *E.g.*, Tex. Stat. Ann., tit. 102, art. 6049a §§ 8, 8a; Okla. Stat. Ann., tit. 52, § 240; La. Rev. Stat., tit. 30, §§ 41–46. As we previously made clear in our discussion of facility abandonments, however, there would be no abandonment of service in the legitimate, temporary variation in purchase patterns.

[14] United presented evidence to show that Continental was the only producer in the Johnson Bayou Field. Presumably no drainage would be suffered, at present, from other producers, but this factual situation which is by no means typical, could change at any time. Even in the absence of drainage, producers abandoned under such circumstances could present a strong justification under Section 7(b) for allowing severance from their previous purchaser, thus freeing their gas from its interstate dedication.

United argues further that, even if its action could be characterized as an abandonment, we lack the power to compel pipelines to purchase gas after the termination of gas sales contracts. It relies upon the following Supreme Court language in *Sunray:*

> It is said that the petitioner will be in a position of inequality, because it must supply gas then to United without a corresponding obligation on United to take it.[15]

The Court's language does not support United's position. By prefacing with "[i]t is said," the Court obviously intended its statement to be read as a paraphrase of counsel's argument, and not as a holding thereon. Further, the Court subsequently made it clear that United, as well as the producer, had obligations under the Act. United's obligations were not specifically demarcated, inasmuch as the Court was primarily concerned with the obligations of producers, but there are no implications that the one reference was intended to be definitive.[16] Moreover, United ignores the thrust of Section 7(b). That section frames the relevant issue, not in terms of whether this Commission has the power to compel continued purchases, but whether the "public convenience and necessity" dictates that pipelines *cease* purchasing. The mandate is clear that absent satisfaction of this test, which cannot be met by mere showing of contract termination, the *status quo* is to continue.

The absence of power to compel initial purchases does not refute this conclusion, for as we recognized in *Argo Oil Corp., et al.*[17] there is a vast distinction between the power to compel initial actions and the power to compel the continuation of these actions. The reason is obvious: once sales and purchases of gas flowing in interstate commerce begin, the interests of numerous parties become dependent upon their continuation. Consequently it is not within the power of individual natural gas companies to say, absent our approval, when they are to cease. *Argo Oil Corp.* is but a reflection of Congressional recognition of the distinction between the need for regulation of initial acts, and regulation of the cessation of those acts. Regulation of all initial acts was not thought necessary, and thus Congress, upon the enactment of the original Section 7(c), exempted from certification the construction of facilities and the resulting sales where effected to serve previously unserved markets. It was not until 1942 that Section 7(c) was amended to its present form. Since 1938, however, there has never been any question but that our prior approval was a prerequisite for the abandonment of any jurisdictional facility or any service rendered by that facility.[18] Section 7(b) reads today as it did twenty-six years ago. Given this history, we would be most derelict in failing to accord it the strict enforcement for which it was written.

---

[15] 364 U.S. 137, 155 (1960).

[16] The particular obligation to which the Court referred ran to United's local distributors.

[17] 15 FPC 601 (1955).

[18] Congressional insistence upon this Commission having authority over every jurisdictional abandonment, regardless of how *de minimis,* was revealed in the hearing on H.R. 4008, in March of 1937, before the House Committee on Interstate and Foreign Commerce. The following amendment to Section 7(b) was then introduced:

> *Provided, however,* that facilities may be abandoned without obtaining such permission, approval, or finding, if service is not thereby impaired or if substitute facilities will be installed.

The amendment was rejected.

The recent cases of *United Gas Pipe Line Co.* v. *Mobile Gas Corp.*[19] and *Sunray Mid-Continent Oil Co.* v. *F.P.C.*[20] reinforce this conclusion. Both cases recognize that obligations between parties, arising out of contract, may be unilaterally altered upon the termination of the contract. Obligations to the public, however, arise out of dedication to public use, and consequently must remain fixed[21] unless changed in the manner provided for in the Natural Gas Act. The repeated rationale for the latter case is that regardless of contractual termination, there may be times when the public interest demands the continuation of gas sales to the interstate market. In the instant case, Continental was issued a permanent certificate,[22] and thus, under the holding of *Sunray*, could be compelled to continue sales to United even after the termination of their contract. If United's contention were correct, however, the Commission would find itself in the anomalous position of having the power to compel Continental to continue to sell, but not having the power to compel United to continue to purchase. To such paradoxical results we cannot subscribe. Thus, we conclude that if the power to compel the continuation of sales is not to be reduced to mere illusion, the power to compel the continuation of purchases must be its correlative.

Inasmuch as we conclude that United's action of ceasing to utilize jurisdictional purchase facilities for an indeterminate period of time constituted an "abandonment" within Section 7(b), we have no alternative but to order United to renew the use of these facilities. Such order is without prejudice to the institution by United of a formal abandonment proceeding. Pending the resolution of such proceeding, however, purchases must be made at Continental's currently effective filed rate, and in volumes consistent with the terms of the previously effective contract.

The minority's fear that our decision will force pipelines to purchase high-priced gas to the consumer's detriment underestimates our power to protect these interests. Thus, increases would always be subject to Commission approval in acquitting its responsibility to fix and maintain just and reasonable rates.

The Commission finds:

(1) United Gas Pipe Line Co. is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, 3 FPC 863 (1942).

(2) Continental Oil Company is a "natural-gas company" within the meaning of the Natural Gas Act, and its sales for resale from the Johnson Bayou Field were sales of natural gas in interstate commerce subject to the jurisdiction of this Commission.

(3) The facilities constructed by United for the purpose of purchasing and taking into its line Continental's Johnson Bayou Field gas are facilities used for the "transportation of natural gas in interstate commerce" within Section 1(b) and thus are "subject to the jurisdiction of the Commission" within Section 7(b).

---

[19] 350 U.S. 332 (1956).

[20] 364 U.S. 137 (1960).

[21] This same principle was announced in the earlier Commission case of *United Gas Pipe Line Co.*, 3 FPC 3 (1942).

[22] Initial decision, pp. 1092, 1093.

(4) United's act of January 31, 1963, resulting in the complete non-use of jurisdictional purchase facilities for an undetermined period of time constituted an abandonment of facilities within Section 7(b) of the Natural Gas Act, for which authorization, as required by that Section, was not granted by this Commission.

(5) United's act of January 31, 1963, in ceasing to draw upon gas reserves dedicated to the interstate market for an undetermined period of time, constituted an abandonment of service within Section 7(b) of the Natural Gas Act, for which authorization, as required by that Section was not granted by this Commission.

(6) As of January 31, 1963 Continental's effective filed rate tariff for sales to United from the Johnson Bayou Field is that schedule designated as Supplement No. 7 to their FPC Gas Rate Schedule No. 115.

The Commission orders:

Effective this date, United will renew operation of its Johnson Bayou Field facilities used to purchase gas from Continental. Purchases made by these facilities will be at the rate specified in Continental's Supplement No. 7 to its FPC Gas Rate Schedule No. 115, in volumes consistent with the terms of the previously executed contract.

Commissioner Woodward *dissenting.*

WOODWARD, Commissioner, *dissenting*:

The fundamental question in this proceeding is whether the Commission has the power to compel a pipeline company to continue to operate its facilities for the purpose of purchasing gas it does not currently need under terms and conditions unilaterally imposed by the producer-seller and in the absence of a contractual relationship between it and the seller.

The majority, answering this question in the affirmative, has achieved a unique result; by virtue of this order, the Federal Power Commission has substituted itself for Continental Oil Company (Continental) as the Company's bargaining agent for the sale of Continental's gas. The majority advances neither sound reasons nor adequate authority to show that the Natural Gas Act was intended to give a producer such an advantage over a pipeline company. For the reasons outlined below, I cannot subscribe to an order that accords lawfulness to duress.

Initially, it should be pointed out that the majority's opinion and order is not responsive to the show cause order issued in this proceeding. That order referred to the cessation of "operation" of facilities;[1] even a cursory reading of Section 7(b)[2] discloses that 7(b) requires approval only for abandonment of facilities or service and not, as we have here, for approval of "changes" in the operation of facilities which remain in place ready for use at any time. The word "operation" cannot be found in Section 7(b) of the statute.[3] In short, Section 7(b) is not applicable in the instant proceeding.

---

[1] In issuing this order, the Commission found: "We find it necessary and appropriate in carrying out the provisions of the Natural Gas Act, therefore, that United show cause, as hereinafter ordered, why it should not file with the Commission an application for abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and the Commission's Rules and Regulations thereunder." The Commission ordered: "United Gas Pipe Line Company shall appear and show cause, if any there be, at the hearing directed in paragraph (B) hereof, why it should not be required to apply for and obtain the permission and approval of the Federal Power Commission before ceasing the operation of all or any portion of the facilities heretofore operated by United to purchase natural gas from Continental Oil Company from Johnson Bayou Field, Cameron Parish, Louisiana." As the examiner notes in his initial decision. "The Commission has not issued any substantive rules as to general policy and interpretations relating to abandonment under the Natural Gas Act." [*infra*. p. 1090 note 2]

No section of the Natural Gas Act should be construed to confer upon the Commission powers denied it by other sections of the Act. *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 204 F. 2d 675. Here, the Commission cannot construe the provisions of Section 7(b) relating to abandonment of facilities as empowering it to compel a purchase of gas in contravention of the express limitation imposed upon its jurisdiction by Section 1(b) of the Act. Thus, the majority errs in finding ". . . that by rendering facilities dedicated for use operationally dormant for a period of indefinite duration, United has 'abandoned' them within the meaning of Section 7(b) . . ."[4]

The term "abandonment", as it has been judicially construed, necessarily connotes an intention to *permanently discontinue* use[5] of facilities; mere cessation of operation is not sufficient to constitute abandonment. Staff counsel correctly recognized this vital distinction during oral argument in this case.[6]

> *Mr. Knight:* I would say in all cases, Mr. Chairman, whether or not there is an abandonment would have to be decided in the light of all facts and circumstances of the case.
>
> *Chairman Swidler:* If you say that, the mere cessation is not enough.
>
> *Mr. Knight:* That is right.
>
> *Chairman Swidler:* It requires more.
>
> *Mr. Knight:* You have to have more.
>
> *Chairman Swidler:* It requires intention.
>
> *Mr. Knight:* That is right.

The record is replete with evidence which establishes beyond doubt that United, at no time, has intended to abandon these facilities. During oral argument counsel for United stated, "We did offer them a contract and *the offer is still outstanding*."[7] Further, "If we in this bargaining process here with Continental, if it takes us a year to get this matter settled before we get back this gas at either 14¢ or 10¢ whatever it is, we haven't abandoned those facilities, they are still there, and if we need this gas tomorrow at Beaumont, United will take it."[8] In other words, the reserves are still in place and they are still available to United if United wishes to take them. All facilities remain in place and all customers of United are being adequately served.

The majority's findings, although couched in vagaries, simply boil down to this; a willingness to take gas at a price of 10¢ but not 14¢ amounts to total abandonment. There is no legal or factual support in the record for such a contention. United stands willing to continue the operation of the facilities and performance of the obligation it undertook initially to perform. Moreover, United has indicated that it will take Continental's gas, even if it must pay the higher price, if the gas should be needed to continue its service obligations to its customers. These facts are uncontradicted in the record.

---

[2] Section 7(b) provides: "No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience and necessity permit such abandonment."

[3] Where Congress, in Section 7, intended regulation over the "operation" of facilities, it so stated with clarity and precision. *cf* subsections (c) and (e).

[4] *Supra*, p. 1083.

[5] Emphasis supplied throughout this statement unless otherwise indicated.

[6] *Tr.* P-194.

[7] *Tr.* P-203.

[8] *Tr.* P-205.

There is no authority under the Natural Gas Act to force United to buy gas under Continental's unilateral terms. The majority summarily holds that United must buy or abandon notwithstanding the fact that nowhere does the Natural Gas Act even remotely indicate that Congress intended to grant the Commission jurisdiction over the *purchase* of natural gas in interstate commerce. The Commission has uniformly so construed the Act by its action in granting sellers certificates of public convenience and necessity to initiate sales of gas without requiring any filing by the purchasers for certificates authorizing their purchases and by issuing countless orders permitting *sellers* to abandon certificated sales without requiring any filing by the *purchasers* for permission to abandon their purchases. Nothing in Section 7 of the Act holds that a certificate to sell carries with it a concurrent obligation for another party to buy. Stated simply, the Act does not guarantee any certificate holder a market.

Specifically, Section 7 authorizes issuance of certificates for the *operation*, *construction*, *extension*, or *acquisition* of facilities and the sales and service rendered thereby. This categorical listing of the areas where certificates are required and the pointed omission of purchasing or receiving permits no ground for argument that certificates are required for either purchasing or receiving delivery of gas. United's cessation of purchasing cannot be considered a violation of any certificate and the Commission's use of the words "ceasing the operation" of facilities heretofore "operated" by United, in its show cause order clearly confirms this fact. It is pure fallacy to hold that whatever statutory restrictions apply to abandonment of a sale must also apply to abandonment of purchase. United's action cannot constitute an abandonment under Section 7(b) of the Natural Gas Act.

The majority further errs in finding: "If we are to assure the continuing adequacy of reserves dedicated to the interstate market, the indefinite cessation of purchases from sources, previously dedicated to that market, must be interpreted as an abandonment of service within Section 7(b)."[9]

The record shows that United has not discontinued or abandoned any service to its customers and does not propose to do so. The reserves attached to United's system have not been abandoned, because they remain physically attached to that system to this day. No amount of verbage can obscure one essential fact; the only "service" involved in this proceeding is the "service" Continental has been authorized to render to United from the Johnson Bayou Field pursuant to a certificate of public convenience and necessity issued to Continental in Docket G-6949. The term "service", as used in Section 7(b) has always meant a *seller's service* to *the purchaser*. Any other interpretation does violence to the statute.

Although the majority alludes to the *Sunray* case[10] with an interpretation that transcends all bounds of reasonableness, they totally ignore the position taken by the Solicitor General on behalf of the Commission in the *Sunray* case. The Solicitor General's brief[11] summarily disposes of the majority's contention and reveals their fatal error. Defining the term "service" he states, "As that term is used in Section 7(e) when read together with Section 7(b) and other provisions of the Act—the *'service' is the continuous furnishing of the gas to the purchaser*." In short, "service" refers to fulfilling the demands of the purchaser of gas; the converse would be untenable and an impediment to effective regulation the Natural Gas Act was intended to achieve.

---

[9] *Supra*, p. 1084.

[10] *Sunray Mid-Continent Oil Company v. Federal Power Commission*, 364 U.S. 137.

The majority further errs in its analysis of the *Sunray* decision. Briefly stated, Sunray turned on the Commission's certificate authority, not on its authority to regulate abandonments under Section 7(b). The court held that the Commission's authority to control abandonments under Section 7(b) was co-extensive with the certificates it issues. If the Commission has not issued a certificate to purchase, it cannot control cessation of purchase under 7(b). This conclusion is inescapable for any other interpretation of the decision would render the Supreme Court's language meaningless.

Sunray created no new or preferential rights in the seller of natural gas to change rates under the Natural Gas Act. The court pointed out that a producer selling gas after its contract has expired would be free to file rate changes without the consent of the purchaser but, the court also cautioned that a producer availing himself of this right was obligated to continue gas deliveries *only at the buyer's request*. Referring to the contract, the court declared, "When it expires, the petitioner to be sure is under an obligation to deliver gas to United on United's request unless it can justify an abandonment before the Commission." This is the law; during the contract term, the producer has an obligation to sell, and the buyer an obligation to purchase, in accordance with the contract terms. After the expiration of the contract, a producer, absent abandonment authorization, has an obligation to continue to deliver gas to the purchaser but only on the purchaser's request not on producer's demand and not at the direction of this Commission. There is an equitable balance of bargaining strength—the producer has the right, in the absence of contract, to unilaterally raise its price, the pipeline has the right to accept the price and receive deliveries or to reject the offer of sale. Any other result would render the pipeline's bargaining position a nullity in fact and be prejudicial to the public interest.

It is inconceivable that continuity of service is being utilized here as a tool to force a pipeline to purchase gas. This decision, if allowed to stand, will inevitably result in an increase in the average price of gas and run directly contrary to the admonition forcefully expressed in CATCO[12] to "hold the line." If United has no control over what it must pay for its gas, it will certainly be in no position to maintain its markets; the ability to fairly meet competition will be stifled. Such a drastic result goes beyond the permissible limits of regulatory authority.

The decision of the presiding examiner should be affirmed and the order to show cause issued on May 1, 1963, directed to United Gas Pipe Line Company should be dismissed and vacated.

---

[11] P. 23.

[12] *Atlantic Refining Co., et al., v. Public Service Commission of New York, et al.*, 360 U.S. 392.

INITIAL DECISION OF THE PRESIDING EXAMINER UPON ORDER TO SHOW CAUSE

(Issued October 28, 1963)

KURTZ, *Presiding Examiner:*

This proceeding involves an order directed to United Gas Pipe Line Company (United) to show cause as to whether it should first be required to obtain permission and approval for abandonment under Section 7(b) of the Natural Gas Act[1] before discontinuing a purchase of Johnson Bayou Field gas from Continental Oil Company (Continental). In issuing this order, the Commission found:

> We find it necessary and appropriate in carrying out the provisions of the Natural Gas Act, therefore, that United show cause, as hereinafter ordered, why it should not file with the Commission an application for abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and the Commission's Rules and Regulations thereunder.[2]

and ordered:

> United Gas Pipe Line Company shall appear and show cause, if any there be, at the hearing directed in paragraph (B) hereof, why it should not be required to apply for and obtain the permission and approval of the Federal Power Commission before ceasing the operation of all or any portion of the facilities heretofore operated by United to purchase natural gas from Continental Oil Company from Johnson Bayou field, Cameron Parish, Louisiana.

The Commission Staff and Continental take the position that the discontinuance by United of the purchase of Continental's gas from the Johnson Bayou Field constitutes an abandonment under Section 7(b) of the Natural Gas Act. United and Texas Eastern Transmission Corporation (Texas Eastern), an intervener, take the position that an abandonment under this section has not occurred and that United is not required to purchase gas under terms and conditions imposed unilaterally by Continental.

Both United and Continental are natural-gas companies subject to the Commission's jurisdiction. United operates in the States of Texas, Louisiana, Mississippi, Alabama, and Florida, and Continental is an independent producer of natural gas.

On January 22, 1953, Continental and United entered into a contract covering the sale and purchase of gas produced by Continental in the Johnson Bayou Field in Cameron Parish, Louisiana. The contract price was 8.0973 cents per Mcf at 15.025 psia during the five-year period commencing January 31, 1953, when gas deliveries commenced; and on and after January 31, 1958, the price was 8.997 cents per Mcf at 15.025 psia, plus tax reimbursement amounting to 1.8 cents per Mcf. The contract was for a primary term of 10 years, and was to continue in effect after expiration of the primary term for successive periods of one-year each, unless either party terminated the contract at the end of the primary term, or any succeeding annual period, giving the other party 90 days' prior written notice. Under this contract, United, while having the right to purchase the gas, is not obligated to take all or any proportion of the gas produced, and in the event gas is not taken, Continental may terminate the contract. United did agree to take ratably in the same proportion as to other purchases that it was or might make in this field. The only purchases that United did make in this field were from Continental at the rate of one to one-and-ahalf million cubic feet per day.

---

[1] Section 7 (b) provides: "No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment."

[2] The Commission has not issued any substantive rules as to general policy and interpretations relating to abandonment under the Natural Gas Act.

The Johnson Bayou Field is located near United's 16-inch transmission line which extends westward from the area of the Mud Lake Field in southwest Louisiana into the Beaumont, Texas, area. This 16-inch line was already in place when United executed the contract with Continental in 1953, and Continental agreed to deliver the gas produced in the Johnson Bayou Field to a central point located adjacent to the line. In order to make the gas so received suitable for sufficient pipeline transmission, to meter it and to receive it into the 16-inch line, United constructed a separator, meter station, and 55 feet of 4-inch line at a total cost of $6,884. United has not removed these facilities and they remain in place and can be used at any time. Continental, in order to effectuate the sale and delivery of gas to United, constructed approximately 4,400 feet of 2½-inch line, two separators and storage tanks adjacent thereto. The title to the gas passed from Continental to United at the interconnection between the above facilities, and such gas was taken into United's system and transported by United to the vicinity of Beaumont, Texas, where it was sold for resale and to consumers for their own use.

The above contract was filed by Continental with the Commission on November 30, 1954, as its FPC Gas Rate Schedule No. 115. On October 23, 1962, Continental having become dissatisfied with the contract notified United that it elected to terminate the contract as of January 31, 1963, to which United raised no objection. Thereafter, in November 1962, Continental sought to obtain from United a new contract for a 20-year term at an increased price of 14 cents per Mcf, plus 1.75 cents tax reimbursement, for the first five years and thereafter with stated increases of one-cent for each five-year period provided that Continental could charge the applicable price as determined by the Commission in Area Rate Proceedings if that price should be higher than the contract price. United was not willing to pay the increased price demanded by Continental, nor did it need this particular gas to meet its customers' requirements. United in turn advised Continental it could and would support an application to the Commission for abandonment by Continental of this sale. United also offered to contractually agree to continue buying Johnson Bayou Field gas on a day-to-day basis at the existing contract rate. This was unacceptable to Continental.

On December 28, 1962, Continental filed with the Commission a unilateral change in its rate schedule to become effective as of January 31, 1963. This change included an increase in the rate to be charged for the Johnson Bayou Field gas to 15.75 cents per Mcf at 15.025 psia (14¢ plus tax reimbursement of 1.75¢ per Mcf). The filing referred to the cancellation of the contract, as follows:

> After unsuccessful efforts to renegotiate the contract with United, Continental advised United by written notice dated October 23, 1962, that Continental elected to terminate the contract at the end of the primary term, on January 31, 1963. United acknowledged this notice of termination.

The notice of termination and acknowledgment are attached as Exhibit "A" to this Change in Rate Schedule.

Pursuant to the certificate of public convenience and necessity issued to Continental by Commission order on January 4, 1956, and Continental's FPC Gas Rate Schedule No. 115, Continental proposes to continue the sale of gas to United from Johnson's Bayou Field covered under such certificate and rate schedule at the rate herewith filed by this Supplement No. 7 to said Rate Schedule.

It was necessary for Continental to cancel the contract as no provision was incorporated therein which would permit the increase here demanded by Continental. The effect of this filing was a substitution of a new schedule naming the rates and charges for gas proposed to be sold to United together with the terms and conditions of the sale in place of the previous contract entered into between United and Continental. The Commission allowed this new schedule to become effective as requested, over the protest of United. This action resulted in United not being under any contractual obligation to purchase the gas from Continental.[3] United, by letter dated January 28, 1963, notified Continental that it would discontinue the purchase of gas from Johnson Bayou Field on January 31, 1963. Since that date United has not purchased any gas from this field.

United's refusal to continue the purchase stems from Continental's letter of cancellation of the contract and the unilateral filing of the 15.75 cent rate. United does not need to purchase the Johnson Bayou Field gas to continue meeting the needs of its customers. United is currently paying for a large quantity of gas in south Louisiana which it cannot presently take into its system. These payments are substantial, amounting over a 2½ year period to approximately $15 million. Further, United believes that it can buy gas cheaper than the price of 15.75 cents named in Continental's unilateral filing. While United is not now seeking additional supplies, it has entered into gas purchase contracts at higher prices with certain producers in south Louisiana, who were faced with a loss of lease for non-production and a very extensive drainage problem. Such purchases have been limited to production from a single well.

On February 1, 1963, Continental filed a petition with the Commission wherein it requested an order directed to United to show cause why United "should not be required to continue taking gas from Continental in accordance with Continental's Rate Schedule 115, as supplemented, and further order that United take such gas pending action upon the order to show cause." It will be noted that the Commission did not order United to show cause as requested by Continental, but instead directed United to show cause as to why it should not be required to apply for and obtain Commission permission and approval before ceasing operations of the facilities used to purchase such gas.

In view of the arguments advanced by the parties, it is necessary to first place the issue here in its proper perspective. This proceeding is not a settlement of a contractual dispute between two parties, nor does it involve the terms and conditions of a sale of gas by Continental to United. Texas Eastern is apparently under a misapprehension as to the status of the certificate of public convenience and necessity issued by the Commission to Continental covering the above sale. In its brief Texas Eastern states that the certificate is limited to the particular contract. In *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 153, the Court, in holding that the Commission had the right to issue permanent certificates, pointed out that a distinction existed between the service in which the producer is engaged and the contract which regulates the relationship in performing the service. The certificate issued to Continental relating to the Johnson Bayou gas on January 4, 1956, under Docket No. G–6949, was without limitation, and is as follows:

---

[3] See also, Commission order denying application for rehearing issued March 18, 1963, *Continental Oil Company (Operator), et al.*, 29 FPC 525.

> (A) A certificate of public convenience and necessity be and is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the continued operation of any facilities, subject to the jurisdiction of the Commission, used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.[4]

In *Sun Oil Company* v. *Federal Power Commission*, 364 U.S. 170, the Court, in interpreting identical language in a Commission order granting a certificate of public convenience and necessity, held that the certificate issued was a permanent one, not subject to the term set forth in the contract.

This brings us to the question raised by the show cause order as to whether or not the failure of United to purchase gas from Continental constitutes an abandonment under Section 7(b). This Examiner is of the opinion that it does not constitute such an abandonment.

Staff counsel's position stems from the fear of a gap occurring in the regulatory process as it is related to continuous service to consumers, if United is not required to secure Commission approval before ceasing to purchase gas from Continental. To bring United within Section 7(b), it is argued that the term "service" as used in this section includes the purchase of gas. This is not the position taken by the Solicitor General on behalf of the Commission in the above *Sunray* case. In the brief filed therein, the Solicitor General represented to the Supreme Court that the term "service" was the furnishing of gas to the purchaser. The Solicitor's statement is as follows (p. 23):

> As that term is used in Section 7(e)—when read together with Section 7(b) and other provisions of the Act—the "service" is the continuous furnishing of the gas to the purchaser.

There is no gap in the regulatory process by reason of the requirement that Continental must obtain approval under Section 7(b) before abandonment of service. The issues under such an application could properly include any that might be raised if United was required to file an application under Section 7(b). The principal issue being the need of this gas to meet the demands off United's system.

Continental, in support of its position claims that "United has undertaken to abandon summarily a part of its service to its customers and the public by abandoning the receipt and purchase of gas upon which the customers and public rely." This argument overlooks the position of United and Continental existing as of today. No service has been abandoned by United. Further, it can call upon Continental to deliver Johnson Bayou gas if and when such gas is needed to meet customer demands and Continental is obligated to make such deliveries.

The purpose of the Natural Gas Act is to protect the consumer, who is the "public" that the Act refers to. This was recognized in *Hope Natural Gas Company* v. *Federal Power Commission*, 320 U.S. 591, 610, wherein the Court stated that the primary aim of the act was to protect consumers against exploitation at the hands of natural-gas companies. To this end, Section 7(b) specifically prohibits abandonment of facilities and service rendered by means of such facilities except in accordance with the standards named therein. United's facilities are still in place and can be operated at any time. The service referred to in Section 7(b) in conjunction with the other provisions of the act refers to fulfilling the demands of the purchaser of gas, *i.e.*, the obligation on the part of the utility to satisfy the requirements of the consumer. The act is silent as to any requirement that the purchaser of gas secure a certificate. In *P. R. Rutherford, et al.* Docket No. G–10922, 23 FPC 357, 360, the Commission authorized Rutherford to abandon its sale to United Gas Pipe Line Company under similar circumstances as here presented in that United had ceased the purchases of gas. Commissioner Connole in his concurring opinion pointed out that the Commission cannot compel a pipeline to purchase gas and that the certificate holder cannot be required to sell its gas if the buyer is unwilling to buy.

---

[4] The terms and conditions mentioned in the certificate authorization do not refer to the contract.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in this proceeding, it is further found and concluded:

(1) United Gas Pipe Line Company's supply of natural gas is adequate to meet the demands for service off its system, and it has not abandoned any facilities or service by means thereof, within the meaning of Section 7(b) of the Natural Gas Act.

(2) It has not been shown that permission and approval of the Commission is required by United Gas Pipe Line Company to cease the purchase of natural gas tendered by Continental from the Johnson Bayou Field, Cameron Parish, Louisiana.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission, that the above-mentioned Order to Show Cause, issued on May 1, 1963, directed to United Gas Pipe Line Company, be and it hereby is dismissed and vacated.

ALVIN A. KURTZ
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER APPROVING REVISED PROJECT EXHIBITS AND EXTENDING TIME FOR COMPLETION OF CONSTRUCTION

(Issued May 5, 1964)

On April 24, 1963, Idaho Power Company, licensee for Project No. 1971, filed for Commission approval revised Exhibit L drawings showing certain proposed changes in the project structures and a revised Exhibit M giving a general description of the mechanical, electrical, and transmission equipment for the Hells Canyon development of the project. The licensee also seeks Commission approval of an extension of time for completing construction of the Hells Canyon development.

The proposed changes to the project structures consist essentially of: (1) moving the location of the dam upstream 500 feet to a more favorable site for a concrete gravity dam; (2) changing from a rock-fill type of dam to a concrete gravity dam resulting in a savings of cost; (3) raising the normal water surface elevation of the Hells Canyon reservoir from 1683 feet to 1688 feet; (4) changing the spillway from 8 radial gates each 39 feet wide by 36 feet high to 5 gates, of which 3 would be radial surface gates each 43 feet wide by 50 feet high and 2 would be submerged radial gates, with sill at elevation 1549 feet, each 23 feet wide by 23 feet high; and (5) increasing the initial installed capacity from 270 megawatts (5 units of 54 Mw each) to 370 megawatts (3 units of 123.3 Mw each) and the ultimate installed capacity from 406 megawatts (5 units of 54 Mw each, plus 2 units of 68 Mw each) to 493 megawatts (4 units of 123.3 Mw each).

The change in type of dam from rock-fill to concrete gravity was due to a lack of a sufficient amount of suitable core material in the vicinity of the dam and to indicated savings in costs resulting from elimination of retaining walls and the separate concrete gravity spillway section, and from other changes in facilities related to the dam. The geology of the new site is better suited to a concrete gravity dam and the foundation rock was found to be competent.

Raising the normal water surface elevation of the reservoir five feet will result in an economic increase in net power output since the gain in head at Hells Canyon will exceed the loss of head at the upstream Oxbow plant resulting from encroachment. The spillway now proposed will have a capacity equal to that contemplated in the license. The hydraulic performance of the spillway will be verified by means of model tests, prior to construction, in accordance with the provisions of Article 30 of the license for the project.

The increased installed capacity now proposed for the low Hells Canyon development will permit the use of substantially the same amount of water through that generating plant as is now being utilized through the Oxbow plant and will more efficiently utilize the gain in hydraulic head provided by the proposed five foot increase in the elevation of the Hells Canyon reservoir. The increased installed capacity will provide a more economical development.

While the overall changes proposed should result in cost savings in many items of construction, the proposed increase in the installed capacity of the Hells Canyon development is expected to cause a small increase in the total cost of the development. The licensee estimates that the cost of the original initial development would have been about $64.9 million (the earlier estimate of $45.8 million increased by a cost index to January 1963 costs) as compared with an estimated cost of about $65.3 million for the initial development as now proposed, an increase of about $400,000, while the increase in installed capacity is about 100 megawatts.

The concrete gravity structures of the Hells Canyon development have been checked by Commission staff against sliding and overturning for normal and flood water conditions, including the effect of earthquake and found to be stable, and the spillway capacity was found to be adequate.

By its order issued December 11, 1959, the Commission approved, among other things, a fuse plug spillway at the Oxbow development of the project, and ordered the licensee to submit for Commission approval a spillway gate operating procedure for the Hells Canyon development during any unscheduled operation of the Oxbow fuse plug, and to develop that procedure in collaboration with the District Engineer, Corps of Engineers, Walla Walla, Washington. The Chief of Engineers, as a result of such collaboration, has recommended for inclusion in the license a special condition covering the spillway gate operating procedure for the Hells Canyon development which we are herein including as an additional license article.

The Chief of Engineers, and the Secretary of the Army, have approved the plans of the project structures insofar as the interests of navigation are concerned.

The license for Project No. 1971, issued August 1, 1955, called for completion of construction of the Brownlee development by January, 1959, the Oxbow development by August 1, 1961, and the low Hells Canyon development by August 1, 1964. The time for completion of the Brownlee development was extended to February 15, 1959, by Commission order issued January 9, 1959, and the time for completion of Oxbow was extended to September 15, 1961, by Commission order issued January 28, 1960, and was further extended to December 31, 1961, by Commission order issued September 8, 1961. The Oxbow and Brownlee developments were completed and put into operation within the times specified by the Commission's orders. The licensee is now requesting that the time for completion of the Hells Canyon development be extended from August 1, 1964, to March 31, 1968, with the first generating unit to begin operation about November 1, 1967.

At the time revised Exhibit K for the access road to the Hells Canyon site was approved by Commission order issued August 24, 1961, the Commission required the licensee to redesign the structures of the low Hells Canyon development for maximum tailwater elevation of 1515 feet in lieu of elevation 1490 feet contemplated at the time the license was issued. This new elevation is compatible with the reservoir elevation of 1510 feet contemplated for the downstream High Mountain Sheep Project. To meet this requirement, it was necessary for the licensee to undertake extensive studies, including investigation of alternate sites. The revised Exhibit M and the revised Exhibit L drawings for the low Hells Canyon development, filed April 24, 1963, show the result of such studies. Article 29 of the license has prohibited the licensee from commencing construction of the project works for the low Hells Canyon unit until the Commission shall have approved the Exhibit L drawings relating to that unit, which we are doing here.

Furthermore, construction of the low Hells Canyon structures could not proceed until requirements for temporary fish handling facilities were resolved. The Commission order issued December 11, 1963, approved temporary fish facilities for the low Hells Canyon development and provided that determination of what permanent fish facilities should be installed at that development would be made on or before January 1, 1966.

In view of the foregoing, we find that the licensee has proceeded with construction of the project in good faith and with reasonable diligence and that under the circumstances it is not incompatible with the public interests to grant the requested extension of time for completing construction of the low Hells Canyon development.

The Commission further finds:

(1) Public notice of the application has been given as required by the Federal Power Act. No protests or petitions to intervene have been received.

(2) The following described Exhibit L drawings and Exhibit M conform to the Commission's rules and regulations and should be approved as part of the license for the project and the Exhibit M described in this finding as being superseded and which is now part of the license, should be eliminated from the license.

Exhibit L	*FPC No.*	*Hells Canyon H.E. Development*
Sheet 1 of 6	1971-201	General plan
Sheet 2 of 6	1971-196	Elevations and Sections
Sheet 3 of 6	1971-197	Plans and Section

Exhibit M (signed April 22, 1963) entitled "General Description and Specifications of Equipment," superseding the Exhibit M for Low Hells Canyon Development received in the Commission May 15, 1953.

The Commission orders:

(A) The exhibits described in finding (1) above as conforming to the Commission's rules and regulations are hereby approved as part of the license for Project No. 1971, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

(B) Article 28(c) of the license which specifies the time for completion of construction of the Hells Canyon development is hereby amended to read as follows:

Article 28(c). Commence construction of the low Hells Canyon unit within six years of the effective date of this license, and shall thereafter in good faith and with due diligence prosecute such construction; and shall complete that unit not later than March 31, 1968.

(C) The following additional article is hereby included in the license for Project No. 1971.

Article 48. The Licensee shall install automatic gate operating devices and shall operate the spillway at the Hells Canyon development in accordance with the Reservoir Regulations Manual for Brownlee, Oxbow and Hells Canyon Projects and in accordance with the following conditions:

The maximum increase in discharge from the Hells Canyon spillway as a result of an unscheduled breach of the Oxbow fuse plug shall be controlled to not exceed 10,000 c.f.s. This increase in discharge shall be in addition to any discharge already being released from the spillway and powerhouse. In case of a load rejection at the Hells Canyon powerhouse, concurrently with an unscheduled breach of the Oxbow fuse plug, the discharge from the Hells Canyon spillway shall be increased so that the rate of discharge from the Hells Canyon Project is unaffected by the load rejection.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LAKELAND PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. RI64-363

ORDER DENYING MOTION FOR RECONSIDERATION AND SHORTENING SUSPENSION PERIOD

(Issued May 5, 1964)

On March 20, 1964, Lakeland Petroleum Corporation (Lakeland) filed a motion for reconsideration of the Commission's order issued December 4, 1963, in the above-designated proceeding, providing for hearings on and suspension of the proposed changes in rates designated as Supplement Nos. 3 and 5 to Lakeland Petroleum Corporation (Operator), *et al.*, FPC Gas Rate Schedule Nos. 2 and 3, respectively.[1]

In support of its motion Lakeland states that it was improper for the Commission to consider the minimum guarantee of 1.0¢ per Mcf for liquids as part of the increased rate for the sale of natural gas in interstate commerce; therefore, the Commission should modify its order of December 4, 1963, by permitting Lakeland to charge and collect the subject rates without such rates being subject to suspension.

In Opinion Nos. 390 (29 FPC 1175) and 390–A (30 FPC 479), *El Paso Natural Gas Company, et al.*, Docket No. G–17849, *et al.*, we held that a contractual provision providing for a minimum guarantee for liquids should properly be considered as a component of the rate for the jurisdictional sale of gas in determining whether the rate was in excess of the applicable ceiling. Dealing specifically with this question in Opinion No. 390–A, page 480, we referred to the Examiner's decision for the rationale of our determination. In this connection, see the Examiner's decision issued September 4, 1962, therein (29 FPC 1191 at 1207 and 1208). Consistent therewith, in the suspension order in Docket No. RI64–363, we treated the subject rate filings as seeking approval of 14.0¢ per Mcf rates, *i.e.*, 13.0¢ per Mcf plus 1.0¢ per Mcf minimum guarantee for liquids.

Lakeland in its motion points out that the 1.0¢ minimum guarantee provision in its contract is operative only a portion of the time. When the value of the extracted liquids exceeds 1.0¢ per Mcf of the wet gas stream, Lakeland is compensated pursuant to the liquid settlement tables in its contracts. Under these circumstances we think it appropriate to shorten the suspension period to the date of issuance of this order, as hereinafter provided.

The Commission finds:

The motion for reconsideration filed by Lakeland on March 20, 1964, in the proceeding in Docket No. RI64–363, sets forth no new facts or legal considerations which were not fully considered prior to the issuance of our order of December 4, 1963, or which now having been considered warrant any modification of the said order, except that we shall shorten the suspension period as hereinafter provided.

The Commission orders:

(A) The motion for reconsideration of the Commission's order of December 4, 1963, filed by Lakeland Petroleum Corporation on March 20, 1964, is hereby denied.

(B) The suspension periods for the proposed rates contained in Supplement Nos. 3 and 5 to Lakeland's FPC Gas Rate Schedule Nos. 2 and 3, respectively, are hereby shortened in Docket No. RI64–363 to the date of issuance of this order, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however*, that the above supplements to the rate schedules filed by Respondent, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondent shall execute and file under the above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder, accompanied by a certificate showing service of copies thereof upon the purchaser under the rate schedules involved. Unless Respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

---

[1] Also suspended in the above-designated proceeding were proposed increased rates designated as Supplement Nos. 5 to Lakeland Petroleum Corporation (Operator), *et al.*, FPC Gas Rate Schedules Nos. 7, 8 and 9. Lakeland's motion does not pertain to these rates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LEFLORE GAS COMPANY, DOCKET NO. CP64-192

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 5, 1964)

On February 28, 1964, as supplemented on March 13, 1964, LeFlore Gas Company, formerly the LeFlore County Gas and Electric Company, (Applicant) filed in Docket No. CP64-192 an application pursuant to Section 7(b) of the Natural Gas Act for permission to abandon service of natural gas to Athletic Mining and Smelting Company (Athletic), a direct industrial customer of Applicant.

Applicant has been advised by letter from Athletic that due to the latter's discontinuance of its plant operations no more gas will be purchased from Applicant after March 17, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, LeFlore Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-304 (3 FPC 969).

(2) The transportation and delivery of natural gas hereinbefore described are subject to the jurisdiction of the Commission and abandonment of the same is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and should be permitted and approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, LeFlore Gas Company, of the transportation and delivery of natural gas to Athletic Mining and Smelting Company, as hereinbefore described, are hereby granted.

(B) LeFlore shall advise the Commission of the date of abandonment of the aforesaid service within 10 days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-188

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 5, 1964)

On February 24, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-188 an application pursuant to Sections 7(c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of new 6-inch pipeline approximately 1.4 miles in length to enable it to continue to serve the City of Owatonna, Minnesota, which is now being served from two 4-inch lines which Applicant seeks permission to abandon and remove because these lines lie within the right of way of a highway for which construction is now underway or to be commenced, all as more fully set forth in the application.

The estimated cost of the proposed construction and removal of facilities is $41,000, which will be financed from funds on hand.

A temporary certificate to construct and operate the 6-inch pipeline was issued by the Commission March 20, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the application and exhibits submitted in support thereof, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to

the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate facilities and to deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Applicant, Northern Natural Gas Company, of the facilities hereinbefore described, be and the same are hereby granted.

(D) Applicant shall advise the Commission of the date of removal of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. G-12193, ET AL.[1] AND G-12401

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued May 5, 1964)

There is before us for consideration a Motion for Approval of Settlement Proposal and Termination of Proceedings filed on March 30, 1964, by Socony Mobil Oil Company, Inc. (Socony) encompassing the rates for 223 of Socony's currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Socony provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings with four exceptions hereinafter discussed;

(2) Socony waives the right to file for contractually authorized increased rates until April 1, 1969, for Rate Schedule Nos. 24 and 69 and January 1, 1967, for the remainder of the rate schedules. Socony reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

---

[1] The additional dockets involved herein are set forth in Appendices A, B, and C attached hereto.

(3) Socony would waive any favored nation and price redetermination clauses contained in Rate Schedule Nos. 8, 9, 10, 12, 13, 14, 21, 27, 28, 45, 47, 49, 53, 57, 73, 77, 78, 81, 83, 87, 96, 99, 118, 130, 136, 143, 178, 212, 213, 224, 225, 270, 271, 275, 285, and 296 and additionally would waive the periodic pricing provisions in Rate Schedule Nos. 65, 84, and 138.

(4) Refunds, with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with December 1, 1962, to the date of issuance of this order for all of Socony's rate schedules, and in addition for the period April 1, 1960 to December 31, 1961, for Rate Schedule Nos. 275 to 306, inclusive, where collection was made subject to refund.

(5) Exclusion from the settlement proposal of all Permian Basin sales, fifteen sales related to previous offers of settlement accepted by the Commission; seven sales to other producers whose resale rates are under suspension; and those matters relating to Rate Schedule No. 16, together with its pending Section 4(e) rate increase dockets (G-12201 and G-17526).[2]

In support of its proposal, Socony states that the settlement rates, refunds, moratorium periods and other provisions thereof, not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving interstate commerce.

With respect to refunds, the parties to the settlement conferences utilized cost of service studies and revenues based on contract rates to determine Socony's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after December 1, 1962. Socony proposes, as noted above, that such general refunds be made up to and including the date of issuance of this order. Additionally, studies made by the parties showed that as to Rate Schedule Nos. 275 to 306, inclusive, where collection was made subject to refund, we should require refunds from April 1, 1960 to December 31, 1961. Applicable interest shall be paid on all of the refunds through March 31, 1964. Such refunds will be approximately $12,000,000 inclusive of interest. Socony's future revenues will be decreased approximately $5,600,000 annually as a result of the settlement.

Settlement rates which are exceptions to the applicable area ceilings are proposed by Socony for two sales of natural gas made by it to United Gas Pipe Line Company (United) in South Louisiana and for two sales to Cities Service Gas Company (Cities) in the Oklahoma Panhandle and the State of Kansas.

The two sales to United are made under Socony's FPC Gas Rate Schedule Nos. 24 and 69 from the Iowa and Cameron Meadows fields, Louisiana. Prior to 1958, these sales were made under ten year contracts which were about to expire. On May 26, 1958, Socony and United renegotiated and amended the contracts to provide for twenty-year terms, and Socony dedicated substantial additional reserves, which resulted in increased annual deliveries to United under these contracts.[3] The current rates for gas sold under the renegotiated contracts are 20.55¢ per Mcf under Rate Schedule No. 24 and 20.25¢ per Mcf under Rate Schedule No. 69. The proposed settlement rate under each rate schedule is 17.0¢ per Mcf. The proposed settlement rates, therefore, exceed the increased rate ceiling, but are below the initial rate ceiling. In view of the above circumstances surrounding these sales, we find the settlement rates of 17.0¢ per Mcf to be proper and approve the same.[4]

---

[2] Socony does not propose a settlement of the Section 4(e) proceedings involving Rate Schedule No. 16, or the termination of any refund obligation thereunder but will supersede the existing rate of 23.55¢ per Mcf with a rate of 17.0¢ per Mcf to be effective April 1, 1964, subject, however, to the Section 4(e) rate proceedings.

[3] United was represented and actively participated in the settlement negotiations herein.

The other two exceptions to the applicable area ceiling involve two sales to Cities in the Oklahoma Hugoton Field (Rate Schedule No. 283) and the Kansas Hugoton Field (Rate Schedule No. 3) from shallow horizons in each of said fields. The presently effective rates under Rate Schedule Nos. 3 and 283 are 14¢ and 15¢ per Mcf respectively. Subsequent to the negotiation of the contracts for the sales of gas from the shallow horizons, deeper productive horizons were discovered in each field. When the currently effective rates under Rate Schedule Nos. 3 and 283 were renegotiated, Socony committed, by separate contracts, the deep gas reserves which had been discovered under a substantial amount of the acreage covered by the original rate schedules. The commitment of the deep horizons in the Kansas Hugoton was approximately 100,000 acres (Rate Schedule No. 262) and approximately 58,000 acres in the Oklahoma Hugoton (Rate Schedule No. 304). The currently effective rates under Rate Schedule Nos. 262 and 304 are 16¢ and 17¢ per Mcf, respectively. Consideration of all the circumstances surrounding these sales, and the interdependence of the currently effective rates for the shallow gas with the dedication of the deep gas reserves, causes us to believe them similar to others where we have considered such a unique situation to warrant exceptions to the applicable area ceiling, *Cities Service Production Company, et al.*, Docket No. G-9510, *et al.*, 28 FPC 1114, order issued December 26, 1962. Therefore, we find the proposed settlement rates of 13.0¢ per Mcf to be proper for these four sales and approve the same.

As set forth above, Socony proposes to waive the favored nation, price redetermination and periodic price provisions in certain of its rate schedules and proposes settlement rates for said rate schedules in accordance with the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, and the Seventh Amendment thereto, issued November 27, 1963, 30 FPC 1370. However, said amendments each specifically provide for the elimination of such provisions except for those instances where specified period price provisions are substituted by amendment. Therefore, we hereby require Socony to comply with said amendments by eliminating the favored nation, price redetermination and periodic price provisions from those rate schedules where it merely proposes waiver.[5]

The settlement proposal also includes rates for which issuance of related permanent certificates is pending; some of which are for deliveries presently being made under temporary authority.[6] The certificate applications in Docket Nos. G-17777, CI61-271, CI62-603 and CI62-998 involve upward Btu price provisions, and are presently consolidated for hearing in the proceedings in *Sunray DX Oil Company, et al.*, Docket No. G-4281, *et al.*, relating to the Btu adjustment provisions. Accordingly, the matter of the issuance of permanent certificates should be determined in such proceedings, and not through the abridged hearing procedure.

---

[4] See: *Shell Oil Co., et al.*, Docket No. G-9446, *et al.*, 28 FPC 257; *Gulf Oil Corp., et al.*, Docket No. G-9520, *et al.*, 29 FPC 837; and *Sinclair Oil & Gas Co.*, Docket No. G-9291, *et al.*, 30 FPC 5, order issued July 1, 1963, for similar circumstances where exceptions to the applicable area ceiling were granted.

[5] In its Exhibit A to the appendix to its proposal, Socony states that it proposes to "delete" such provisions from the subject rate schedules rather than to merely "waive" the right to file under such provisions.

[6] See Appendix B attached hereto.

We propose to set the remaining pending certificate applications for abridged statutory hearing in accordance with Section 7 of the Natural Gas Act, indicating that the settlement rates, as provided for herein, shall be the initial price. Certain of such applications also contain Btu adjustment provisions and are presently consolidated with the proceedings in *Pan American Petroleum Company, et al.*, Docket No. G–19417, *et al.*[7] We shall condition the certificates to be issued in those proceedings so that the initial price, including tax reimbursement, shall not exceed 17¢ per Mcf at 14.65 psia for Docket No. CI61–1281 (insofar as it covers acreage in the Oklahoma Panhandle) and 15.0¢ per Mcf at 14.65 psia for the remainder of the dockets; the allowances for take-or-pay provisions in the related rate schedules are subject to the ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199; however, Socony will not be required to file take-or-pay provisions for less than 80 percent of the annual quantity dedicated under each rate schedule; the allowance for any BTU adjustment provision in the related rate schedules shall be subject to the ultimate disposition with respect to such provision in the rule-making proceeding in Docket No. R–200; and in Docket No. CI61–1024 the BTU adjustment provision shall operate above or below 1,000 BTU per cubic foot as specified in the temporary certificate issued July 1, 1961, as modified by the Commission's letters of September 14, 1961 and November 17, 1961.

Two other rate schedules among such pending applications also contain BTU adjustment provisions[8] and are not consolidated in either the *Sunray DX* or the *Pan American* proceedings. The certificates issued in those proceedings shall be conditioned to make such BTU adjustment provisions subject to the ultimate disposition in the rule-making proceeding in Docket No. R–200.

On April 29, 1964, The Public Service Commission of the State of New York (PSC) filed its opposition to the settlement proposal. PSC notes Socony's statement that our approval of the settlement will result in an annual reduction in Socony's rates of approximately $5.6 million and in refunds of approximately $12.0 million, but, PSC states that a meaningful evaluation of the amounts cannot be made without knowledge of the amount of monies collected subject to refund and retained under the settlement, and the annual amount of rate increases which will be effected under the settlement. Further, PSC states that its past acquiescence in rate settlements "is necessarily premised upon our reliance on the scrutiny which such settlements receive from the Commission and its staff", and that it believes such scrutiny should not be hampered by the lack of the information it cites.[9]

The principles underlying the present settlement are consistent with those utilized in previous major independent producer rates settlements. The rates herein agreed upon are consistent with the guideline prices set forth in our Statement of General Policy No. 61–1, as amended. Refund dates are determined by utilizing cost of service studies prepared in accordance with prior Commission decisions, with full refunds above the settlement rates required from the date on which the conferees fix as that upon which the producer's unit revenues exceed the unit costs so determined. On this basis Socony's proposed refund of $12,000,000 will constitute approximately 45% of amounts collected above the settlement rates, subject to refund, and the reduced rates of $5,600,000 annually will constitute disallowance of approximately 55% of the increased rates currently being collected in Section 4(e) proceedings.

---

[7] See Appendix C hereto.

[8] Amendments to certificates in Docket Nos. G–12480 and G–14223.

[9] In its response to the settlement proposal filed by PSC in *Texaco Inc., et al.*, Docket No. G–8969, *et al.*, *PSC* stated that it had never been a signatory or joined in any settlement agreement or proposal but rather was a "silent bystander". Consistent with that position PSC was not represented in the settlement conferences which resulted in the proposal filed by Socony herein. However, all relevant information, including that referred to in PSC's motion, is made available to the conferees and will be made available upon request of any party to the proceedings whether it attends the conferences or not.

In addition to these matters, we consider the fact that a reduction in rates is required in connection with a sale not subject to a Section 4 proceeding (Socony's Rate Schedule No. 164) and that Socony has assured a period of rate stability through a moratorium on above ceiling increased rate filings until at least January 1, 1967.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Socony's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed on March 30, 1964, is in the public interest, and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed by Socony on March 30, 1964, is approved and made effective subject to the terms and conditions herein.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of May 1, 1964.

(C) The settlement rates approved herein shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Socony, its successors or assigns.

(D) The pending certificate proceedings set out in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act and the terms and conditions of this order.

(E) Within 60 days from the date of this order, Socony shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal.

(F) Within 60 days from the date of this order, Socony shall (1) refund with interest as specified in each docket computed to March 31, 1964, the difference between the rates collected subject to refund and the related settlement rates, on and after December 1, 1962 to the date of this order for all of such of Socony's Rate Schedules, and for the period between April 1, 1960 and December 31, 1961 for Rate Schedules Nos. 275 to 306 inclusive where the rates were collected subject to refund, and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(G) Upon full compliance by Socony with all the terms and provisions of this order, the Section 4(e) proceedings, except those related to Rate Schedule No. 16 listed in Appendix A hereto, and the Section 5(a) proceedings in Docket No. G-12401, shall terminate.

(H) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (G) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61-2, AR64-1 and AR64-2, respectively.

(I) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Socony, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Socony or any other companies, person or parties affected by this order.

APPENDIX A

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-12193, ET AL.

CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS

R.S.	Field	Purchaser	Certificate docket	4(e) docket	Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
	Texas RR District #2						
23	Green	United Gas	G-11917		8.6088	8.6088	8.6088
31	South Porter	United Gas	G-11939		[b] 7.59624	[b] 7.59624	6.66376
39	Clayton	Natural Gas	G-11989		9.5169	9.5169	9.5169
43	East Provident City	Texas Eastern	G-11996		14.6	14.6	14.6
50	Helen Gohlke	Texas Eastern	G-11944	RI 63-337	14.3733	14.8733	14.6
51	Henze	Texas Eastern	G-11958	RI 63-337	13.8733	14.3733	14.1
59	Boyce	United Gas	G-11952		12.1848	12.1848	12.1848
65	Koontz and Keeran	Tennessee Gas	G-12006	G-17334	10.80887	[hh] 15.3333	[e][hh] 15.0
72	Karon	Texas Eastern	G-12097	RI 63-337	13.8733	14.3733	14.1
96	Heyser	Tennessee Gas	G-12086	G-17332	11.02818	15.3333	[d] 14.6
243	Placedo	Tennessee Gas	CI 61-189		14.0	14.0	14.0
287	Refugio	United Gas	G-7650		7.596	7.596	7.596
321	Burnell	United Gas	CI 63-558		14.0	14.0	14.0
331	Ike West	Transco	G-1852		7.017964	7.017964	7.017964
	Texas RR District #3						
28	Frnka	Tennessee Gas	G-11934	G-17332	13.49751	16.16947	[d] 14.6
40	Chesterville	Tennessee Gas	G-11943	G-17333 G-20211	13.2782	[hh] 16.16947	[d][hh] 14.6
62	Old Ocean	Natural Gas	G-11997		11.48832	11.48832	11.48832
130	North Indian Hill	United Gas	G-13943		15.192	15.192	15.192
275	North Louise	Tennessee Gas	G-7637	G-16857	13.49751	16.16947	[d] 14.6
334	S.W. Pleasant	Valley Gas	CI 63-1423		14.0	14.0	14.0
	Texas RR District #4						
21	Piedre Lumbre	Tennessee Gas	G-11913	G-19892 RI 60-292	12.12268	17.24347	[d] 14.6
27	Edinburg	Tennessee Gas	G-11936	G-19892 RI 60-292	12.12268	17.24347	[d] 14.6

See footnotes at end of table.

APPENDIX A—continued

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-12193, ET AL.—Continued

CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS—continued

R.S.	Field	Purchaser	Certificate docket	4(e) docket	Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
	Texas RR District #4—Continued						
45	N. Government Wells	Tennessee Gas	G-11951	G-19892 RI 60-292	12. 12268	17. 24347	[d] 14. 6
47	San Salvador	Tennessee Gas	G-11950	G-19891 RI 60-293	12. 12268	17. 23437	[d] 14. 6
52	San Carlos	Trunkline Gas	G-11955	G-20344	11. 1056	13. 41667	[e] 14. 0
53	San Ramon	Tennessee Gas	G-11954	G-19891 RI 60-293	12. 12268	17. 24347	[d] 14. 6
57	Hagist Ranch, etc	Tennessee Gas	G-11947	G-19892 RI 60-292	12. 12268	17. 24347	[d] 14. 6
81	Donna	Tennessee Gas	G-12082	G-19891 RI 60-293	12. 12268	17. 24347	[d] 14. 6
83	La Reforma	Tennessee Gas	G-12083	G-19892 RI 60-292	12. 12268	17. 24347	[d] 14. 6
84	La Reforma	Tennessee Gas	G-12084	G-19891 RI 60-293	12. 12268	17. 24347	[e] 15. 0
87	Sun	Tennessee Gas	G-12081	G-19891 RI 60-293	12. 12268	17. 24347	[d] 14. 6
123	San Manuel	Texas Eastern	G-12657	G-16620 G-19650 RI 61-113 RI 62-112 RI 64-226	14. 4	15. 2	[g] 14. 4
124	East Bishop	Texas Eastern	G-12686		14. 6	14. 6	14. 6
134	Premont	Coastal States	G-13275		9. 7672	9. 7672	9. 7672
162	San Carlos	Trunkline Gas	G-15270	G-20344	12. 1152	14. 41667	[h] 14. 0
178	Seeligson	Tennessee Gas	G-11946	G-19892 G-19892 RI 60-292	12. 12268	17. 24347	[d] 14. 6
286	White Pt. Saxet, et al	United Gas	G-7648		7. 596	7. 596	[i] 8. 0346
288	Alfred	Coastal States	G-8832		11. 1056	11. 1056	11. 1056
296	Seeligson	Tennessee Gas	G-7640	G-19325 RI 60-264	12. 12268	17. 24347	[d] 14. 6

318	La Gloria	Transcontinental Gas	CI 63-464		8.89088	8.89088	8.89088
319	Seeligson	Tennessee Gas	CI 63-466		14.6	14.6	14.6
320	La Gloria	Natural Gas	CI 63-470		10.8231	10.8231	10.8231
332	South Lundell	Natural Gas	CI 63-1290		16.0	16.0	16.0
	Texas RR District #6						
33	Carthage	United Gas	G-11937		10.8876	10.8876	10.8876
36	Carthage	Texas Gas	G-11960		11.6232	11.6232	11.6232
42	Willow Springs	Texas Eastern	G-11998		14.6	14.6	14.6
44	Rodessa	Arkansas Louisiana	G-11986		7.5378	7.5378	7.5378
56	Winnsboro	Lone Star	G-11945		12.0768	12.0768	12.0768
64	Bethany	Arkansas Louisiana	G-12000		11.394	11.394	11.394
95	Carthage	Texas Gas	G-12092		11.6288	11.6288	11.6288
99	Bethany	Tennessee Gas	G-12085	RI 60-216	13.5	14.4248	[d] 14.4248
106	Bethany	United Gas	G-12431		10.8876	10.8876	10.8876
107	Bethany	United Gas	G-12584		10.8876	10.8876	10.8876
108	Bethany	United Gas	G-12585		10.8876	10.8876	10.8876
109	Bethany	United Gas	G-12586		10.8876	10.8876	10.8876
110	Carthage	United Gas	G-12587		10.8876	10.8876	10.8876
121	Bethany	United Gas	G-12655		10.8876	10.8876	10.8876
136	Caledonia	Natural Gas	G-13543	RI 63-342	13.1	14.1	[d] 14.1
205	Bethany	United Gas	G-20252		10.8876	10.8876	10.8876
255	Lassater	Arkansas Louisiana	CI 61-903		12.5541	12.5541	12.5541
	Texas RR District #9						
*181	Wise	Natural Gas	G-16393	RI 61-268 RI 64-324	13.25	14.25	[p] 14.5
190	Big Mineral Creek	Lone Star Gas	G-18731		14.49	14.49	14.49
	Texas RR District #10						
11	Prairie	Panhandle Eastern	G-11870	RI 62-189	16.0	17.0	16.0
*54	Panhandle	Panhandle Eastern	G-11948	RI 61-274 RI 64-410	11.0	11.0	[j] 11.0
125	Perryton	Northern Natural	G-12718		15.5	15.5	15.5
137	Parnell & Northrop	Northern Natural	G-13826		16.0	16.0	16.0
145	Panhandle	Shamrock Oil & Gas	G-14910		5.5	5.5	5.5
154	Panhandle	Phillips Petroleum	G-14914		9.0	9.0	9.0
185	Quinduno	Natural Gas	G-18276	RI 61-559	12.0	13.0	12.0
221	Perryton	Northern Natural	CI 60-168		16.5	16.5	16.5
230	Feldman-Tonkawa	Transwestern	G-16967		17.0	17.0	17.0
245	West Panhandle	Natural Gas	CI 61-188		13.2	13.2	13.2
251	East Panhandle	Warren Petroleum	CI 61-801		9.0	9.0	0.9

See footnotes at end of table.

APPENDIX A—continued

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-12193, ET AL.—Continued

CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS—continued

R.S.	Field	Purchaser	Certificate docket	4(e) docket	Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
	South Louisiana Onshore						
1	Gum Cove	United Fuel	G-11985	G-12193 G-13437 G-16691 G-19649 RI 61-113 RI 62-112 RI 64-209	17.5	20.3	17.5
2	Chalkley	United Fuel	G-11956	G-12193 G-13437 G-16691 G-19649 RI 61-113 RI 62-112 RI 64-209	17.5	20.3	[a] 17.5
18	Cameron	American Louisiana	G-11912		19.75	19.75	19.75
24	Iowa	United Gas	G-11918	G-15410	11.047	20.55	17.0
37	Bearhead Creek	Trunkline Gas	G-11987	RI 62-153	11.4417	20.90	15.5
41	Clear Creek	Trunkline Gas	G-11953	G-14068 G-17622 G-20343 RI 60-422	17.7	23.5	17.7
46	Hurricane Creek	Trunkline Gas	G-11941		15.5	15.5	15.5
59	Cameron Meadows, et al	United Gas	G-11995	G-15411	10.747	20.25	17.0
141	Thornwell	United Fuel	G-14225	G-19649 RI 61-113 RI 62-112 RI 64-209	18.7	20.3	[a] 18.7
164	Main Pass Blk. 46	Southern Natural	G-12362		22.0	22.0	21.25
165	Cowpen Creek	Trunkline Gas	G-16307		17.9	17.9	17.9
229	N.W. Oberlin	United Gas	CI 60-311	RI 63-412	20.375	22.375	20.375
258	Gibson	United Gas	CI 61-1128	RI 61-441	20.25	23.3	20.25
16	West Gueydan	Transcontinental Gas	G-12004	G-12201 G-17526	10.29715	23.55	(**)
	South Louisiana Offshore						
66	Eugene Island	United Gas	G-12005		10.0472	10.0472	9.5472
	North Louisiana						
7	Monroe	United Gas	G-11938		11.0	11.0	11.0
68	Cotton Valley	United Gas	G-12002		13.05076	13.05076	13.05076
70	North Ruston	Arkansas Louisiana	G-12001		[b] 14.75	15.4763	[b] [a] 15.25
82	Delhi	Texas Eastern	G-12098		15.4763	11.2432	15.47633

70	North Ruston						
82	Delhi	Texas Eastern					
111	Lisbon	United Gas	G-12588		11.2432	11.2432	11.2432
112	Sligo	United Gas	G-12589		11.7752	11.7752	11.7752
113	Monroe	United Gas	G-12590		11.0	11.0	11.0
114	Monroe	United Gas	G-12591		11.0	11.0	11.0
115	Monroe	United Gas	G-12592		11.0	11.0	11.0
117	Monroe	United Gas	G-12594		11.0	11.0	11.0
169	North Ruston	Arkansas Louisiana	G-16522		13.27	13.27	•13.72
182	East Lisbon	Texas Gas	G-17055		jj 18.25	jj 18.25	jj 18.25
192	Carterville	Texas Gas	G-19289		jj 18.25	jj 18.25	jj 18.25
237	Calhoun	Texas Gas	CI 60-657		18.75	18.75	18.75
238	Lisbon	United Gas	CI 60-586		12.5252	12.5252	12.5252
291	Colquitt	Arkansas Louisiana	G-13335		13.454	13.454	13.454
293	Colquitt	Arkansas Louisiana	G-13889		13.479	13.479	13.479
316	Holly Ridge	American Louisiana	CI 61-254		18.5	18.5	18.5
337	Holly Ridge	American Louisiana	CI 61-254		18.5	18.5	18.5
	Mississippi						
120	Pistol Ridge	United Gas	G-12654	G-20079	20.126	23.0	20.0
138	Gwinville	Southern Natural	G-12094	G-14277	b nn 8.1857	kk 20.0	n kk 15.0256
	Oklahoma-Panhandle						
*22	Keyes	Colorado Interstate	G-11915	G-17331	15.0	16.0	15.0
63	Camrick	Natural Gas	G-11999	G-12229 G-14615 G-17938 RI 60-167 RI 61-387 RI-62-344	16.0	17.2	16.0
88	Camrick	Natural Gas	G-12003	G-13195 G-14725 G-17938 RI 60 167 RI 61-387 RI 62-344	16.0	17.2	16.0
100	South Glenwood	Cities Service Gas	G-12102	RI 62-225	12.0	13.0	12.0
*105	S.W. Camp Creek	Northern Natural	G-12364	RI 62-238	15.0	16.0	15.0
*128	N.E. Gate Lake	Northern Natural	G-12821	RI 62-499	15.0	16.0	15.0
*129	Mocane	Colorado Interstate	G-12840		15.0	15.0	15.0
*140	Keyes	Colorado Interstate	G-14223	G-17721	15.0	16.0	15.0
170	Laverne	Michigan-Wisconsin	G-13324		17.0	17.0	ff 17.0
*189	Beaver	Northern Natural	G-18617	RI 62-499	15.0	16.0	15.0
219	Woodward & N. E. Woodward	Cities Service Gas	CI 60-81		16.0	16.0	16.0
223	Unnamed	Panhandle Eastern	CI 60-217		15.0	15.0	15.0
234	Beaver	Northern Natural	CI 60-589		16.5	16.5	16.5
240	West Shattuck	Transwestern	G-16368		17.0	17.0	17.0
244	Southeast Camrick	Natural Gas	CI 61-187		16.8	16.8	16.8
267	Guymon-Hugoton	Cities Service Gas	CI 61-1705		11.0	11.0	11.0
268	Guymon-Hugoton (Shallow)	Cities Service Gas	G-7645	G-13062 RI 61-422	10.85340	h 15.0	h 13.0
284	Guymon-Hugoton[1]	Northern Natural	G-7646	G-16896	9.8262	12.0	11.0
295	Laverne	Michigan-Wisconsin	G-17047		17.0	17.0	ff 17.0
301	Guymon-Hugoton (Deep)	Panhandle Eastern	CI 60-252		17.0	17.0	17.0
303	Guymon-Hugoton	Panhandle Eastern	G-7647		11.0	11.0	11.0
324	Northeast Ivanhoe	Northern Natural	CI 63-742		17.0	17.0	17.0

See footnotes at end of table.

APPENDIX A—continued

SOCONY MOBIL OIL COMPANY, INC., DOCKET No. G-12193, ET AL.—Continued

CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS—continued

R.S.	Field	Purchaser	Certificate docket	4(e) docket	Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
	Oklahoma—Other						
8	Cruse, Doyle & Katie	Lone Star	G-11864	RI 60-139 RI 64-324	11.0	10.8	[f][r] 11.6
9	Graham	Lone Star	G-11863	RI 60-140 RI 64-313	9.0	14.8	[f][s] 10.6
10	Katie	Lone Star	G-11867	RI 61-84 RI 64-609	8.0	12.35	[f][t] 9.6
12	Katie	Lone Star	G-11866	RI 60-141	11.0	10.8	[f] 11.6
13	Katie	Lone Star	G-11869	RI 61-85 RI 64-608	8.0	12.35	[f][u] 9.6
14	Doyle	Lone Star	G-11868	RI 60-141 RI 64-325	11.0	16.8	[f] 11.6
34	S. Oklahoma City	Cities Service Gas	G-11959	G-14118	10.0	20.0	11.0
73	Katie	Lone Star	G-12090	RI 61-85 RI 64-608	8.0	12.35	[f][u] 9.6
75	West Edmond	Cities Service Gas	G-12103		10.5	10.5	10.5
77	Katie	Lone Star	G-12087	RI 60-139	11.0	16.8	[f] 11.6
78	Katie	Lone Star	G-12089	RI 61-85 RI 64-608	8.0	12.35	[f][u] 9.6
118	Panther Creek	Lone Star	G-12323	RI 60-141 RI 64-555	11.0	9.0	[f][bb] 11.6
130	Katie & N. W. Hoover	Lone Star	G-12861	RI 60-139	11.0	16.8	[f] 11.6
143	North Healdton	Lone Star	G-14324	RI 60-139 RI 64-543	11.0	16.8	[f][cc] 11.6
153	Healdton	All Star	G-14913		6.0	6.0	6.0
155	Velma	Skelly Oil	G-14012		8.5	8.5	8.5
*168	South Rainey	Natural Gas	G-16296		15.0	15.0	15.0
186	Caddo	Southern Gas	G-18122		6.0	6.0	6.0
188	South Erick	El Paso	G-18495		12.0	12.0	12.0
220	North Cement	Southern Gas	CI 60-107		6.0	6.0	6.0
222	North East Waynoka	Cities Service Gas	CI 60-182		[ii] 13.0	[ii] 13.0	[ii] 13.0
224	Katie	Lone Star	CI 60-244	RI 61-85 RI 64-608	8.0	12.35	[f][u] 9.6
225	Katie	Lone Star	CI 60-243	RI 60-216	11.0	16.8	[f] 11.6
247	Bradley Area (Plant)	Cities Service Gas	G-16266		11.0	11.0	11.0
273	West Marlow	Arkansas Louisiana	CI 62-230		12.0	12.0	12.0
285	Katie	Lone Star	G-7649	G-20209	11.0	16.8	[f] 11.6
290	Yellowstone	Cities Service	G-9080	G-19153	12.0	13.0	12.0
305	Comanche	Cities Service	CI 61-1308		15.0	15.0	15.0
333	Red Oak	Arkansas Louisiana	CI 63-234		15.0	15.0	15.0
338	East Doyle	Lone Star	CI 64-304		15.0	15.0	15.0
339	West Crane & Putnam	Natural Gas	CI 63-1300		15.0	15.0	15.0

	Oklahoma-Carter Knox						
204	Carter Knox	Lone Star	G-20226		16.8	16.8	16.8
207	Carter Knox	Lone Star	G-18008		16.8	16.8	16.8
	Kansas						
3	Hugoton	Cities Service Gas	G-11742	RI 61-506	11.0	[l] 14.0	[aa] 13.0
4	Medicine Lodge	Cities Service Gas	G-11862	G-20300	12.0	13.0	12.0
5	Hardtner & Driftwood	Cities Service Gas	G-11861	G-20301	12.0	13.0	12.0
6	North Rhodes	Cities Service Gas	G-11860	G-20301	12.0	13.0	12.0
15	Hugoton	Kansas Nebraska	G-11894	G-18108	[m] 11.0	11.42915	11.0
32	Hugoton	Northern Natural	G-11940	RI 60-178	[m] 9.0	15.0	11.0
71	Hugoton	Northern Natural	G-12099	RI 61-200	12.0	17.0	12.0
85	Hugoton	Northern Natural	G-12100		11.0	11.0	11.0
89	Hugoton	Cities Service Gas	G-12101	RI 63-392	10.719	14.5	11.0
*93	Greenwood	Colorado Interstate	G-12096	G-17331 RI 64-410	15.0	16.0	[u] 15.0
*94	Greenwood	Colorado Interstate	G-12095	G-17831 RI 64-410	15.0	16.0	[u] 15.0
*94	Sparks	Colorado Interstate	G-12904	G-17331 RI 64-410	15.0	16.0	[u] 15.0
122	N. W. Sharon	Cities Service Gas	G-12656	G-20300	12.0	13.0	12.0
156	McKinney	Northern Natural	G-15182	RI 62-238	14.0	15.0	14.0
158	Hugoton	Northern Natural	G-14959	RI 61-258	12.0	17.0	12.0
179	Hugoton	Northern Natural	G-17638	RI 61-528	12.0	13.0	12.0
180	Greenwood	Colorado Interstate	G-17777	RI 64-410	16.0	16.0	[u] 16.0
183	N. Medicine Lodge	Cities Service	G-17948	G-20300	12.0	13.0	12.0
*233	Hugoton	Colorado Interstate	CI 60-587	RI 64-410	11.0	12.5	[v] 11.0
248	Hugoton	Panhandle Eastern	G-12728		11.0	11.0	11.0
261	Hugoton	Cities Service Gas	CI 61-1413		12.0	12.0	12.0
272	Aetna	Cities Service Gas	CI 62-77		13.0	13.0	13.0
281	Hugoton	Northern Natural	G-7642	G-15451	[m] 10.0	16.75	11.0
282	Hugoton	Northern Natural	G-7643	G-15451	[m] 8.0	15.0	11.0
284	Guymon-Hugoton [i]	Northern Natural	G-7646	G-16896	11.0	12.0	11.0
*290	Adams Ranch	Colorado Interstate	G-13207		15.0	15.0	15.0
299	Hugoton	Panhandle Eastern	G-7644		11.0	11.0	11.0
306	Hugoton (Kismet)	Panhandle Eastern	CI 62-362		16.0	16.0	16.0
326	Hugoton	Northern Natural	CI 63-670	RI 60-198	7.8	15.0	11.0
340	Syracuse	Kansas Nebraska	CI 64-286		12.5	12.5	12.5
	New Mexico-San Juan						
38	Jicarilla Area	El Paso	G-11984		12.0433	12.0433	[w] 12.0433
				RI 64-109 RI 64-486	13.0	13.0409	[x] 13.0
166	Bisti	El Paso	G-16370	RI 64-90 RI 64-496	13.0	13.2175	[y] 13.0
199	Blanco	El Paso	G-19842	RI 64-90 RI 64-488	11.0	12.2008	12.0433
200	Blanco	El Paso	G-19843	RI 64-90 RI 64-496	12.0	13.2008	[y] 13.0
314	San Juan Basin	El Paso	CI 62-1521	RI 64-90 RI 64-270 RI 64-496	13.0	13.2175	[y] 13.0

See footnotes at end of table.

APPENDIX A—continued

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-12193, ET AL.—Continued

CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS—continued

R.S.	Field	Purchaser	Certificate docket	4(e) docket	Last firm rate [a]	Rate in effect [a]	Settlement rate [a]
	Colorado						
216	Piceance Creek	El Paso	G-10167		11.0	11.0	11.0
313	Ignacio	El Paso	CI 62-1520	RI 64-461	13.0	14.0	13.0
311	Piceance Creek	El Paso	CI 62-1187		10.0	11.0	11.0
329	San Juan	El Paso	CI 63-975	RI 64-528	13.0	13.0	[aa] 13.0
307	Piceance Creek	El Paso	G-10495		11.0	11.0	11.0
	Wyoming						
212	Big Horn	Montana Dakota	G-2584		[pp] 11.65	[pp] 11.65	[pp] [dd] 13.6154
213	Sand Creek	Montana Dakota	G-6030		11.65	11.65	[dd] 13.6154
214	Garland	Montana Dakota	G-12115		8.5	8.5	8.5
215	Tip Top	El Paso	G-10145	G-16710 RI 61-65	15.0	[mm] 18.5	15.0
217	Hogsback	El Paso	G-10525 G-16298	G-16710 RI 61-65	15.0	[mm] 18.5	15.0
270	Big Horn	Montana Dakota	CI 62-25		[pp] 11.65	[pp] 11.65	[pp] [dd] 13.6154
271	Big Horn	Montana Dakota	CI 61-1366		[pp] 11.65	[pp] 11.65	[pp] [dd] 13.6154
298	Alkali Creek	Mountain Fuel	CI 61-18		[oo] 13.0	[oo] 13.0	[oo] 13.0
335	State Line Unit	Mountain Fuel	CI 63-669		15.0	15.0	15.0
	Utah						
218	Aneth	El Paso	G-14245		17.7	17.7	17.7

FOOTNOTES RELATING TO CERTIFICATED RATE SCHEDULES AND/OR 4(e) DOCKETS

[a] Unless otherwise indicated, all rates are expressed in cents per Mcf at a pressure base of 14.65 psia, except in Louisiana, Colorado, New Mexico, Mississippi, Wyoming and Utah, where the rates are expressed in cents per Mcf at a pressure base of 15.025 psia. All rates include applicable tax reimbursement, and certain rates (including some of the settlement rates) are subject to BTU adjustment.

[b] Rate is at a pressure base of 16.7 psia.

[c] Socony will eliminate the favored nation, price redetermination and future periodic escalation provisions to qualify for rate not to exceed 15.0¢ per Mcf.

[d] Socony will eliminate the favored nation and price redetermination provisions in contract to qualify for contract rate not to exceed 14.6¢ per Mcf.

[e] Rate increase to 15.25¢ per Mcf at 16.7 psia (13.72¢ per Mcf at 15.025 psia) accepted by Commission on 3-6-64 to be effective 4-26-64.

[f] Socony will eliminate the favored nation and price redetermination provisions to qualify for rate not to exceed 11.6¢ per Mcf.

[g] Settlement rate subject to a contractual deduction of 1.25¢ per Mcf for dehydration and gathering.

[h] Settlement rate subject to a contractual deduction of .25¢ per Mcf for dehydration.

[i] This Docket covers sales both from the Oklahoma Panhandle and the Kansas areas.

[j] 4(e) Docket relates to suspended rate of 7.86624¢ per Mcf which was collected under undertaking from 12-12-60 through 10-31-62. Present rate of 11.0¢ per Mcf was accepted on 11-1-62. Rate increase to 12.54¢ per Mcf suspended in Docket RI 64-410.

[k] Settlement rate and rate in effect includes 2¢ per Mcf contractual service charge for gathering and delivery.

[l] Rate in effect includes 3¢ per Mcf contractual service charge for gathering and compression.

[m] Rate is at a pressure base of 16.4 psia.

[n] Socony will eliminate the future price escalation provisions in contract to qualify for rate of 15.0256¢ per Mcf.

[o] Rate increase to 15.6¢ per Mcf suspended in Docket RI 64-226.

[p] Rate increase to 15.25¢ per Mcf suspended in Docket RI 64-324.

[q] Rate increase to 21.1¢ per Mcf suspended in Docket RI 64-209.

[r] Rate increase to 17.9¢ per Mcf suspended in Docket RI 64-324.

[s] Rate increase to 15.9¢ per Mcf suspended in Docket RI 64-313.

[t] Rate increase to 13.175¢ per Mcf suspended in Docket RI 64-609.

[u] Rate increase to 17.0¢ per Mcf suspended in Docket RI 64-410.

[v] Rate increase to 13.5¢ per Mcf suspended in Docket RI 64-410.

[w] Low Pressure gas rate not subject to 4(e) proceeding.

[x] High Pressure gas rate subject to 4(e) Dockets. Rate increase to 14.0505¢ per Mcf suspended in Docket RI 64-486.

[y] Rate increase to 14.2343¢ per Mcf suspended in Docket RI 64-496.

[z] Rate increase to 13.175¢ per Mcf suspended in Docket RI 64-608.

[aa] Rate increase to 14.0¢ per Mcf suspended in Docket RI 64-528.

[bb] Rate increase to 16.8¢ per Mcf suspended in Docket RI 60-141. Contract amended effective 7-25-63 to provide lower delivery pressure and rate of 8¢ per Mcf and which was increased to 9¢ per Mcf effective 1-1-64. Rate increase to 12.35¢ per Mcf filed on 1-3-64 and suspended in Docket RI 64-555.

[cc] Rate increase to 17.9¢ per Mcf suspended in Docket RI 64-543.

[dd] Rate increase to 15.384¢ per Mcf filed on 1-27-64. Socony proposes to delete favored nation provisions to qualify for rate of 13.6154¢ per Mcf.

[ee] Socony did not propose a settlement rate for this Rate Schedule or the termination of any refund obligation under the pending Section 4(e) proceedings thereunder. Socony proposes to file for a rate of 17.0¢ per Mcf to be effective 4-1-64 and which rate will be subject to a Section 4(e) rate proceeding.

[ff] The parties agreed on a rate of 17.0¢ per Mcf plus contract BTU adjustment. However, under the arrangement between Socony and others and Buyer, a gas products plant was constructed on the main line field lateral of Michigan-Wisconsin with the plant owners compensating Michigan-Wisconsin for the reduction in BTU and gas volume due to processing. The arrangement here is that the net cost to Michigan-Wisconsin at the discharge of the plant cannot exceed 17.0¢ per Mcf.

[gg] The settlement rate consists of 11.0¢ per Mcf for price of gas plus service charge of 2.0¢ per Mcf for gathering and compression.

[hh] Rates are subject to 0.21931¢ deduction for dehydration.

[ii] Settlement rate includes 0.5¢ at 16.7 psia (0.4386¢ at 14.65 psia) additional compensation for gathering by Seller as provided in the contract.

[jj] Base rate is 16.5¢ plus tax reimbursement of 1.75¢ for high pressure gas and 0.875¢ for low pressure gas.

[kk] Rates are subject to 0.5¢ deduction for gas requiring compression by purchaser.

[ll] Rates are subject to 0.75¢ deduction for dehydration.

[mm] Base rate is 17.5¢ plus 1¢ for gas delivered at 860 psig.

[nn] Base rate is 8.1857¢ at 16.7 psia, low pressure gas subject to deduction of .5¢.

[oo] Rate is 13.0¢ for sweet gas and 10.0¢ for sour gas.

[pp] Rate subject to applicable contract deduction for compression.

*Rate subject to upward BTU adjustment.

APPENDIX B

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-12193, ET AL.

PENDING CERTIFICATE APPLICATIONS

R.S.	Field	Purchaser	Certificate docket	Date of contract	Initial price [a]	Settlement rate [a]
	Texas RR District #2					
206	North La Ward	Florida Gas	G-18386	2-18-59	17.0	15.0
264	Kentucky Mott	Florida Gas	G-18385	2-18-59	17.0	15.0
327	KaWitt	Lone Star Gathering	CI 63-874	12-10-62	12.0	12.0
328	Speary, KaWitt, Yorktown	Lone Star Gathering	CI 63-875	12-10-62	18.0	16.0
	Texas RR District #3					
263	Citrus Grove	Florida Gas	G-18384	2-18-59	17.5	16.0
	Texas RR District #4					
47-14	San Salvador	Tennessee Gas	G-11950	6-14-60	15.0952	15.0
57-14	Hagist Ran. & N. Gov't. Wells	Tennessee Gas	G-11947	7- 8-60	15.0952	15.0
236	Hargill	Tennessee Gas	CI 60-653	3-25-60	17.24347	15.0
236-2	Hargill	Tennessee Gas	CI 60-653	9- 1-62	16.0	16.0
330	Seeligson	Tennessee Gas	CI 63-465	1-15-62	17.24347	16.0
	Texas RR District #6					
317	Bryans Mill	Natural Gas	CI 63-172	4-15-62	15.0	15.0
	Texas RR District #10					
137-9	Parnell & Northrup	Northern Natural	G-13826	3-28-61	16.0	16.0
239-4	Feldman-Tonkawa	Transwestern Pipeline	G-16367	2- 3-61	17.0	17.0
	North Louisiana					
250	East Blackburn	Texas Gas	CI 61-735	9-26-60	[h] 18.25	[h] 18.25
	South Louisiana—Onshore					
16-25	West Gueydan	Transcontinental Gas	G-12004	1-27-60	23.55	([j])
	Oklahoma Panhandle					
*129-3	Mocane	Colorado Interstate	G-12840	5-26-60	15.0	15.0
*140-2	Keyes	Colorado Interstate	G-14223	4- 8-59	16.0	16.0
170-5	Laverne	Michigan Wisconsin	G-13324	5-26-60	17.0	[i] 17.0
232	Ellis County Area	Transwestern Pipeline	G-18726	4- 1-59	17.0	17.0
246	Mocane	Panhandle Eastern	CI 61-271	7-13-60	17.0	[e] 17.0
274	Laverne	Michigan Wisconsin	CI 62-603	9-19-60	17.0	[e] [i] 17.0

304	Guymon Hugoton (Deep)	Cities Service Gas	CI 61-1327	3- 1-61	d 17.0	g 13.0
*310	Mocane	Colorado Interstate	CI 62-998	1-15-62	17.0	e 17.0
*322	Cedardale	Michigan Wisconsin	CI 61-1281	1-18-61	17.0	e 17.0
	Oklahoma—Other					
*266	North Custer City	Natural Gas	CI 61-1024	10- 1-60	15.0	e 15.0
*322	Cedardale	Michigan Wisconsin	CI 61-1281	1-18-60	15.0	e 15.0
*322-3	Cedardale	Michigan Wisconsin	CI 61-1281	5-11-62	15.0	e 15.0
*322-7	Cedardale	Michigan Wisconsin	CI 61-1281	3-26-63	15.0	e 15.0
323	Chitwood (Deep)	Natural Gas	CI 63-615	9-14-62	15.0	e 15.0
*325	Seiling	Panhandle Eastern	CI 61-1244	10-25-60	15.0	e 15.0
333-3	Red Oak	Arkansas Louisiana	CI 63-234	12-20-63	15.0	15.0
	Kansas					
4-3	Medicine Lodge	Cities Service Gas	G-11862	1- 5-60	13.0	13.0
*180	Greenwood	Colorado Interstate	G-17777	1- 7-59	16.0	e 16.0
248-1	Hugoton	Panhandle Eastern	G-12728	8-15-60	11.0	11.0
262	Hugoton (Deep)	Cities Service Gas	CI 61-1405	2- 1-61	f 16.0	h 13.0
	Colorado					
313-2	Ignacio, San Juan Basin	El Paso	CI 62-1520	8-13-62	13.0	13.0
313-3	Ignacio, San Juan Basin	El Paso	CI 62-1520	9-27-62	13.0	13.0
313-4	Ignacio, San Juan Basin	El Paso	CI 62-1520	11-12-62	13.0	13.0
	Wyoming					
213-7	Sand Creek	Montana Dakota	G-6030	10- 4-60	11.65	b 13.6154
214-3	Garland	Montana Dakota	G-12115	5-25-60	7.5	8.5
215-7	Tip Top	El Paso	G-16298	3-22-58	15.0	15.0
217-11	Hogsback	El Paso	G-10525	10- 4-61	15.0	15.0

FOOTNOTES RELATING TO PENDING CERTIFICATE APPLICATIONS

[a] Unless otherwise indicated, all rates are expressed in cents per Mcf at a pressure base of 14.65 psia, except in Louisiana, Colorado, New Mexico, Mississippi and Wyoming, where the rates are expressed in cents per Mcf at a pressure base of 15.025 psia. All rates include applicable tax reimbursement, and certain rates (including some of the settlement rates) are subject to BTU adjustment.

[b] Rate increase to 15.384¢ per Mcf filed on 1-27-64. Socony will eliminate the favored nations provisions to qualify for rate of 13.6154¢ per Mcf.

[c] Set for hearing in Sunray DX Oil Company, et al., proceedings in Docket No. G-4281, et al.

[d] Initial rate includes contractual gathering and delivery charge of 2.0¢ per Mcf for associated gas and contractual gathering and delivery charge of 1.0¢ per Mcf for non-associated gas.

[e] Set for hearing in Pan American Petroleum Corporation, et al., proceedings in Docket No. G-19417, et al.

[f] Initial rate includes contractual service charge of 3.0¢ per Mcf for gathering and compression on casinghead gas produced from oil wells and for gas produced from gas wells connected to Socony's gathering system.

[g] Settlement rate consists of 11.0¢ per Mcf for price of gas plus service charge of 2.0¢ per Mcf for gathering and delivering associated gas and service charge of 1.0¢ per Mcf for gathering and delivering non-associated gas.

[h] Settlement rate consists of 11.0¢ per Mcf for price of gas plus service charge of 2.0¢ per Mcf for gathering and compression.

[i] The parties agreed on a rate of 17.0¢ per Mcf plus contract BTU adjustment. However, under the arrangement between Socony and others and Buyer, a gas products plant was constructed on the main line field lateral of Michigan Wisconsin with the plant owners compensating Michigan Wisconsin for the reduction in BTU and gas volume due to processing. The arrangement here is that the net cost to Michigan Wisconsin at the discharge of the plant cannot exceed 17.0¢ per Mcf.

[j] Socony did not propose a settlement rate for this Rate Schedule. Socony proposes to file for a rate of 17.0¢ per Mcf to be effective 4-1-64 and which rate will be subject to a refund condition.

[k] Base rate is 16.5¢ plus tax reimbursement of 1.75¢ for high pressure gas and 0.875¢ for low pressure gas.

*Rate subject to upward BTU adjustment.

APPENDIX C

SOCONY MOBIL OIL COMPANY, INC. DOCKET NO. G-12193, ET AL., DOCKET NO. G-12401

4(e) *Dockets consolidated with Docket No. AR61-2*

G-12193
G-13437
G-14068
G-15410
G-15411
G-16691
G-17622
G-19647
G-20343
RI60-422
RI60-113
RI61-441
RI62-112
RI62-153
RI63-412

4(e) *Dockets consolidated with Docket No. AR64-1*

G-12229
G-13062
G-13195
G-14615
G-14725
G-15451
G-16896
G-17331
G-17721
G-17938
G-18108

4(e) *Dockets consolidated with Docket No. AR64-1*—Continued

G-19153
RI60-167
RI60-178
RI60-198
RI61-200
RI61-258
RI61-274
RI61-387
RI61-422
RI61-506
RI61-528
RI61-559
RI62-189
RI62-225
RI62-238
RI62-344
RI62-499
RI63-392

4(e) *Dockets consolidated with Docket No. AR64-2*

G-16857
G-17332
G-17333
G-17334
G-19325
G-19891
G-19892
G-20211

4(e) *Dockets consolidated with Docket No. AR64-2*—Continued

RI60-264
RI60-292
RI60-293
RI61-113
RI62-112
RI63-337
RI64-226

7(c) *Dockets consolidated with G-16760*

G-18385
G-18386
CI63-874
CI63-875

7(c) *Dockets consolidated with CI62-508*

CI63-172

7(c) *Dockets consolidated with G-18077*

G-18384

7(c) *Dockets consolidated with G-19417, et al.*

CI61-1024
CI61-1281
CI61-1281 amendment
CI61-1281 amendment
CI61-1244
CI63-615

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP64-114

ORDER DENYING PETITION FOR REHEARING

(Issued May 5, 1964)

On April 6, 1964, The Superior Oil Company (Superior) filed a "Petition for Rehearing" of the Commission's order issued March 19, 1964, denying Superior's petition to intervene in the above-entitled proceeding. Superior alleges that the Commission erroneously denied its petition to intervene and urges the Commission to reverse its prior decision and permit Superior to intervene in Docket No. CP64-114. Since the Commission has already granted the expansion application of Trunkline Gas Company (Trunkline) in Docket No. CP64-114 by order issued March 20, 1964, Superior requests that the order issuing Trunkline a certificate of public convenience and necessity be set aside and that Trunkline's application be scheduled for a full and formal hearing at which Superior would be permitted to raise the issues and arguments which it has heretofore set forth in its petition to intervene as well as in the petition for rehearing which is now before us for consideration. We believe the Commission's earlier rulings in this proceeding have fully protected the interests of Superior and that its further contentions are groundless.

Superior alleges that we overlook some of the arguments which it had claimed were justification for its being permitted to intervene in Docket No. CP64–114. On the contrary, our order denying Superior's petition to intervene specifically considered all of Superior's substantial allegations and concluded:

> * * * All the matters raised by Superior are either irrelevant to the issues to be considered in Docket No. CP64–114 or are already the subject of decisions which have been made or which should be made in other proceedings as hereinbefore described.

The foregoing conclusion is equally applicable to the contentions raised by Superior's petition for rehearing, but in order to demonstrate that we have overlooked none of Superior's arguments, we shall discuss all four of its alleged grounds.

(1) Superior alleges that it was made an involuntary creditor by Trunkline's failure to pay the prices in effect subject to refund for Superior's deliveries of gas to Trunkline under the former's FPC Gas Rate Schedules Nos. 1 and 3. This failure of Trunkline to pay the effective prices has resulted in Trunkline's owing Superior a sum of about $2,000,000 and has raised the question of whether Trunkline can finance the proposed expansion in Docket No. CP64–114 from funds on hand without resort to public financing. Superior further alleges in this connection that our order issued March 9, 1964, in *Trunkline Gas Co.* v. *The Superior Oil Co.*, Docket No. RI64–273, *et al.*, 31 FPC 506, does not dispose of its interest in Trunkline's financial responsibility and thereafter Superior incorporates herein by reference its Motion for Clarification and Petition for Rehearing filed March 16, 1964, in Docket No. RI64–273, *et al.*

(2) Superior alleges that Trunkline's gas purchase contracts with Pan American Petroleum Company (Pan Am) and Union Oil Company of California (Union) have the effect of restraining commerce in that they require Trunkline to purchase gas from Pan Am and Union on a 1 Mcf to 8,000 Mcf basis to the extent that the reserves underlying their leasehold interests in Blocks 14, 15, and 26 Offshore Vermilion Parish, Louisiana, are sufficient to meet Trunkline's additional gas requirements. Superior contends that its failure to file a petition to intervene in the dockets wherein Pan Am and Union sought certificates authorizing their sales to Trunkline does not preclude it from raising the issue of "restraint on commerce" in Docket No. CP64–114. Superior further argues that it was improper for us to characterize the nature of the contractual provisions between Pan Am, Union, and Trunkline when the interpretation of those contracts was a dispute in controversy regarding which Superior is entitled to be heard, as well as to have the opportunity to present evidence and file briefs. Finally, Superior alleges that its proposed sale to American Louisiana Pipe Line Company in Docket No. G–6067, even if approved by the Commission, will not commit all of its reserves in Block 14 Offshore Vermilion Parish, Louisiana, to American Louisiana.

(3) Superior next contends that the Commission ignored the gas-supply issue raised in its petition to intervene. Superior points out that Trunkline's claim of having a 13-year gas deliverability is subject to question because of Trunkline's breach of its gas purchase contracts (Superior's FPC Gas Rate Schedules Nos. 1 and 3) with Superior. Superior states that Trunkline's action as to these contracts would justify Superior's cancellation of the contracts, subject only to regulatory approval. Since Trunkline has relied upon the gas

reserves committed under these contracts as a part of its total gas supply supporting its expansion proposal, at least a substantial portion of Trunkline's gas supply is in danger of being lost. According to Superior, the Commission's refusal to grant Superior's petition to intervene has left unanswered the question of how long Superior's gas will be available to Trunkline.

(4) The last issue raised by Superior is that Trunkline was willfully and deliberately refusing to abide by valid and effective Commission orders at the time its application in Docket No. CP64–114 was filed. Superior contends that since a finding that an applicant is willing and able to conform to the provisions of the Natural Gas Act and to the Commission's regulations thereunder is a necessary element to be considered by the Commission prior to the issuance of a certificate, it is essential that the Commission make such determinations without mere reliance upon allegations made by Trunkline in support of the granting of its application.

As to the first issue raised by Superior, that is, the question of Trunkline's ability to meet its financial obligations, particularly its ability to pay Superior the amount of $2,000,000 which Trunkline allegedly owes for gas delivered by Superior under its Rate Schedules Nos. 1 and 3, it is obvious that Trunkline's financial integrity is in no danger of being impaired as a result of the $9,000,000 expansion proposed in Docket No. CP64–114. In our order issued March 30, 1964, in *Trunkline Gas Co.*, Docket No. RP64–19, 31 FPC 743, we approved Trunkline's proposal to reduce its jurisdictional rates in the sum of approximately $8,600,000 by reason of the reduction in unit costs of operations and a $2,000,000 reduction in cost of gas purchased from Pan Am and Union. We further observed that (31 FPC 744):

> Trunkline's rate reduction proposal has resulted from conferences with the Commission staff. These conferences were initiated by letter of the Executive Director to Trunkline on September 6, 1963, as a consequence of the staff's continuing supervision of natural gas companies and the periodic review of the reports filed with the Commission by such companies.

Our staff's continual review of the financial condition of the companies subject to the Commission's jurisdiction is certainly adequate basis for providing us with knowledge from which to conclude that there is no merit to Superior's allegations that Trunkline's financial responsibility will be seriously impaired merely because it has sought to embark upon an expansion program at a cost of approximately $9,000,000.

Superior's second contention to the effect that Trunkline's contracts with Pan Am and Union result in restraint of commerce is not a matter properly to be considered in this case. We have already indicated that we do not consider the reserve redetermination clauses in these contracts to be unusual or in restraint of trade any more than the many other gas sales contracts which provide that the purchasers will agree within limits to buy gas from newly added wells or acreage before they seek other sources of supply. But in any event this question relates to the sales to Trunkline which have already been certificated without protest by Superior and this final order cannot be collaterally attacked in the pipeline expansion proceedings.

Superior's third contention is that some of Trunkline's gas reserves are in danger of being lost because of Superior's asserted legal right to cancel the contracts which Trunkline has allegedly breached. But even assuming Superior has a contractual right to cancel its contracts with Trunkline, it cannot terminate service under the Natural Gas Act without first seeking abandonment authority from the Commission pursuant to Section 7(b) of the Act. If such abandonment would jeopardize Trunkline's ability to serve its customers' requirements, it clearly would not be consistent with the public convenience and necessity.

Superior's fourth and final ground for being permitted to intervene in Docket No. CP64–114 is based upon the allegation that Trunkline's refusal to pay Superior the full prices in effect subject to refund under the latter's Rate Schedules Nos. 1 and 3 prior to our determination of its duty to do so demonstrated its incapacity or unwillingness to comply with the Natural Gas Act and the Regulations of the Commission adopted pursuant thereto. When we issued our order of March 9, 1964, in Docket No. RI64–273, *et al.*, we ordered Trunkline to pay Superior the prices in effect subject to refund. Since Trunkline filed on March 31, 1964, a report of refunds in compliance with our order issued March 9, 1964, and since this is the only situation, to our knowledge, where it has been alleged that Trunkline has failed to comply with the Act or the Commission's Regulations, it does not appear that the Commission erred in finding in the order issued March 20, 1964, in Docket No. CP64–114 that Trunkline was able and willing to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the petition for rehearing filed by Superior set forth no new facts or principles of law which were not fully considered by the Commission when it adopted its order issued herein on March 19, 1964, or which having now been considered warrant any change or modification in said order.

The Commission orders:

The "Petition for Rehearing" of The Superior Oil Company filed April 6, 1964, in Docket No. CP64–114 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64–160; KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP-64-137

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1964)

On January 13, 1964, as amended on March 2, 1964, and on December 11, 1963, as amended on February 24, 1964, Colorado Interstate Gas Company (Colorado Interstate) and Kansas-Colorado Utilities, Inc., (Kansas-Colorado) hereinafter referred to as (Applicants) filed in Docket Nos. CP64–160 and CP64–137, respectively, applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas as hereinafter described, all as more fully described in the applications on file herein.

Colorado Interstate seeks authorization for metering facilities necessary to enable it to sell and deliver natural gas to Kansas-Colorado from its system in New Mexico. The estimated cost of such facilities is $7,057 which costs are to be financed from funds on hand. The sale of natural gas will be made on an interruptible basis by Colorado Interstate under its Rate Schedule IS-2 (21.5 cents per Mcf).

Kansas-Colorado proposes to construct and operate 3.15 miles of 6⅝-inch transmission pipeline extending from a point of connection with Colorado Interstate's facilities in Union County, New Mexico, to a point of connection with Felt Water Development Company (Felt Water) in Cimarron County, Oklahoma, together with a measuring and regulating station at this point. The estimated cost of such facilities is $36,080, to be financed from current working funds.

The volume of gas which Kansas-Colorado proposes to purchase from Colorado Interstate for resale to Felt Water for irrigation and other purposes is 173,465 Mcf per annum (third year estimate) on an interruptible basis under its proposed Rate Schedule I-1 (24.5 cents per Mcf).

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, as amended, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) Applicant, Kansas-Colorado Utilities, Inc., is a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" as heretofore found by the Commission in its order of December 8, 1958, in Docket No. G-15991 (20 FPC 793).

(3) The facilities heretofore described, as more fully described in the applications, as amended, in these proceedings, are to be used for the transportation, sale and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Colorado Interstate and Kansas-Colorado, respectively, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Colorado Interstate's and Kansas-Colorado's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Colorado Interstate Gas Company and

Applicant, Kansas-Colorado Utilities, Inc., to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the respective applications, as amended, in Docket Nos. CP64-160 and CP64-137, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Colorado Interstate's and Kansas-Colorado's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in operation, as provided by paragraph (b) of Section 157.20 above mentioned, within six months from the date on which this order issues.

LETTER-ORDER REJECTING RATE FILING

MAY 6, 1964*

WILLIAM HERBERT HUNT TRUST ESTATE,
700 Mercantile Bank Building,
Dallas 1, Texas.

Attention: Donald K. Young, Attorney.

GENTLEMEN: This is with reference to your letter dated April 3, 1964, transmitting for filing a purported notice of change in rate, also dated April 3, 1964, as a supplement to your FPC Gas Rate Schedule No. 11.

Since the instant notice does not change the 18.0¢ rate presently being collected, it does not constitute a change in rate within the meaning of Section 4(d) of the Natural Gas Act and the filing is hereby rejected pursuant to Section 154.100 of the Commission's Regulations under the Natural Gas Act. All available copies are returned herewith.

By direction of the Commission.

*Rehearing denied July 2, 1964, 32 FPC 14. Affirmed, *sub nom. Continental Oil Co., et al.* v. *F.P.C.*, — F. 2d — (CA5–1967).

LETTER-ORDER REJECTING RATE FILING

MAY 6, 1964*

LAMAR HUNT TRUST ESTATE,
700 Mercantile Bank Building,
Dallas 1, Texas.

Attention: Donald K. Young, Attorney.

GENTLEMEN: This is with reference to your letter dated April 3, 1964, transmitting for filing a purported notice of change in rate, also dated April 3, 1964, as a supplement to your FPC Gas Rate Schedule No. 9.

Since the instant notice does not change the 18.0¢ rate presently being collected, it does not constitute a change in rate within the meaning of Section 4(d) of the Natural Gas Act and the filing is hereby rejected pursuant to Section 154.100 of the Commission's Regulations under the Natural Gas Act. All available copies are returned herewith.

By direction of the Commission.

*Rehearing denied July 2, 1964, 32 FPC 14. Affirmed, *sub nom. Continental Oil Co., et al.* v. *F.P.C.*, — F. 2d — (CA5–1967).

LETTER-ORDER REJECTING RATE FILING

May 6, 1964*

Hunt Oil Company,
700 Mercantile Bank Building,
Dallas 1, Texas.

Attention: Donald K. Young, Attorney.

Gentlemen: This is with reference to your letter dated April 3, 1964, transmitting for filing a purported notice of change in rate, also dated April 3, 1964, as a supplement to your FPC Gas Rate Schedule No. 55.

Since the instant notice does not change the 18.0¢ rate presently being collected, it does not constitute a change in rate within the meaning of Section 4(d) of the Natural Gas Act and the filing is hereby rejected pursuant to Section 154.100 of the Commission's Regulations under the Natural Gas Act. All available copies are returned herewith.

By direction of the Commission.

*Rehearing denied July 2, 1964, 32 FPC 14. Affirmed, *sub nom. Continental Oil Co., et al.* v. *F.P.C.*, — F. 2d — (CA5–1967).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

JOHNSON RANCHO COUNTY WATER DISTRICT, PROJECT NO. 2240; YUBA COUNTY WATER AGENCY, PROJECT NO. 2246

ORDER DISMISSING APPLICATIONS FOR PRELIMINARY PERMIT

(Issued May 6, 1964)

On December 16, 1957, L. Cedric Macabee of Palo Alto, California, succeeded by Johnson Rancho County Water District, Wheatland, California, filed an application for preliminary permit for a proposed hydroelectric development, Project No. 2240, on the Yuba River and tributaries in Sierra, Nevada, and Yuba Counties, California.

On May 19, 1958, Yuba County, succeeded by Yuba County Water Agency, filed an application for preliminary permit for a proposed hydroelectric development, Project No. 2256, on the Yuba River and tributaries in Sierra, Nevada, and Yuba Counties, California.

The Commission having by order of May 16, 1963, 29 FPC 1002, as modified by order of December 27, 1963, 30 FPC 1610, issued a license to Yuba County Water Agency for Project 2246 after due notice and hearing, and said license having been accepted by the licensee on February 3, 1964, the above-entitled applications for preliminary permit, both of which contemplated project works in the same stretch of the Yuba River for which a license has now been issued, are hereby dismissed as moot.

LETTER-ORDER REJECTING RATE FILING

May 6, 1964*

Placid Oil Company,
600 Beck Building,
Shreveport, Louisiana.

Attention: Mr. Paul W. Hicks.

Gentlemen: This is with reference to your letter dated April 6, 1964, transmitting for filing a purported notice of change in rate, dated April 3, 1964, as a supplement to your FPC Gas Rate Schedule No. 22.

---

*Rehearing denied July 2, 1964, 32 FPC 14. Affirmed, *sub nom. Continental Oil Co., et al.* v. *F.P.C.*, — F. 2d — (CA5–1967).

Since the instant notice does not change the 18.0¢ rate presently being collected, it does not constitute a change in rate within the meaning of Section 4(d) of the Natural Gas Act and the filing is hereby rejected pursuant to Section 154.100 of the Commission's Regulations under the Natural Gas Act. All available copies are returned herewith.

By direction of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–94; TEXACO INC., CI64–475

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1964)

On October 18, 1963, Texas Gas Transmission Corporation (Texas Gas) filed, in Docket No. CP64–94, an application for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act, for authority to construct and operate approximately 13.5 miles of 26-inch pipeline and one meter station to connect a new gas supply to its system from Texaco Inc. (Texaco) from reserves located in offshore Vermilion Parish, Louisiana.

On October 22, 1963, Texaco filed, in Docket No. CI64–475, an application for a certificate of public convenience and necessity, pursuant to Section 7 of the Act, for authority to sell one trillion cubic feet of natural gas to Texas Gas from specifically dedicated reserves in the Tiger Shoal, Lighthouse Point and Mound Point Fields, offshore Vermilion Parish, Louisiana, under the terms of a contract dated October 10, 1963.

Notice of both applications was issued by the Commission and published in the Federal Register.[1]

Petitions to intervene and notices of intervention were filed by:

Public Service Commission of New York
Long Island Lighting Company
Memphis Light, Gas and Water Division of the City of Memphis, Tennessee
Texas Gas Transmission Corporation
Philadelphia Gas Works Division of the United Gas Improvement Company

An offer of settlement was submitted by Texaco on February 27, 1964, and supplemented March 17, 1964.

No party has indicated opposition to the issuance of certificates of public convenience and necessity as proposed in the applications and supplemented by the final offer of settlement.

Docket No. CI64–475

A portion of the dedicated reserves herein is located in the Offshore Federal Domain (Zone 2) and a portion is located in the South Louisiana Area (Zone 1) within the taxing jurisdiction of the State of Louisiana.

---

[1] Notice of the application in Docket No. CI64–475 was issued October 29, 1963 (28 F.R. 11752) and notice of the application in Docket No. CP64–94 was issued March 20, 1964 (29 F.R. 3790).

Under the terms of the application as supplemented by the final offer of settlement, the proposed initial price is 20.625 cents per Mcf for that portion of the gas produced from the South Louisiana Area and 19.0 cents per Mcf for the gas produced from the Offshore Federal Domain. These prices include present taxes, but Texaco would be entitled to file for reimbursement of 50 percent of any new or additional taxes. The initial price shall be effective until January 1, 1972, with a 1.0 cent per Mcf periodic increase each five years thereafter for the duration of the 25-year contract.

Delivery is to be made at the outlet of Texaco's processing plant to be located in the Erath Field, Vermilion Parish, Louisiana.

The contract specifically provides, among other things, that no more than 17 percent of the total annual volumes shall be from the South Louisiana Area, and gas in excess of one trillion cubic feet of reserves located in the South Louisiana Area and/or volumes of "Economically Recoverable Reserves" located in the South Louisiana Area in excess of 17 percent of the total "Economically Recoverable Reserves" dedicated are considered surplus reserves and are exempted from the contract.

At any time during the first ten contract years, seller may propose, subject to buyer's acceptance, a reserve substitution of an equal volume of gas from some other reservoir or reservoirs. This period may be extended for whatever time necessary, for at least three years following the date of final demarcation between the State of Louisiana and the Offshore Federal Domain.

The contract contains a downward Btu adjustment provision, but no provision for upward Btu adjustment.

The following daily contract quantities will be available to Texas Gas:

Contract year ending	Contract quantity (Mcf)	Minimum quantity (Mcf)
11-1-65	35,714	25,000
11-1-66	71,429	50,000
11-1-67	107,143	75,000
11-1-68	142,857	100,000
Thereafter	178,571	125,000

During the first five contract years, buyer must take or pay for the total sum of the daily minimum quantities determined at the end of the five year period, with no future make-up period. After November 1, 1969, buyer must take or pay for a yearly volume equal to the minimum quantity times the number of days in the year, with a make-up period of five years.

Buyer may request and seller agrees to deliver 125 percent of the daily contract quantity, if available, but not in excess of regulatory allowables. If seller is unable to deliver the contract quantity, the contract and minimum quantities may be redetermined.

Docket No. CP64–94

Texas Gas is seeking a certificate authorizing the construction and operation of facilities necessary to connect the new gas supply to its general system.

The acquisition of these reserves is not contingent upon any expansion program of Texas Gas and will not create any obligation to pay for gas not taken under any gas purchase contract. The cost of the facilities is estimated to be $1,552,700 and will be financed from cash on hand.

The new supply is expected to increase the deliverability life of Texas Gas from 10 years to 12 years.

At a meeting held on May 1, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Texaco Inc. and Texas Gas Transmission Corporation are "natural-gas" companies within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas by Texaco Inc. is subject to the jurisdiction of the Commission and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Texaco Inc. is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale proposed by Texaco Inc., together with the construction and operation of any facilities, subject to the jurisdiction of the Commission and necessary therefor, are required by the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The facilities described above and more fully described in the application of Texas Gas Transmission Corporation in Docket CP64–94 will be used for the transportation of gas in interstate commerce as integral parts of the pipeline system of Texas Gas and their construction and operation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Texas Gas is able and willing to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act and the rules and regulations thereunder.

(7) The proposed construction and operation of facilities and transportation proposed by Texas Gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Texas Gas Transmission Corporation to construct and operate the facilities described above and more fully described in the application in Docket No. CP64–94 to connect a new gas supply to its system from Texaco Inc. from reserves located in offshore Vermilion Parish, Louisiana.

(B) A certificate of public convenience and necessity is hereby issued to Texaco Inc. in Docket No. CI64–475 for the sale of natural gas in interstate commerce for resale as proposed in its application and specifically modified by the offer of settlement as supplemented (which we shall treat as an amendment to such application) and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Texaco's application and the settlement offer submitted herein. The certificate issued by this paragraph is not transferable and shall be effective only so long as Texaco continues the acts or operations

hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission and shall be accepted in writing and under oath within thirty days after the issuance of this order.

(C) At such time as Texaco shall deliver volumes of gas from a reservoir other than those specifically referred to herein, it shall report to the Commission the name and location of such gas supply.

(D) The general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, shall attach to the issuance of the certificate granted in paragraph (A) hereof and to the exercise of the rights granted thereunder.

(E) The time within which the facilities hereby authorized in Paragraph (A) shall be constructed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission's Regulations is hereby fixed at 12 months from the date on which this order issues.

(F) The certificate issued by paragraph (A) to Texas Gas is conditioned upon Texaco accepting the certificate issued to them within thirty days after the date of this order as provided in paragraph (B) herein.

(G) The certificate issued by paragraph (B) above is granted upon the express condition that Texaco comply fully with the terms of this order and the settlement offer as supplemented and filed herein, which supplemented settlement is expressly approved under the conditions of this order.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Rules and Regulations thereunder, requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provisions in the gas purchase contract herein involved.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TURLOCK IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT, PROJECT NO. 2299

ORDER MODIFYING OPINION NO. 420 AND DENYING APPLICATIONS FOR REHEARING

(Issued May 6, 1964)

Applications for rehearing of the Commission's Opinion No. 420 and accompanying order issued in this proceeding on March 10, 1964, 31 FPC 510, have been filed by the applicants, Turlock and Modesto, by the California Department of Fish and Game, and by the Secretary of the Interior.

The applicants do not object to the issuance of the license, but they do seek clarification of what they consider to be certain ambiguities in Opinion No. 420, and the correction of several minor errors in the wording of Article 38 of the license. The applicants are correct in stating that we have not made any adjudication that water for fish is to be assured ahead of water needed to satisfy rights to water for irrigation and municipal uses. No such adjudication was made because, in our judgment, there will be adequate water in the

Tuolumne River to satisfy the essential requirements of all interested parties for a period of 20 years, at the end of which we shall hold further hearings to determine the amount of water which the applicants should be required to release downstream for maintenance of the fishery. Opinion No. 420 clearly states that the releases which the applicants are now required to make will be subject to modification at the end of the 20-year period to assure the continuing feasibility of the New Don Pedro project; there is no assurance, however, that the applicants and San Francisco will thereafter be free to use the waters of the river for irrigation and municipal purposes without limit. For the reasons spelled out in Opinion No. 420, the allocation of river waters which will best serve the public interest within the limits permissible under law appropriately should and will be made when and if the need for such allocation arises.

We do not anticipate conflicting demands for the Tuolumne waters during the first 20 years of the license, insofar as irrigation, municipal, and fish uses are concerned, if the project is operated to maximize the water available for these purposes. The applicants challenge this, and have submitted as an appendix to their application for rehearing a table similar to Exhibit No. 207, but using the fish releases required in Opinion No. 420. This table, they contend, shows that the fish releases required will cause an impairment of their basic irrigation requirements in several years during the 20-year period. The applicants' calculations are based on the reservoir draft schedules set out in Exhibit No. 99 and the proposed reservoir operation contained in Exhibit No. 100. Under the applicants' Schedule A (Exhibit No. 99), provision is made for releases of 1,420,000 acre feet, of which 1,200,000 acre feet is for irrigation and 220,000 acre feet is for other purposes (power). Under Schedule B (Exhibit No. 99), provision is made for releases of 1,105,000 acre feet, of which 62,000 acre feet could be used for purposes other than irrigation. If the additional water which is provided for or permitted to be used for purposes other than irrigation under Schedules A and B were put to use for fish releases, either for current use or the unused portion stored for use in subsequent years, there will be sufficient water to make the fish releases required and to meet the applicants' irrigation needs under the reservoir operation set forth in Exhibit No. 100. Moreover, the applicants' present irrigation needs are about 1,000,000 acre feet a year and not the 1,200,000 acre feet provided for in Schedule A; and these needs should continue at about 1,000,000 acre feet a year for the foreseeable future, *i.e.* until additional lands are put to use for irrigation.

The water studies in this case are based on a given hydrologic cycle of 39 years. It is always possible that there could be unusually dry years which would cause a critical water condition, and that a conflict between the basic needs of the applicants and San Francisco for irrigation and municipal purposes and the requirement of Opinion No. 420 for fish releases could arise. Article 28 of the license provides for a proportional reduction of fish releases in dry years; but if this reduction is not sufficient to satisfy the applicants' needs, the applicants would have to seek a modification of the license requirements to meet the emergency. We do not expect this situation to arise, but if it should we would consider such modification of the license to the extent shown to be necessary in the public interest.

The applicants question their ability to fill the reservoir under certain circumstances. Opinion No. 420 makes no provision for filling the reservoir; however, should the applicants encounter trouble, they can always ask for temporary relief from the fish release requirements during the filling period. In a good water year the applicants should have no problem.

The applicants point to certain errors in Article 38 of the license. The following corrections should be made:

(1) Article 38(a): Insert the words "at least" before "4,500 cfs."

(2) Article 38(b)(2): Change the figure "4" to "10" in the phrase "in excess of 4 inches provided in paragraph (b)(1)."

The California Department of Fish and Game and the Secretary of the Interior object to Opinion No. 420 and accompanying order on several grounds. They argue first that the Commission has given the applicants a license without any real restriction insofar as protection of salmon runs is concerned. There is no substance in this argument. The applicants are required to make fish releases for 20 years as specified, and in so doing they are giving up considerable value in terms of power benefits which would otherwise be realized, as well as in the unrestricted use of the water for irrigation. Moreover, at the end of the 20-year period the applicants will be required to make such further releases for fish purposes as the Commission finds to be necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the Act.

California and the Secretary contend that burden of proving the need for further releases at the end of the 20-year period has been put on them, whereas the burden should be on the applicants to show that further releases are not required. We did not put any burden of proof on any party, but if a further hearing is had, all parties will have a burden to bear with respect to coming forward with relevant evidence to aid our determination. It is not unreasonable that this should be so, since this is not a case where the licensing of the project will create a fish problem. As Opinion No. 420 makes clear, this project will greatly relieve an existing situation in which the fish would soon be destroyed if the project were not built. Even without the prescribed fish releases, the construction of the new project would be beneficial to the salmon runs; and with the required releases, there will be a maximum use of the river for the benefit of all interests. Under these circumstances, and as provided in Opinion No. 420, the fish interests will have the primary obligation for showing the need for continuing releases from New Don Pedro at the end of the 20-year period if such releases are to be ordered. The applicants, however, will have to show, *inter alia*, the water required to maintain the economic feasibility of their project; the water available at New Don Pedro for irrigation, power, and conservation purposes; the availability of any alternative sources of water for such purposes or other alternative solutions to the fish problem as it may then exist; and their then existing and expected future needs for water for irrigation purposes. San Francisco will also be required to make a showing of its then existing and expected future needs for water for municipal purposes, and to demonstrate the interrelation of New Don Pedro with the operation of its Hetch Hetchy municipal water supply and power system.

California and the Secretary also question the burden put on them of finding and financing future solutions to the fish problem. With respect to the interim studies of alternative methods of preserving the fish, it is in the interest of all of the parties to cooperate in finding a mutually agreeable solution. Our order cannot bind California or the Secretary of the Interior to undertake such studies or to contribute to their cost. We do, however, expect that these parties will cooperate with the applicants in the interest of conservation. Article 39 directs the applicants to make such studies with the cooperation of California and the Secretary. It is also our expectation that the cost of such studies will be shared. In order that a plan or program for such studies will be forthcoming, we shall amend Article 39 to require the applicants to develop such a plan or program in cooperation with California and the Secretary, and to file it with the Commission for approval within one year from the effective date of the license. The plan should outline the studies to be undertaken and the responsibility to be assumed by each of the parties in carrying it forward. In response to a question of the applicants' financial obligation with respect to the construction, maintenance, and operation of fish facilities which may be found to be required, we refer the parties to Article 10 of the license.

Both California and the Secretary renew the arguments made in their briefs and exceptions that the record should be reopened for evidence of San Francisco's upstream power benefits, and that San Francisco should be required to become an applicant for a license. Ordinarily we do not require a party to join as an applicant for a license unless the party has a proprietary interest in the project works. San Francisco has no such interest here. It is contracting for water storage for municipal purposes and Raker Act releases in much the same way as the Federal government, through the Corps of Engineers, contracts for flood control storage. San Francisco has no interest whatsoever in the power to be developed at New Don Pedro, and any upstream benefits which it may realize will be only incidental to the main purpose of its participation, which is to acquire additional municipal water storage. Moreover, as we have found, there is no reasonable basis for believing that any substantial upstream benefits will be realized. The interveners have not shown sufficient cause to justify reopening the case at this time.

The Commission further finds:

Except as found above, the assignments of error and grounds for rehearing set forth in the applications for rehearing present no new facts or principles of law which were not fully considered by the Commission when it adopted Opinion No. 420 and accompanying order, issued March 10, 1964, or which having now been considered warrant any change or modification of said opinion or order.

The Commission orders:

(A) Article 38(a) of the license issued to the applicants by Opinion No. 420 and accompanying order is hereby amended by inserting the words "at least" before "4,500 cfs."

(B) Article 38(b)(2) is hereby amended by substituting the figure "10" for the figure "4" in the phrase "in excess of 4 inches provided in paragraph (b)(1)."

(C) Article 39 is hereby amended by substituting the following:

Article 39. The Licensees in cooperation with the California Department of Fish and Game and the Department of the Interior shall make necessary studies aimed at assuring continuation and maintenance of the fishery of the Tuolumne River in the most economical and feasible manner. Such studies shall be completed prior to the end of the 20-year period for which minimum stream flows have been provided in Article 37. The Licensees shall develop in cooperation with the California Department of Fish and Game and the Department of the Interior a program for the making of such studies and for financing their cost. The program shall be submitted for Commission approval within one year from the effective date of this license.

(D) In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward. and David S. Black.

CONTINENTAL OIL COMPANY, DOCKET NO. CI63-979

ORDER GRANTING STAY

(Issued May 7, 1964)

By telegram filed May 5, 1964 and supplemented May 6, 1964, United Gas Pipe Line Company has requested a stay of our Opinion and Order No. 426 issued May 5, 1964, *supra*, p. 1079. There we determined that United's action in ceasing to utilize certain jurisdictional purchase facilities in the Johnson Bayou Field constituted an abandonment within Section 7(b) of the Natural Gas Act; we ordered United to renew operation of the facilities; and we required that purchases will be made at the rate specified in Continental's Supplement No. 7 to its FPC Gas Rate Schedule No. 115. By telegram filed May 6, 1964, Continental Oil Company has answered United's telegraphic request.

Because this is a case of first impression, because United states that it will file an application for rehearing, and because it appears that United might be irreparably injured if our order should be modified, we shall grant the stay requested.

The Commission orders:

United's request for a stay of the Commission's Opinion No. 426 and Order issued May 5, 1964, is granted until issuance of the Commission's order upon United's application for rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R Ross, and David S. Black.

CROW DRILLING COMPANY, INC., DOCKET NOS. G-6622 AND G-8510; JAMES D. MADOLE, ET AL., DOCKET NO. G-20196; DAVID CROW, TRUSTEE, DOCKET NO. G-20188; DAVID CROW, AGENT, DOCKET NO. G-20189.

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued May 7, 1964)

On November 12, 1963, James D. Madole, *et al.*, David Crow, Trustee and David Crow, Agent (Madole), successors to Crow Drilling Company, Inc., (Crow), submitted an offer of settlement in the above-entitled proceedings, the details of which are set forth in Appendix A hereof.[1] The rates involved here relate to sales from the Maxie Pistol Ridge Area of Mississippi to United Gas Pipe Line Company.

---

[1] Except for sales under David Crow, Trustee FPC Gas Rate Schedule No. 3, which relates to sales to Transcontinental Gas Pipe Line Corporation from the Kinder Field in Allen Parish, South Louisiana involved in Docket No. G-20088, the proposal covers all of the rate proceedings in which Madole is involved. Madole states that due to certain administrative problems it is not possible at the present time to dispose of Docket No. G-20088.

In summary, the settlement proposal submitted by Madole provides;

(1) The rate increases under James D. Madole, *et al.*, Rate Schedule No. 1 (G-20196), David Crow, Trustee Rate Schedule Nos. 4 and 5 (G-20188) and David Crow. Agent Rate Schedule No. 7 (G-20189) will be withdrawn.

(2) The effective rate under each of the rate schedules in (1) above will be 20¢ per Mcf, the initially certificated rate under all of the above rate schedules except for Madole's Rate Schedule No. 1.

(3) There will be a 30 month moratorium on the filing of future rate increases from June 1, 1963 through November 30, 1965.

(4) Rate increases may be filed if contractually authorized to the extent of any adjustment in area rate levels through hearing or amendment of the Commission's Statement of General Policy No. 61-1.

(5) Refunds with applicable interest under each rate schedule of the difference between the revenues collected subject to refund and those which would have been collected at the settlement rate for the entire refund period.

No protests or objections have been filed to the offer. The estimated total dollars to be refunded approximates $62,395, exclusive of interest. The estimated annual reduction in rates is approximately $17,107.

With the exception of the 20¢ rate proposed under Madole's FPC Gas Rate Schedule No. 1,[2] which was certificated at an initial rate of 15.0¢ per Mcf, the terms advanced in Madole's offer are consistent with the recent rate settlements accepted by the Commission. There are, moreover, certain extenuating circumstances which justify acceptance of the proposed settlement rate for the lone exception above. The original contract entered into between Crow, Madole's predecessor, and United for this sale provided for an initial rate of 20.0¢ per Mcf. However, the parties therein agreed to an interim rate of 15¢ per Mcf for a period of 7 months to allow United to recoup a portion of its construction costs in the field. Gulf Oil Corporation also entered into a similar arrangement with United. In granting Gulf a 20¢ per Mcf rate for its sale,[3] we stated:

> The rate agreed upon by the parties is below the applicable area initial ceiling (21.5¢ for Mississippi). We have considered all of the circumstances surrounding this sale and find them to be similar to others where we have in such circumstances regarded the increased rate to be in the nature of the initial rate . . . Therefore, we find the settlement rate of 20¢ per Mcf to be proper and approve the same.

Because of the similarity between the Gulf situation and the situation here, we conclude that a settlement rate of 20¢ for this sale by Madole is appropriate.

We believe the instant settlement proposal meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Madole's rates and rate schedules.

---

[2] Prior to the transfer to Madole, the subject sale was made pursuant to Crow's FPC Gas Rate Schedule No. 2 at an increased rate of 20¢ which was involved in Docket Nos. G-6622 and G-8510. Madole proposes to also dispose of Crow's proceedings herein.

[3] See order issued April 25, 1963, in Gulf Oil Corporation, *et al.*, Docket No. G-9520, *et al.*

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Madole on November 12, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Madole November 12, 1963, is hereby approved in accordance with the provisions of this order.

(B) Madole shall, within 30 days from the date of issuance of this order, make such filings under its rate schedules as are required to make effective the terms of its settlement proposal.

(C) Madole shall refund to United with interest as specified in each docket computed to the date of actual refund the difference between the rates collected subject to refund under the rate schedules herein and the settlement rates, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from United with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Madole has complied with the terms and conditions of the order, the settlement rates specified in Madole's offer of settlement as set forth in Appendix A hereto shall be effective as of the date of issuance of this order, and the above designated proceedings shall be deemed terminated.

(E) The acceptance by the Commission of Madole's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Madole including area rate or other similar proceedings.

APPENDIX A

Producer	Rate schedule No.	Section 4(e) docket No.	Present rate [1] (cents)	Effective date	Settlement rate (cents)	Last clean rate (cents)
Crow Drilling Co.	2	G-6622, G-8510	20.0	4/15/55	20.0	15.0
James D. Madole, *et al.*	[2] 1	G-20196	24.0	4/26/60	20.0	15.0
David Crow, Trustee	4	G-20188	24.0	4/26/60	20.0	20.0
David Crow, Trustee	5	G-20188	24.0	4/26/60	20.0	20.0
David Crow, Agent	7	G-20189	24.0	4/26/60	20.0	20.0

[1] At 15.025 psia and includes tax reimbursement.

[2] Madole succeeded to Crow's interest in the sale made under Crow's FPC Gas Rate Schedule No. 2.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2354

ORDER ISSUING LICENSE (MAJOR)

(Issued May 7, 1964)

Application was filed on March 18, 1963 by Georgia Power Company (Applicant) of Atlanta, Georgia, for a license under the Federal Power Act (Act) for constructed Project No. 2354, known as the North Georgia Development, located on Tallulah and Tugalo Rivers, in Rabun, Habersham, and Stephens Counties, Georgia, and Oconee County, South Carolina.

The project consists of six developments as follows: Burton, Nacoochee, Mathis-Terrora, and Tallulah Developments on the Tallulah River, and Tugalo and Yonah Developments on the Tugalo River. A predecessor company of Applicant commenced construction of the Tallulah Development in 1911 and the first of the original five generating units at Tallulah went into operation in September, 1913. The sixth unit at Tallulah was installed in 1920. Mathis storage reservoir was completed in 1915 and the Terrora powerhouse addition thereto was built in 1925. Burton dam and reservoir were completed in 1919, and power installation was made in 1927. Tugalo Development began operating in 1923, Yonah in 1925, Nacoochee in 1926, and Burton in 1927. An earth dyke was built at Mathis in 1956 to replace the original concrete dyke structure. The total power capacity of the project is 166,420 kilowatts.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 and Order issuing license to Public Service Company of New Hampshire for Project No. 2288 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1956 and a termination date of December 31, 1993.

The Tallulah and Tugalo Rivers form parts of the headwaters of the Savannah River. The uppermost plant of the integrated series of power developments comprising Project No. 2354 is Burton on the Tallulah River at river mile 369, and the lowermost plant, Yonah, is situated on the Tugalo River at river mile 340, less than one mile upstream from the confluence of Panther Creek with the Tugalo River. According to available records the Tugalo River has been navigated by pole boats 70 to 80 feet long and 7½ feet wide from its confluence with the Savannah River as far upstream as the mouth of Panther Creek at mile 339.6. The uppermost reservoir, Burton Lake, contains 87,000 acre-feet of usable storage in the 50 feet of drawdown. The lowermost Yonah Development on the Tugalo immediately upstream from Panther Creek, when peaking and in participation with the series of upstream developments, will sharply fluctuate the stage and flow of the Tugalo River in its navigable reach.

The Secretary of the Army and the U.S. Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory, and the plans were approved pursuant to the provisions of Section 4(e) of the Act.

The Department of the Interior recommended for inclusion in any license issued for the project certain conditions in the interests of the Department.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) The Tallulah and Tugalo Rivers are streams over which Congress has jurisdiction under its authority to regulate interstate and foreign commerce.

(3) Applicant is a corporation organized under the laws of the State of Georgia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license.

(4) Public notice of the application has been given as required by the Act. No protests have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(7) The step-up substations, generator leads and appurtenant facilities, included in the application for license, and described in paragraph (B) below, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The following described transmission lines which were not included in the application for license are parts of the "project" as defined in Section 3(11) of the Act and should be included in the license as hereinafter provided:

Lines	Kv	Approximate length (miles)
1. Burton-Nacoochee	38	3.8
2. Nacoochee-Terrora (2)	38	6.0
3. Terrora-Dillard	38	14.0
4. Terrora-Tallulah Lodge	110	2.3
5. Tallulah Falls-Tallulah Lodge (2)	110	2.0
6. Tugalo-Tallulah Lodge	110	5.0
7. Tugalo-Commerce	110	35.0
8. Yonah-Commerce	110	29.0
9. Yonah-Commerce to Tallulah Lodge (tap)	110	7.0
10. Tallulah Lodge-Elberton	110	58.0
11. Tallulah Lodge-Gainesville	110	34.0
12. Cornelia-Clarksville	38	7.0

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 221,900 horsepower, and the electric energy generated by the project is used in Applicant's public utility system.

(10) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(11) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license, to the extent thereinafter indicated.

The Commission orders:

(A) This license is hereby issued to Georgia Power Company (Licensee) of Atlanta, Georgia, under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1956 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2354 on the Tallulah and Tugalo Rivers, Georgia and South Carolina, and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2354 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more generally shown and described by an exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J: (FPC No. 2354–1) General Map of Projects

(ii) Project works consisting of dams, reservoirs and powerhouses listed in order, moving downstream:

Burton Development: A concrete gravity dam on the Tallulah River at mile 369, about 135 feet in maximum height and 1,043 feet long including 197 feet of gated spillway. The reservoir at full pond elevation 1,866.6 feet m.s.l. has a surface area of 2,775 acres. Active storage is 87,000 acre-feet. The powerhouse at the toe of the dam has two vertical type Francis turbines, each directly connected to a generator with nameplate capacity of 3,060 kw for a total installed capacity of 6,120 kv.

Nacoochee Development: A concrete gravity dam on the Tallulah River about 90 feet in maximum height and 490 feet long, including 140 feet of ungated spillway. The reservoir at full pond elevation 1,725.5 feet m.s.l. has an area of 240 acres, and no seasonal storage. The powerhouse at the toe of the dam has two vertical shaft propeller type turbines, each directly connected to a generator with nameplate capacity of 2,400 kw for a total installed capacity of 4,800 kw.

Mathis-Terrora Development: A concrete slab and buttress dam on Tallulah River about 125 feet in maximum height and about 597 feet long including 285 feet of gated spillway. There is also an earthfill saddle dike about 370 feet long. The project reservoir has an area of 834 acres at full pond elevation 1,689.6 feet m.s.l. A power tunnel 5,295 feet long conveys water to the powerhouse on Tallulah River which has two vertical units with a total nameplate capacity of 16,000 kw.

Tallulah Development: A concrete gravity arch dam on Tallulah River about 140 feet in maximum height and 426 feet long including gated spillway section, and a reservoir with an area of 63 acres at normal pool elevation of 1,500 feet m.s.l. A 6,665-foot long power tunnel conveys water to the powerhouse on Tallulah River which contains six vertical units with total nameplate capacity of 72,000 kw.

Tugalo Development: A concrete gravity dam on Tugalo River about 170 feet high and 850 feet long, including 357 feet of gated spillway. The reservoir at normal full pond elevation of 891.5 feet m.s.l. has an area of 597 acres. The powerhouse at the toe of the dam houses four vertical shaft units with a total nameplate capacity of 45,000 kw.

Yonah Development: A concrete gravity dam on Tugalo River about 90 feet in maximum height and 980 feet long, including 450 feet of spillway controlled by flashboards. The reservoir has an area of 325 acres at full pond elevation 744.2 feet m.s.l. The powerhouse at the toe of the dam houses three vertical Francis type turbines directly connected to generators having a total nameplate capacity of 22,500 kw.

and appurtenant mechanical and electrical facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 of 16 (FPC No. 2354–2) entitled "North Georgia Development; Burton Project; General Plan, Elevations and Typical Sections of Dam".

Sheet 2 of 16 (FPC No. 2354–3) entitled "North Georgia Development; Burton Project; Floor Plan of Turbine Room, Plan of Generator Deck and Transverse Section".

Sheet 3 of 16 (FPC No. 2354–4) entitled "North Georgia Development; Nacoochee Project; General Plan, Elevations and Typical Sections of Dam".

Sheet 4 of 16 (FPC No. 2354–5) entitled "North Georgia Development; Nacoochee Project; Floor Plans and Transverse Sections".

Sheet 5 of 16 (FPC No. 2354–6) entitled "North Georgia Development; Mathis-Terrora Project; General Arrangement, Details of Intake, Tunnel, & Surge Tank".

Sheet 6 of 16 (FPC No. 2354–7) entitled "North Georgia Development; Mathis-Terrora Project; Powerhouse Plan, Elevation & Transverse Section".

Sheet 7 of 16 (FPC No. 2354–8) entitled "North Georgia Development; Mathis-Terrora Project; Plan and Elevation Penstocks".

Sheet 8 of 16 (FPC No. 2354–9) entitled "North Georgia Development; Mathis-Terrora Project; Plan Elevation and Section Dam".

Sheet 9 of 16 (FPC No. 2354–10) entitled "North Georgia Development; Tallulah Falls Project; General Plan of Project and Typical Sections of Tunnel".

Section 10 of 16 (FPC No. 2354–11) entitled "North Georgia Development; Tallulah Falls Project; Plan and Transverse Section of Powerhouse and Switch House and Section Thru Surge Tank".

Sheet 11 of 16 (FPC No. 2354–12) entitled "North Georgia Development; Tallulah Falls Project; Plan of Dam and Intake, Elevation of Dam and Typical Sections of Dam and Intake".

Sheet 12 of 16 (FPC No. 2354–13) entitled "North Georgia Development; Tallulah Falls Project; General Plan and Profile Along Penstock No. 6".

Sheet 13 of 16 (FPC No. 2354–14) entitled "North Georgia Development; Tugalo Project; General Plan, Elevation and Typical Sections of Dam".

Sheet 14 of 16 (FPC No. 2354–15) entitled "North Georgia Development; Tugalo Project; General Plans of Turbine Room and Generator Room Floors & Transverse Section Thru Powerhouse and Intake".

Sheet 15 of 16 (FPC No. 2354–16) entitled "North Georgia Development; Yonah Project; General Plan, Elevations & Typical Sections of Dam".

Sheet 16 of 16 (FPC No. 2354–17) entitled "North Georgia Development; Yenah Project; Floor Plans & Transverse Section".

Exhibit M: Twelve letter-size sheets giving general descriptions of equipment, except insofar as it states that the transmission lines are excluded from the project.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period January 1, 1956, through December 31, 1963, one (1) cent per horsepower on the authorized installed capacity (221,900 horsepower) plus two and one half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; beginning January 1, 1964, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 221,900 horsepower.

Article 29. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 30. The Licensee shall, within one year from the date of issuance of this license, file in conformity with the Commission's rules and regulations an application for amendment of license to include the transmission lines listed in finding (8) above.

Article 31. The Licensee shall, within one year from the date of issuance of this license, file in conformity with the Commission's rules and regulations Exhibits F and K, showing and describing the project lands and project boundary.

Article 32. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., DOCKET NO. G-8969, ET AL.[1]

ORDER TERMINATING PROCEEDINGS

(Issued May 7, 1964)

On December 30, 1963, we issued an order in these proceedings approving a rate settlement proposal, terminating proceedings and prescribing refunds. The order provided, *inter alia*, that the Section 4(e) proceedings listed in Appendix A to the order, shall terminate upon full compliance by Texaco with all the terms and provisions of the order. Not included among the Section 4(e) proceedings set forth in Appendix A were certain of such proceedings which relate to proposed increased rates, never made effective, under certain of the rate schedules for which settlement rates were approved. Accordingly, it is appropriate that the proceedings concerning such proposed increased rates be severed from related area rate proceedings, and terminated at the same time as the proceedings set forth in Appendix A to the order of December 30, 1963, and under the same terms and provisions.

The Commission finds:

The proposed settlement of the subject proceedings having been approved by order issued December 30, 1963, and the proposed increased rates concerned therein never having been made effective, good cause exists for terminating the proceedings, and for severing certain of the proceedings from related area rate proceedings.

The Commission orders:

Upon full compliance by Texaco Inc. with all the terms and provisions of the order issued herein on December 30, 1963, the Section 4(e) proceedings listed in the appendix hereto shall terminate, and certain of said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR64-1 and AR64-2.

APPENDIX

Rate Schedule Nos.:	*Docket Nos.*	Rate Schedule Nos.:	*Docket Nos.*
2	RI64-266	184	[1] RI64-126
3	RI64-265	200	RI64-264
4	RI64-264	201	[1] RI64-10
5	RI64-264	212	[2] RI64-229
166	RI64-183		

[1] Consolidated with the Area Rate Proceeding, Docket No. AR64-1, *et al.*

[2] This proceeding to be terminated and severed from the Area Rate Proceeding, Docket No. AR64-2, *et al.*, insofar as it pertains to Rate Schedule No. 212.

---

[1] The additional dockets involved herein are set forth in the appendix hereto.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY OF LOUISIANA, PROJECT NO. 2305

ORDER EXTENDING TIME FOR FILING PLAN FOR CLEARING PROJECT RESERVOIR

(Issued May 8, 1964)

On March 13, 1964, Sabine River Authority of Texas and Sabine River Authority of Louisiana, joint licensees for proposed Project No. 2305, filed a joint application for an extension of six months within which to file for Commission approval a plan for clearing the project reservoir. Article 36 of the license requires the filing of such a plan within six months of October 14, 1963, the date of issuance of the license.

In support of their joint application, the licensees point out that under Article 35 of their license, they are required to file within one year of the issuance date of their license, for Commission approval, a proposed recreational use plan for the project "prepared after consultation with appropriate Federal, State, and local agencies [which plan] shall include recreational improvements which may be provided by others in addition to the improvements the Licensees plan to provide." The licensees are working on such a plan and anticipate that the full period of one year will be needed because of the required consultation with interested agencies.

The licensees advise that the contract for construction of the project dam, spillway and other major works is scheduled to be let in April of this year and that four years' construction time for such works is anticipated, as is permitted by the license. Because of heavy rainfall and fast growth characteristics of trees and underbrush in the reservoir area, the joint licensees propose that the clearing be accomplished during the construction period on a time schedule that will minimize "regrowth" prior to closure and filling.

The licensees point out the need for closely coordinating the clearing plan with the recreational use plan. It appears that ample time will be available for clearing after the spring and summer growth period of 1965.

The Commission finds:

In the circumstances recited above, it will not be incompatible with the public interest to grant the requested extension.

The Commission orders:

The time required by Article 36 of the license for Project No. 2305 for submittal of the clearing plan for Commission approval is hereby extended to October 13, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

VIRGINIA ELECTRIC & POWER COMPANY, PROJECT NO. 2009

ORDER CLARIFYING LICENSE

(Issued May 8, 1964)

By letter dated February 4, 1964, Virginia Electric & Power Company has called our attention to the need to clarify the language of its license for Project

No. 2009 by removing an ambiguity apparent in the language set forth in Articles 30 and 31 of the license.

As the licensee correctly points out, an amendment of the license, issued August 21, 1956, established in subparagraph (D)(4) a procedure by which, upon approval of the named State Agency, the licensee could make a proposed disposition of project lands, "without further restriction by this paragraph, but subject to other provisions of the license". Subparagraph (D)(4) included also the provision that the entire project area shall be open to free use by the public, so that after the required clearance under the established procedure, that provision would no longer apply. The licensee points out further that with subsequent amendment of the license (order issued March 25, 1960), the language dealing with free public use of the entire project area was placed separately in Article 30, and the procedure for making disposition of project lands after clearance with the State agency was included in the succeeding Article 31, and the proviso in Article 31 reads that such disposition should be "subject to the other provisions of the license". The words "without further restriction by Article 30 of the license" were omitted in Article 31.

While it does not appear necessary to reserve all project waters and adjacent project lands for public access, (except such as are reserved for reasons of safety and efficient operation of the power facilities), it is desirable that the Commission retain authority to require that the licensee make adequate provision for public recreation as hereinafter provided.

The Commission finds:

In the circumstances, clarification of the license is appropriate and desirable.

The Commission orders:

(A) Article 31 of the license for Project No. 2009 is hereby revised to read as follows:

Article 31(a) After notice to the North Carolina Wildlife Resources Commission or to the Virginia Commission of Game and Inland Fisheries as to project lands in the State of North Carolina or in the State of Virginia, respectively, of a plan for disposition of any interest in project lands, the Licensee may effect the same without further restriction by Article 30 of the license, but subject to the other provisions of the license, unless, within 30 days of any such notice such state agencies shall advise the Federal Power Commission of any objection to the disposition, in which event the matter shall be determined by the Commission: *provided, however*, that until such time as a recreational plan is approved by the Commission pursuant to Article 31(b) hereof, no interest in project lands shall be disposed of without the approval of the Federal Power Commission.

Article 31(b) The Licensee shall, within six (6) months from the date of issuance of this order, file for Commission approval a plan showing the existing and proposed facilities for public utilization of project waters and adjacent project lands for recreational purposes. The plan shall show the location of the project lands and waters for existing and proposed camping, picnicking, bathing, boating, fishing, hunting and similar recreational activities, including sanitary facilities, boat-launching ramps and access roads and trails. The project lands included in the plan as approved will not be available for disposition pursuant to Article 31(a) of this license.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In the acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITY OF ANCHORAGE, ALASKA, PROJECT NO. 2405

ORDER ISSUING PRELIMINARY PERMIT

(Issued May 11, 1964)

Application was filed on September 3, 1963 by the City of Anchorage, Alaska (Applicant), for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2405, to be located on Eagle River, approximately 2 miles upstream from the Glen Highway crossing in the Third Judicial Division, State of Alaska, affecting public lands of the United States in the general vicinity of Anchorage, Eagle River and Chugiak.

As described in the application, the project will consist of: an earth-fill dam creating a reservoir with a maximum elevation of 450 feet; a concrete lined saddle spillway; a steel penstock; a powerhouse at elevation 260 feet, containing a 15,000 kilowatt generating unit; and other necessary appurtenances and structures.

According to the application, power to be generated, estimated at 48,200,000 kilowatt hours annually, will be used as additional energy to augment Applicant's energy requirements and to provide energy and capacity for participation in power pooling arrangements with other generating electric utilities in the area. The development will also include provisions for Applicant's future water supply.

The Secretary of the Army and the Chief of Engineers, in commenting on the application, stated that insertion in the permit of special terms and conditions in the interest of navigation is not considered necessary.

The Department of the Interior, in commenting on the application, recommended for inclusion in any permit issued, special conditions in the interests of the Department.

The Department of Health, Education and Welfare, in commenting on the application, recommended that Applicant consult with the Alaska Department of Health on measures that may be necessary for mosquito control.

The Alaska Department of Fish and Game, in commenting on the application has not recommended any special conditions for inclusion in the permit.

Applicant requests a preliminary permit for a period of 30 months. It appears appropriate, however, that the initial period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit.

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Alaska.

(2) Public notice of the filing of the application has been given and no formal protests or petitions to intervene have been received. However, three informal protests have been received from individuals expressing concern that the proposed project may affect their respective properties or claimed interest therein.

(3) The proposed project will affect public lands of the United States but will not affect any Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to the City of Anchorage, Alaska (hereinafter referred to as the Permittee), for a period of 24 months, effective as of May 1, 1964, for the sole purpose of maintaining priority of application for a license for Project No. 2405, affecting public lands of the United States, subject to the terms and conditions of the Act which is incorporated by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is also subject to the terms and conditions set forth in Form P-1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303-1305), which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Alaska Department of Fish and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss or damage to those resources, and (3) to develop and improve those resources where practicable.

Article 11. The Permittee shall, during the period of project planning, consult with the Department of Anthropology at the University of Alaska, College, Alaska, to determine the cost of salvage of archeological remains which may be found in the project area, and shall advance to the University an amount not to exceed $1,000 for this purpose.

Article 12. The Permittee shall, during the period of project planning, consult with the Alaska Department of Health to determine measures that may be necessary for the control of mosquito production.

Article 13. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

Article 14. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission regulations under the Federal Power Act.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EARL C. BROOKOVER, DOCKET NO. RI62-338

ORDER TERMINATING PROCEEDING

(Issued May 11, 1964)

On January 29, 1962, Earl C. Brookover (Brookover) tendered for filing Supplements Nos. 1, 2 and 3[1] to Brookover's FPC Gas Rate Schedule No. 1, proposing rate increases from 8.9329¢ to 12.0¢ and 14.0¢ per Mcf, respectively, for his jurisdictional sales of natural gas being made at the wellhead to Kansas-Colorado Utilities, Inc., from different formations, as explained below, in a 640 acre unit located in Grant County, Kansas. By order issued February 16, 1962, the Commission suspended the above supplements until August 1, 1962, and thereafter until made effective in the manner prescribed by the Natural Gas Act.

A motion was filed by Brookover on November 4, 1963, requesting that the rate suspension proceeding in Docket No. RI62-338 be terminated. In support of his request, Brookover states that the proposed rates were for a new sale and should not have been suspended. Brookover further states that the underlying rate of 8.9329¢ was applicable to the sale of gas under the superseded contract which covered production specifically from only the one well then in production and did not cover future wells. In November 1961, the original well on the unit ceased production and the well was plugged and abandoned. Brookover then drilled another well at a different location on the same acreage and secured production from two different producing formations (Hugoton and Council Grove) via the dual completion method. Production from both formations are segregated and metered separately. Thereafter, the parties negotiated a new contract on December 6, 1961, providing for rates of 12¢ and 14¢ per Mcf, respectively, for the two zones. The filing involved here relates to sales under the new contract.

Under the circumstances, we believe that it would be in the public interest to terminate the rate suspension proceeding in Docket No. RI62-338 effective as of April 1, 1964.

---

[1] Supplement No. 1 consists of the superseding contract. Supplement No. 2 consists of an amendment to the superseding contract. Supplement No. 3 proposed a rate increase from 8.9329¢ to 12¢ and 14¢.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder that Supplements Nos. 1 through 3 to Brookover's FPC Gas Rate Schedule No. 1 be permitted to become effective as of April 1, 1964, and to terminate the proceeding in Docket No. RI62–338.

The Commission orders:

(A) Supplements Nos. 1 through 3 to Brookover's FPC Gas Rate Schedule No. 1 are hereby made effective as of April 1, 1964.

(B) The proceeding in Docket No. RI62–338 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CAROLINA POWER & LIGHT COMPANY, DOCKET NO. E–7078

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND TERMINATING PROCEEDING

(Issued May 11, 1964)

On January 23, 1963, the Commission issued an Order to Show Cause and Providing for Hearing at which the Carolina Power & Light Company (Carolina) was directed to show cause why the Commission should not find and determine *inter alia* that Carolina sales of electric power and energy at wholesale for resale to 39 purchasers listed in that order are sales at wholesale in interstate commerce; and that Carolina should be required to file rate schedules for those services in accordance with the provisions and requirements of Section 205(c) of the Federal Power Act and Part 35.3 of the Commission's Regulations thereunder.

Prior to the commencement of that hearing, Carolina tendered for filing 38 initial rate schedules, service to one of the 39 customers referred to in the Commission's order, Mountain Retreat Association, having been discontinued. The Company also tendered for filing changes in rate schedules previously filed for six resale customers, changes in two of the rate schedules tendered initially at this time, all as shown in the annexed Appendix A.*

By letter dated October 22, 1963 Carolina requested that the Commission's Order to Show Cause be vacated and this proceeding be terminated.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the rate schedules as identified and designated in the annexed Appendix A be accepted for filing, with designations and effective dates as shown therein.

(2) It is necessary and appropriate for purposes of the Federal Power Act that this proceeding be terminated, as hereinafter ordered.

The Commission orders:

(A) The rate schedules identified and designated in annexed Appendix A are hereby accepted for filing, to become effective on the dates therein shown.

(B) The proceeding initiated by order of the Commission issued January 23, 1963, in Docket No. E–7078 is hereby terminated.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such service or rate, provided for in the above rate schedules; and this order is without prejudice to any findings or orders which have been or hereafter may be made by the Commission in any proceeding by or against Carolina.

---

*Omitted in printing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY, PROJECT NO. 2393

ORDER ISSUING PRELIMINARY PERMIT

(Issued May 11, 1964)

Application was filed on August 7, 1963 by Columbus and Southern Ohio Electric Company (Applicant) of Columbus, Ohio, for a preliminary permit for a period of 24 months under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2393 involving the installation of power generating facilities at the existing U.S. Corps of Engineers' Gallipolis Locks and Dam on the Ohio River in Gallia County, Ohio.

The Secretary of the Army and the Chief of Engineers, in commenting on the application recommended any permit issued should require Applicant to coordinate its studies and proposals with the District Engineer, U.S. Army Engineer District, Huntington, West Virginia, to insure protection of the Federal interests, particularly with regard to structural and operational features affecting navigation and recreation.

The Department of the Interior, in commenting on the application, recommended for inclusion in any permit issued, a condition requiring coordination with the U.S. Fish and Wildlife Service and the State conservation agencies during the planning period to insure protection of fish and wildlife resources.

The Department of Health, Education and Welfare, in commenting on the application, stated that the installation of power facilities at navigation dams can be expected to affect water quality during low flow periods and that preliminary planning should give consideration to possible adverse effects and methods of minimizing or avoiding them.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Ohio.

(2) Public notice of the application has been given as required by the Act. No protests have been received.

(3) The proposed project would utilize water power from a Government dam.

The Commission orders:

(A) This preliminary permit is hereby issued to Columbus and Southern Ohio Electric Company (hereinafter referred to as the Permittee) for a period of 24 months, effective as of May 1, 1964, for the sole purpose of maintaining priority of application for license for Project No. 2393, to be located on the Ohio River in Gallia County, Ohio, and affecting a Government dam, subject to the terms and conditions of the Act, which is incorporated by reference as of part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2393, to be known as the Gallipolis Dam Project, would consist of a powerhouse containing hydroelectric units totalling about 40,000 kilowatts located next to Gate Pier No. 9 on the Ohio side of the existing Gallipolis Locks and Dam.

(C) This permit is also subject to the terms and conditions set forth in Form P-1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. **The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.**

Article 10. **The Permittee shall, during the period of project planning coordinate its studies with the District Engineer, Corps of Engineers, U.S. Army Engineer District, Huntington, West Virginia, in order to permit evaluation of any effects on the authorized and incidental functions of the Gallipolis Locks and Dam.**

Article 11. **The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service, the Ohio Department of Natural Resources, Division of Wildlife, and the West Virginia Department of Natural Resources, Division of Game and Fish, for the purpose of planning and designing adequate conservation measures to mitigate and compensate for the loss of or damage to existing fish and wildlife resources and to develop and improve these resources where practicable.**

Article 12. **The Permittee shall, during the period of project planning, cooperate with the United States Public Health Service, Department of Health, Education and Welfare, in order that adequate consideration can be given to the effect of the project on water quality at low flow periods.**

Article 13. **The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.**

Article 14. **The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission regulations under the Federal Power Act.**

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SAM HOUSTON PUBLIC UTILITY DISTRICT, DOCKET NO. CP62-182

ORDER FURTHER AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 11, 1964)

On April 6, 1964, Sam Houston Public Utility District (Utility District), Erin, Tennessee, filed in Docket No. CP62-182 an application to further[1] amend the order of the Commission issued November 19, 1962, which directed Tennessee Gas Transmission Company (Tennessee) to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Utility District, and provided in connection therewith that the Utility District be prepared to receive natural gas from Tennessee within one year from the date of the order (November 19, 1962). By the application to amend, Utility District seeks to further extend the time to receive natural gas to September 3, 1964.

Utility District states through its attorney that the project bonds of Utility District have been sold and a contract for the construction of required facilities has been executed. The additional time is requested to enable Utility District to comply with condition fixed in paragraph (B) of the Commission's order of November 19, 1962, as amended.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 19, 1962, in Docket No. CP62-182 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued November 19, 1962, in Docket No. CP62-182 be and the same is hereby further amended by extending to September 3, 1964, the time in which Utility District shall be prepared to receive natural gas from Tennessee.

(B) In all other respects said order shall remain in full force and effect.

---

[1] Order of November 19, 1962, amended April 19, 1963; and time for taking gas extended by Notice of Secretary dated October 22, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP64-28

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING

(Issued May 11, 1964)

Transcontinental Gas Pipe Line Corporation (Transco), on March 20, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volumes Nos. 1 and 2,[1] to become effective January 1, 1964.[2]

The revisions propose changes which would effect a reduction in Transco's jurisdictional rates of approximately $1,144,908, annually, based upon sales and transportation of gas for the twelve-months' period ended October 31, 1963, as adjusted.

The proposed filing, which we have docketed, as shown above, reflects a reduction in Transco's cost of service, based upon the recent reduction in the Federal income tax rate for corporations from 52 percent to 50 percent. In computing the reduction per Mcf, Transco employed the cost of service utilized in connection with its reduction in GSS (General Storage Service) rates in Docket No. RP64-22. The proposed rate filing is not intended to change or otherwise affect the obligations which Transco has under the settlement agreement in Docket No. RP61-13, Transco's last rate proceeding.[3] Transco undertakes and agrees that it will continue to be bound by the provisions of such settlement agreement in the same manner and to the same extent as it would have been bound if this filing had not been made.

The reflection of the lower Federal income tax rate reduces Transco's sales rates and transportation rates by 0.2¢ per Mcf or $1,144,908, annually. A comparison of the present and proposed rates is contained in Appendix A, hereto.

Transco also intends to make refunds for past billings to reflect the retroactive effective date of January 1, 1964.

Transco requests waiver of the requirements of the Commission's Rules and Regulations as may be necessary to permit the tendered tariff sheets to become effective as proposed.

In addition to Transco's proposed rate reduction filed to reflect the reduced Federal income tax rate, Transco requests that it be discharged from any further obligations with respect to reserves heretofore set upon its books in compliance with orders approving settlements and issuing certificates of public convenience and necessity, *In the Matters of Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* The specific producers, their docket numbers and the dates of the Commission orders are listed in Appendix B to this order.

---

[1] Second Revised Sheets Nos. 28-A.1 and 28-A.4: Substitute Second Revised Sheets Nos. 17-N and 17-O; Fourth Revised Sheets Nos. 17-N and 17-O; Sixth Revised Sheet No. 27; Seventh Revised Sheets Nos. 26-G, 26-L and 26-Q; Eleventh Revised Sheets Nos. 28-K.2 and 28-DD; Twelfth Revised Sheet No. 28-AA; Thirteenth Revised Sheet No. 28-P; Seventeenth Revised Sheets Nos. 17-F and 26-B; Eighteenth Revised Sheet No. 17-B; Nineteenth Revised Sheets Nos. 9 and 28-I; Twentieth Revised Sheets Nos. 16, 19 and 24; and Twenty-first Revised Sheets Nos. 5 and 12 to its FPC Gas Tariff, Original Volume No. 1; and Eleventh Revised Sheet No. 51 to its Tariff, Original Volume No. 2.

[2] Except Fourth Revised Sheets Nos. 17-N and 17-P, which are proposed to become effective as of March 1, 1964, these latter two sheets reflect further reductions in Transco's Rate Schedule GSS beyond those which were made effective as of March 1, 1964, by order of the Commission, issued April 13, 1964, in Docket No. RP64-22.

[3] Order issued February 2, 1962.

In support of this request, Transco states that by agreeing to make the tax rate reduction effective January 1, 1964, it will pass on approximately $300,000 more than if such reduction were made effective prospectively; that Transco made its reduction in its GSS storage rates (Docket No. RP64–22) effective on March 1, 1964, one month earlier than it had first proposed, thereby passing on to its customers approximately $125,000 additionally, and that retention of the minor refunds and reductions received from suppliers listed in the Appendix hereto will not place Transco in an excess earnings position. As further support, Transco also notes that since the settlement of its Docket No. RP61–13, it has reduced its rates (including the GSS reduction and the one herein proposed) by $8,500,000 and has also undertaken to further reduce its rates by $1,200,000 as of January 1, 1965.

The Commission has reviewed the cost and revenue data submitted by Transco in support of the instant reduction reflecting the reduced Federal income tax rate and, based thereon, finds that it is appropriate to grant Transco's request that it be relieved from the obligations with respect to the reserves heretofore set upon its books in compliance with the various *Union Texas* orders.

The Commission finds:

(1) Good cause exists for waiving the 30-day notice and other requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed revised tariff sheets and the rate reductions contained therein are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

(3) It is reasonable and appropriate that Transco be discharged from its obligations with respect to the reserves heretofore set up on its books in compliance with the settlement orders of producers listed in the Appendix hereto.

The Commission orders:

(A) The 30-day notice requirement and other provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets described above are accepted for filing, to be effective as of January 1, 1964, and March 1, 1964, as indicated thereon, subject to the terms and conditions of this order.

(B) This order shall not be construed as relieving Transco from its existing obligations under the settlement agreement and Commission order in Docket No. RP61–13, issued February 2, 1962, including obligations relating to future refunds and rate reductions.

(C) Transco hereby is discharged from any further obligations with respect to the reserves heretofore set upon its books in compliance with the orders approving settlements and issuing certificates of public convenience and necessity listed in Appendix B hereto. This order shall not be deemed to relieve Transco from any obligation in the future to set up reserves or disburse funds therefrom as a result of Commission orders relating to Transco's suppliers.

(D) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Transco, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Transco or any other persons or parties affected by this order.

APPENDIX A

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP64-28

PRESENT AND PROPOSED COMMODITY RATES

Rate schedule	Present commodity rate (cents)	Proposed commodity rate (cents)
Original Volume No. 1		
CD-1 and PS-1	28.5	28.3
CD-2 and LTF-2	24.0	23.8
CD-3 and LTF-3	25.5	25.3
GSS		
Temporary additional service/Mcf	29.0	28.8
Deliveries in excess of firm entitlements—effective 1-1-64	71.8	71.6
Deliveries in excess of firm entitlements—effective 3-1-64	67.6	67.4
G-1 and OG-1	26.0	25.8
G-2 and OG-2	27.0	26.8
G-3 and OG-3	28.0	27.8
E-1	27.0	26.8
E-2	28.0	27.8
E-3	29.0	28.8
S-2	27.456739	27.256739
ACQ-3	31.98	31.78
Original Volume No. 2		
X-11 (Firm Transportation)	9.09	8.89

APPENDIX B

ORDERS IMPOSING ACCUMULATION OF REFUNDS AND RATE REDUCTIONS UPON TRANSCONTINENTAL GAS PIPE LINE CORPORATION

Producer (1)	*FPC Docket No* (4)
Gulf Oil Corp	CI61-1630
Socony Mobil Oil Co., Inc	CI61-1640
Amerada Petroleum Corp	CI62-805
Sohio Petroleum Co	CI62-337
Ocean Drilling & Exploration Co	CI61-1162
Tex-Star Oil & Gas Corp	CI61-1524
Hugh Goodrich	CI62-1410
North Central Oil Corp. (a)	CI62-313
Pan American Petroleum Corp	CI62-782
Pan American Petroleum Corp	CI62-1341

OPINION NO. 401-A

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-161

OPINION AND ORDER DENYING REHEARING

(Issued May 11, 1964)

Syllabus

1. **Reviewing *Colton*, Commission *notes* Supreme Court re-emphasized Congressional denial of states power to regulate wholesale sales to local distribution companies. P. 1153.**

2. Congress intended Commission to exercise jurisdiction over wholesale sales from an interstate transmission system—contrary decision would result in regulatory chaos with respect to sales in this area. P. 1155.

3. Congress did not contemplate that a certain sale would be subject to federal regulation one day and state regulation the next, depending on vagaries of a pipeline's integrated system operations; adoption of a variable jurisdiction theory would not be sound. Pp. 1155, 1156.

4. *Denying* rehearing, Commission *affirms* prior decision that instant sales are jurisdictional. P. 1156.

Commissioners Woodward and O'Connor *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

Ross, *Commissioner:*

Applications for rehearing have been filed herein by United Gas Pipe Line Company (United), Louisiana Gas Service Co., the Louisiana Public Service Commission, and by Hammond-Baton Rouge Brick Co., *et al.* These applications raise no new questions, and we adhere to our original conclusion.

The recently decided *Colton* case confirms our decision.[1] While the precise factual situation differs from that presented here, the Supreme Court's rationale was not premised on the particular circumstances of that case and is equally applicable to the instant case. In *Colton*, the Court of Appeals had confined F.P.C. jurisdiction to those interstate wholesales constitutionally beyond the power of state regulation by force of the commerce clause of the Constitution. It expressly rejected the argument that § 201 of the Power Act incorporated a Congressional decision against deciding the F.P.C.'s jurisdiction by a case-by-case analysis. The lower Court thus employed a test which would bring under federal regulation only those sales of electric energy in interstate commerce at wholesale which had an impact upon the national interest.

The Supreme Court reversed this holding. Reviewing earlier attempts to draw a satisfactory line between federal and state regulation, it referred to the series of cases which had emphasized the nature of state regulation, the objective of the state and the effect of the state regulation upon the national interest in the commerce. This line has now clearly been over thrown by the *Colton* case, for the Supreme Court re-emphasizes that the *Illinois* case[2] stands for the proposition that Congress denied states the power to regulate wholesale sales to local distribution companies.

Continuing, the Supreme Court pointed out that this conclusion was reaffirmed and sharpened in the *Panhandle* case.[3] In that case the Court held that "the line of the statute was thus clear and complete. It cut sharply and clearly between sales for resale and direct sales for consumptive uses. No exceptions were made in either category for particular uses; quantities or otherwise". (332 U.S. 517, quoted in *Colton, supra*)

In conclusion, the Supreme Court in *Colton*, in short but succinct language, cuts the Gordian knot very simply by stating:

---

[1] *F.P.C. v. So. Calif. Edison Co., et al.*, Nos. 71 and 73, decided March 2, 1964, 376 U.S. 205. The fact that this case involved the Federal Power Act is immaterial:

> The Natural Gas Act grew out of the same judicial history as did the part of the Federal Power Act with which we are concerned; and § 201 (b) of the Power Act has its counterpart in § 1(b) of the Gas Act . . . [*Colton, pp. 211–212.*]

[2] *Illinois Natural Gas Co. v. Central Ill. Public Service Co.*, 314 U.S. 498, 505, cited in *Colton, supra.*

[3] *Panhandle Eastern Pipe Line Co. v. Public Service Comm.*, 332 U.S. 507.

> Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis [pp. 215-216.]

Indeed it is manifest that Congress, in passing the Natural Gas and Power Acts, intended to resolve the confusion prevailing as to the extent of federal *vis a vis* state regulation. And the legislative history of the Gas Act makes it quite clear just where Congress drew the dividing line between what was interstate commerce and what was not.

The issue here is whether United needs a certificate under Section 7 of the Gas Act to make the instant sales, or whether the certificates heretofore granted should be vacated. Section 7 was significantly amended in 1942. The House Committee report states:

> The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial setup, the adequacy of the gas reserves, the feasibility and adequacy of the proposed services [*i.e.*, proposed sales] and the characteristics of the rate structure in connection with the proposed construction or extension at a time when such vital matters can readily be modified as the public interest may demand. Without such authority, the Commission may find itself confronted with a situation where it must either accept conditions which appear undesirable in the public interest, or require, subsequent to construction, changes which may have much more serious practical consequences than they would have had if they had been made before the public was asked to finance the enterprise.
>
> The bill, as amended, eliminates the objections to the present section 7(c) above mentioned. *By this legislation, the present jurisdictional disputes are eliminated. . . .*[4] [emphasis added.]

Initially, the bill (H.R. 5249) contained a subsection (h) which was proposed by NARUC. This subsection would have given the states where gas was produced the power to order intrastate expansion of the facilities of interstate pipelines. This section was made subject to the F.P.C. finding that interstate customers would not thereby be adversely affected. Even this limited grant of authority over interstate pipelines requested by the states failed to pass Congress. While the Committee report premised its rejection on its desire to devote further study to the matter, this action is consistent with the clear line Congress drew between federal and state regulation.

H.R. 4051, 80th Congress, 1st Session, (1947) was a comprehensive bill directed to amending the scope of the Commission's jurisdiction covering a wide range of its regulatory efforts with respect to gas companies. The Committee Report states that the bill would not alter the basic jurisdiction of the F.P.C. over interstate pipelines.[5]

Throughout the debate on the bill, it was assumed without exception that the Commission had jurisdiction from the moment the gas left the gathering lines and was injected into the interstate transmission system. To eliminate any confusion, Congressman Rizley who sponsored the bill prepared a chart which clearly delineated that jurisdiction which the Commission was initially granted and which it would retain under the bill. This chart is reproduced as Appendix A hereto.

---

[4] House of Representatives Report No. 1290, 77th Congress, 1st Session.

[5] Report of House Committee on Interstate and Foreign Commerce No. 800, July 7, 1947.

In debating the bill, Mr. Harris declared:

> When the Natural Gas Act was passed in 1938 it was understood that it was the intention of Congress that the jurisdiction of the Federal Power Commission should begin at the inlet of the trunk line in interstate commerce where the gathering from production terminates and the gas goes into the trunk line, and end at the other end of the trunk line where it goes into the distributor line or facilities for resale to the consumer. [*Congressional Record*—House, July 11, 1947, p. 8741.]

Mr. Rizley similarly indicated:

> The jurisdiction of the Federal Power Commission can only begin where the gas enters the interstate line and ends where it leaves the line. [*Congressional Record, supra*, p. 8748.]

Congress again passed upon the scope of the Commission's jurisdiction in 1954 when the Hinshaw bill was passed. No attempt was made to carve out what Congress earlier considered to be the complete jurisdiction of the Commission over interstate facilities.

This legislative history is concerned with the overall scope of the Commission's jurisdiction under Section 7 and is not limited, as the minority erroneously asserts, solely to the F.P.C.'s jurisdiction over interstate facilities.

In the light of the foregoing, we are convinced that Congress intended us to exercise jurisdiction over wholesale sales from an interstate transmission system. A contrary decision would result in a regulatory chaos with respect to the sales in this area[6] certainly not the clear cut dichotomy envisioned by Congress and enforced by the Supreme Court.

The record in this case shows that 8 of the communities, on specific occasions, have received offshore gas, *i.e.*, gas from a point out of the state. But such gas is received sporadically. The record further indicates that offshore gas travelled in the direction of most of the remaining 13 communities although they received no such gas on the few days when checks were made.[7] No reason exists why these communities could not receive offshore gas. Because of the automated nature of United's system, a slight change in either United's purchasing or sales pattern could result in offshore gas moving down the line beyond Independence to Natalbany, a matter of only some 6 miles. Hammond is only 3 miles further. Any failure in United's line connecting the Florida Parishes lateral to the Lirette-Mobile line would necessarily result in out-of-state gas serving all such communities. As the minority has correctly noted, the quantities of gas moving beyond Independence could not well be determined. It is likely some of these communities would only receive offshore gas a few weeks, a few days, or perhaps a few hours annually.

There is also the back-flow of Louisiana produced gas across the Mississippi-Louisiana border, *i.e.*, gas from a point outside the state. Here again, the record fails to disclose which communities receive "back-flow" gas or to what extent.

As stated above, Congress meant to resolve the uncertainties of jurisdiction in enacting the Natural Gas Act. It surely contemplated no situation where a certain sale would be subject to federal regulation one day and state regulation the next, depending on the vagaries of a pipeline's integrated system operations.[8]

---

[6] Our original opinion stated that all 21 of the sales are to communities in the Jackson zone. Actually, four of the sales, *i.e.*, Doyle, Livingston, Port Vincent and Walker are in the New Orleans zone.

[7] United states we erred in finding that communities as far east as Slidell received offshore gas. We made no such finding. We simply were alluding to the testimony that such gas travelled toward Slidell, recognizing that the record does not indicate whether Slidell actually received offshore gas.

Adoption of a variable jurisdictional theory would not be sound. These Louisiana communities could never be certain whether the intrastate rate of 24.85¢ or the present interstate rate of 33.7¢ would be applicable for any predictable period of time if federal jurisdiction were to be determined exclusively by the receipt of gas from a point outside the state under the transitory facts of United's operations. The location of industry as well as the economical development of commercial and residential sales would be impossible in such circumstances. The teachings of the Supreme Court in the X-20 case are particularly applicable to this situation.[9] There the Court stated that "where Congressional authority is not explicit [assuming *arguendo* this is the case], we must ask whether state authority can practically regulate in a given area and, if we find that it cannot, then we are impelled to decide that federal authority governs." (365 U.S. 19-20) Similarly the Supreme Court has held:

> Congress, by Sections 7 (a) and (c) of the Act, has given primary authority to the Federal Power Commission to regulate extensions of gas transportation facilities and their physical connection with those of distributors, as well as the sale of gas to them. . . .[10]

We emphasize that this case involves the sole question whether these sales by United are subject to the jurisdiction of the Commission. It does not involve the appropriate rate level of these sales which constitutes an entirely different question currently before us in Docket No. RP63-1.

For these additional reasons, we believe our original decision was correct.

Accordingly, the Commission orders:

The applications for rehearing filed by United, Louisiana Gas Service Co., the Louisiana Public Service Commission, and by Hammond-Baton Rouge Brick Co., *et al.* are hereby denied.

Commissioners Woodward and O'Connor *dissenting.*

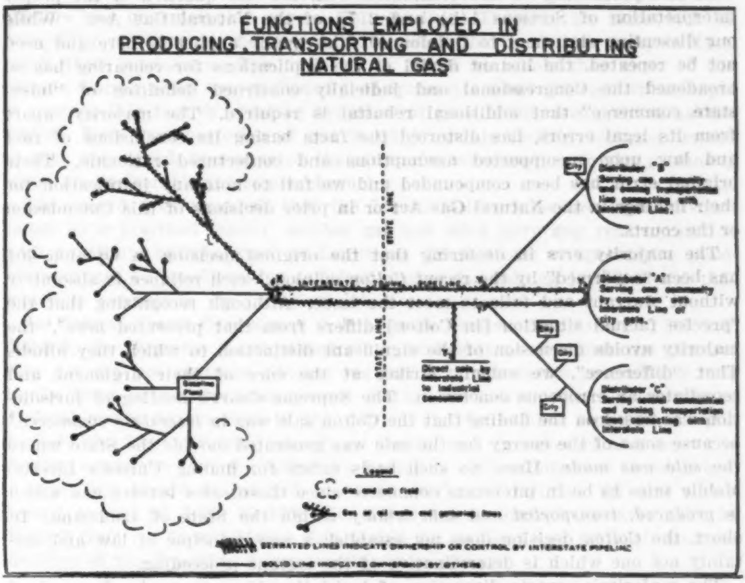
---

[8] United (apart from its physically separate intrastate operations) constitutes a fully integrated interstate pipeline transmission system. We appreciate that United's position here may be consistent with the 5 zone cost approach it advanced in its rate case Docket No. RP63-1. However, this Commission's extensive experience in considering various rate and certificate proceedings involving United compels a conclusion to the contrary. See the Examiner's decision in Docket No. RP63-1.

[9] *F.P.C. v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

[10] *Illinois Natural Gas Co. v. Public Service Co.*, 314 U.S. 498.

APPENDIX A


FUNCTIONS EMPLOYED IN PRODUCING, TRANSPORTING AND DISTRIBUTING NATURAL GAS
City
Distributor "B" Serving one community and owning transportation line connecting with Interstate Line.
STATE LINE
X
INTERSTATE TRUNK PIPELINE
Y
Distributor "A" Serving one community by connection with Interstate Line at city gate.
City
City
Direct sale by Interstate Line to Industrial Consumer
Gasoline Plant
Distributor "C" Serving several communities and owning transportation lines connecting with Interstate Line
City
Legend
Gas and oil field
Gas or oil wells and gathering lines
SERRATED LINES INDICATE OWNERSHIP OR CONTROL BY INTERSTATE PIPELINE
SOLID LINE INDICATES OWNERSHIP BY OTHERS

EXPLANATION OF CHART

* * * * * * *

Commencing at the point marked "X", the inlet of the interstate trunk pipeline system, there is indicated by serrated lines a pipe-line system extending to points marked "Y". The system thus indicated consists of pipe lines, compressor stations, telephone lines and other facilities by which the gas entering the trunk pipe line at point X is transported to consuming markets. The Natural Gas Act of 1938 gave jurisdiction to the Federal Power Commission over operations between points X and Y; the Commission, however, has assumed jurisdiction of matters before X and beyond Y. This bill will again confine the jurisdiction of the Commission to operations between points X and Y. It is not intended by the bill to eliminate any of the Commission's jurisdiction over the transportation of gas from the point marked "X" to the points marked "Y" or the price received by the pipe-line company from sales to any of the distributing companies taking gas from such lines.

* * * * * * *

(80th Congress, 1st Session, House of Representatives, Report No. 800, pages 4–5)

Woodward, Commissioner and O'Connor, Commissioner, *dissenting:*

In this proceeding we are confronted with the sole question of the proper interpretation of Sections 1(b) and 2(7) of the Natural Gas Act.[1] While our dissenting statement to Opinion 401[2] is equally applicable here and need not be repeated, the instant denial of the applications for rehearing has so broadened the Congressional and judicially construed definition of "interstate commerce" that additional rebuttal is required. The majority, apart from its legal errors, has distorted the facts basing its conclusions of fact and law upon unsupported assumptions and conjectured rationale. Their original error has been compounded and we fail to note any justification for their findings in the Natural Gas Act or in prior decisions of this Commission or the courts.

The majority errs in declaring that the original decision in Opinion 401 has been "confirmed" by the recent *Colton* opinion;[3] such reliance is absolutely without warrant and fails to meet the issue. Although recognizing that the "precise factual situation [in Colton] differs from that presented here",[4] the majority avoids discussion of the significant distinction to which they allude. That "difference", we submit, strikes at the core of their argument and repudiates an erroneous conclusion. The Supreme Court's holding of jurisdiction was based on the finding that the Colton sale was in *interstate commerce.*[5] because some of the energy for the sale was generated *outside* the State where the *sale was made.* Here, no such basis exists for finding United's Lirette-Mobile sales to be in interstate commerce since those sales involve gas which is *produced, transported* and *sold* wholly within the State of Louisiana. In short, the *Colton* decision does not establish a new principle of law and certainly not one which is determinative of the instant proceeding.

The majority's cryptic discussion of legislative history can be disposed of summarily. The statements from the House Committee report, as well as those attributed to Mr. Harris and Mr. Rizley simply confirm that, upon completion of production and gathering, Commission jurisdiction was to attach to all interstate transmission facilities. They add no support to a finding that *intrastate* sales off those facilities were also to fall within our jurisdiction.

Although the Presiding Examiner in his Initial Decision has correctly recognized that this case involves two classes of sales, the majority persists in ignoring this controlling distinction creating the false impression that, generally, the Lirette-Mobile customers, at some time or other, do receive out-of-state gas as a result of some uncertain volume of back-flow or because offshore gas unexplainably enters United's line. There is an utter lack of compelling evidence in the record to establish that such gas does, in fact, reach those customers. The majority is forced to admit that most of the Florida Parish sales are exclusively of intrastate gas, although it attempts to obscure this fact by creating hypothetical possibilities unsupported by the record. Mere transportation of gas in an interstate facility does not impart to that gas, which is separated therefrom for consumption in the producing state, an unalterable interstate character.

---

[1] Section 1(b) of the Act provides:

> The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution or to the facilities used for such distribution or to the production or gathering of natural gas.

Section 2(7) of the Act provides:

> "Interstate Commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

[2] Opinion 401 and Order reversing in part and adopting in part initial decision of presiding examiner determining jurisdictional issues, issued August 26, 1963, 30 FPC 560.

[3] *Federal Power Commission* v. *Southern California Edison Company, et al.,* Nos. 71 and 73, decided March 2, 1964, 376 U.S. 205.

[4] *Supra,* p. 1153.

[5] Emphasis supplied throughout this statement unless otherwise indicated.

The record does establish that the Lirette-Mobile sales are intrastate because, as a practical matter, neither gas nor sales have any real connection with any State but the State of Louisiana. Employment of speculative possibility cannot be considered as sufficient ground for holding jurisdictional that which is essentially non-jurisdictional.

In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 502-503, the Supreme Court stated, ". . . suffice it to say that the Natural Gas Act did not envisage Federal regulation of the entire natural gas field to the limit of constitutional power. Rather it contemplates the exercise of Federal power as specified in the Act . . ." The explicit terms of the Act exclude the Lirette-Mobile sales from Commission jurisdiction and serves to further emphasize that the majority's finding is without adequate basis in law.

Rehearing should be granted and that portion of Opinion 401 and Order, issued August 26, 1963, 30 FPC 560, which asserts jurisdiction over sales by United from its Lirette-Mobile line should be reversed and set aside and the decision of the Presiding Examiner should be affirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED NATURAL GAS COMPANY, DOCKET NO. RP64-33

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING

(Issued May 11, 1964)

United Natural Gas Company (United Natural), on April 6, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1,[1] to become effective January 1, 1964. The revisions propose changes which would effect a reduction in United Natural's jurisdictional rates of approximately $49,693 annually, based upon sales for the twelve months' period ended December 31, 1963.

The proposed filing, which we have docketed as shown above, reflects a reduction in United Natural's cost of service based upon the recent reduction in the Federal income tax rate for corporations from 52 percent to 50 percent. In computing the reduction per Mcf, United Natural employed the cost of service underlying current rates as contained in the settlement agreement approved by the Commission in its last rate proceeding in Docket No. G-12493 *et al.*[2] The proposed rate filing is not intended to change, or otherwise affect

---

[1] Tenth Revised Sheet No. 4 and Eleventh Revised Sheet No. 5 to FPC Gas Tariff, Original Volume No. 1.

[2] Order issued June 13, 1962.

United Natural's existing obligations related to refunds and rate reductions under orders issued by the Commission in any proceedings involving the rates and charges of United Natural.

United Natural requests waiver of the requirements of the Commission's Rules and Regulations as may be necessary to permit the tendered tariff sheets to become effective as of January 1, 1964, as proposed.

The present and proposed reduced rates are as follows:

Rate schedule	Present	Proposed	Reduction
CD-1:			
Demand	$2.57	$2.57	----------
Commodity	37.7¢	37.54¢	0.16¢
G-1:			
Commodity	54.5¢	54.3¢	[1] 0.20¢

[1] The G-1 rate is equivalent to the CD-1 rate at 50 percent load factor.

No protests or objections to United Natural's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the 30-day notice and other requirements of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed revised tariff sheets and the rate reductions contained therein are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day notice requirement and other provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets described above are accepted for filing to become effective January 1, 1964, as proposed by United Natural's filing on April 6, 1964, subject to the terms and conditions of this order.

(B) This order shall not be construed as relieving United Natural from its existing obligations under the settlement agreement and Commission order in Docket No. G-12493, *et al.*, issued June 13, 1962, including obligations relating to future refunds and rate reductions, nor from any other outstanding obligations under Commission orders involving the rates and charges of United Natural.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, United Natural, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against United Natural or any other persons or parties affected by this order.

OPINION NO. 427

ST. MICHAELS UTILITIES COMMISSION AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7114

OPINION AND ORDER DETERMINING OVERCHARGES AND PROVIDING FOR REFUNDS

(Issued May 13, 1964)*

Syllabus

1. Under a narrow or broad interpretation of contract with Eastern Shore, St. Michaels would automatically be entitled to benefits of rate reductions to other customers without being compelled to accept other tariff conditions. P. 1163.
2. Failure to make available a contractually required rate reduction is just as much in violation of Federal Power Act as an attempt to impose an unauthorized rate increase. P. 1164.
3. Provisions of new contract appear to support finding that St. Michaels would experience some loss in contractual protection with respect to encroachment of service area, availability of supply, and rate stability. P. 1164.
4. Terms and conditions of any rate schedule are integral part of the wholesale transaction—decision here does not suggest that rate provisions can be isolated and considered apart from remainder of agreement between parties. P. 1164.
5. Commission *determines* overcharge and *provides* for *refunds* in proceeding arising under Section 205 of the Federal Power Act.

Spencer W. Reeder for St. Michaels, Maryland, St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland.

Albert L. Deen and *Wilson B. Stringer* for Public Service Commission of Maryland.

John W. T. Webb for The Eastern Shore Public Service Company of Maryland.

Wilbert L. Merriken and *William C. Wise* for Choptank Electric Cooperative, Inc.

Drexel D. Journey and *Sandra J. Strebel* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black

SWIDLER, *Chairman:*

In this electric rate proceeding under Section 205 of the Federal Power Act St. Michaels Utilities Commission, a municipal distributor, brought a complaint claiming that the Company, Eastern Shore Public Service Company of Maryland, had overcharged St. Michaels on deliveries of electricity occurring after May 1, 1963, under its wholesale contract. A separate count of the complaint charging unlawful discrimination by Eastern Shore in favor of Choptank Electric Cooperative was severed by the Commission on motion of St. Michaels on October 20, 1963. The Company questioned the Commission's jurisdiction but did not press the objection for purposes of this decision.

This opinion is limited to the sole issue whether Eastern Shore is obligated under its existing contract with St. Michaels to afford that city the benefit of rate reductions under new contracts with its other wholesale customers even though St. Michaels refuses to agree to the new contract because of the conditions attached thereto which it considers burdensome. The substantive question of the just and reasonable level of rates for all of Eastern Shore's wholesale customers and the issue of any possible discrimination among such customers remain for decision in the proceeding from which this contract issue was severed.

---

*Initial decision appears on P. 1165.

Eastern Shore is a subsidiary of Delaware Power and Light Company serving in Maryland. It has five wholesale customers—St. Michaels; Centreville Electric Plant; Chestertown Electric Light and Power Company; Stockton Electric Light and Power Company; and the Choptank Cooperative. St. Michaels serves approximately 600 customers in and around the City and in addition some 900 customers in surrounding rural areas including one wholesale client, the Choptank Co-op.

Until May 1, 1963, Eastern Shore's wholesale customers were served under similar but not identical individual wholesale contracts and rate schedules, the agreement with St. Michaels (Rate Schedule FPC No. 7) having been entered in 1960 for a 15-year term and accepted for filing by the Commission effective April 9, 1962. On May 16, 1963, a new electric rate tariff filed by Eastern Shore was accepted by the Commission for filing effective May 1st. The tariff included new rate provisions that were expected to result in a rate reduction of around 14 percent to St. Michaels[1], together with uniform terms and conditions that replaced the varying provisions of the existing individual wholesale contracts.

Two of the wholesale customers, Chestertown and Centreville, accepted the new tariff by executing new service agreements, but St. Michaels refused to do so, contending that under the terms of an automatic downward escalation clause in its existing contract it was entitled to the benefit of the reduced rates without accepting the new tariff terms and conditions. It objects to some of the new conditions which it contends would substantially reduce its current contract protection against service area encroachment and would impair the availability of electric power supply and rate stability.[2] St. Michaels, supported by the Commission's Staff, seeks here in reliance on its original contract the refund of overcharges collected by the Company since the effective date of the new tariff, with interest; the establishment of an accounting reserve to implement the refund requirement; and an order directing the company to cease and desist from charging St. Michaels the higher rates. In terms of our jurisdiction St. Michaels states a claim under § 205 of the Power Act by asserting that it is being charged rates in excess of those provided for in the applicable rate schedule and contract filed with the Federal Power Commission under Section 205.[3]

---

[1] The rate provisions of the new tariff include changes in the method of computing demand and energy charges, the billing demand and power factor, and the voltage and substation credits. The rate provision alone would not reduce St. Michaels' bill but St. Michaels would profit sufficiently from the fuel clause in the new schedule to experience an over-all rate reduction in excess of 14 percent in the test year.

[2] Stockton Electric Light and Power Company has asserted the same position as St. Michaels, but in the severed portion of the proceeding, not in the case before us here.

[3] The applicable provisions of the Federal Power Act are contained in subsections (c), (d) and (e) of Section 205, as follows:

> (c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications,

The Presiding Examiner sustained the St. Michaels contentions, and found that the existing wholesale contract entitled St. Michaels to receive automatically the advantage of any reduced charges resulting from any change in the resale service schedule to the other wholesale customers.

The pertinent contract provisions are as follows:

> ARTICLE V
>
> Section 1. Bills shall be computed in accordance with the COMPANY'S Resale Service Schedule attached hereto and made a part of this contract.
>
> Section 2. COMPANY agrees that if during the life of this agreement there are any changes made in its Resale Service Schedule which would reduce the charges to CUSTOMER, CUSTOMER shall automatically receive the advantage thereof; CUSTOMER agrees that if any changes are made in COMPANY'S Resale Service Schedule which would increase charges to CUSTOMER, CUSTOMER will pay such increased charges but shall have the right to cancel this contract upon giving the COMPANY six months' notice of its intention to do so.
>
> Section 3. The COMPANY retains the right during the life of this contract, subject to the provisions of Section 2 above and the approval of any Regulatory Authority which may have jurisdiction in the matter, to change the provisions of its Resale Service Schedule, including the right to increase or decrease the rates for service set forth therein.

It would seem to us that St. Michaels should prevail under either a narrow or a broad interpretation of the contract. If the contract is read narrowly, the references in Section 2 to the "Resale Service Schedule" mean the rate computation provisions of the contract exclusive of the non-rate conditions. Taking this approach it is clear that St. Michaels would automatically be entitled to the benefits of rate reductions to other customers without being compelled to accept other tariff conditions.

On a broader interpretation the references to the "Resale Service Schedule" could be taken to refer to the entire agreement, including non-rate provisions as well as the rate terms. On this view, too, we believe that St. Michaels is entitled to the rate reductions without accepting the other conditions demanded by the Company. Section 2 states that the customer shall receive the advantage of "any changes . . . which would reduce the *charges*," and makes no reference to changes of any other terms or conditions. It provides that the customer shall *automatically* benefit therefrom, attaching no strings or conditions.

---

practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification or service . . . .

Whichever interpretation is followed, then, we find that St. Michaels is entitled to the benefit of the rate reduction without being required to accept the new tariff conditions.

The controlling legal principles here are set forth in the case of *Federal Power Commission* v. *Sierra Pacific Power Company*, 350 U.S. 348, 1956. In *Sierra* the court held the Federal Power Act by its terms does not permit a public utility regulated under Title II of the Act to impose unilateral contract changes on its wholesale customers without their consent simply by filing a new rate schedule with the Commission. There the company attempted to increase rates to its wholesale customer although its contract did not authorize any rate increase. Here Eastern Shore was obligated under its contract to reduce its rates. A failure to make available a contractually required rate reduction is just as much in violation of the Act as an attempt to impose an unauthorized rate increase.

The principle involved in this case is more than a matter of technical contract interpretation. Here Eastern Shore entered into a long-term contract with St. Michaels in 1960 which was filed with this Commission and the issue is whether St. Michaels is entitled to the benefit of that agreement without agreeing to a new contract which it considered burdensome. The terms and conditions which St. Michaels refused to accept would materially alter its existing contract. While we do not at this stage wish to indicate our views on the merits of the new contract, it is obvious from the following provisions that the changes are of great import to St. Michaels:

Protected territory: The old agreement prohibited sales by the Company to St. Michaels' customers within the town or its environs without St. Michaels' consent while the new agreement would allow service by either party to new customers which it could serve by constructing secondary lines not over 300 feet long.

Availability of service: Under the old agreement the Company agreed to supply St. Michaels' requirements without qualification, while under the new agreement it agreed to supply only requirements for retail sales and for St. Michaels' existing limited resale contracts.

Rate stability: The escalation clause of the old contract is set out above at page 1163. The new contract contains a Memphis-type clause (energy to be delivered under this schedule or "any effective superseding schedule"), and it omits the buyer's right to cancel following a rate increase upon 6 months' notice to Company.

Contract term: The old contract would expire in 1975 with automatic year-to-year renewals unless cancelled thereafter. The new contract would run for only five years before beginning the year-to-year renewals.

These provisions appear on their face to support a finding made by the Examiner that St. Michaels would experience some loss in contractual protection with respect to encroachment of service area, availability of supply, and rate stability.

The terms and conditions of any rate schedule are an integral part of the wholesale transaction, and our decision herein does not suggest that the rate provisions can be isolated and considered apart from the remainder of the agreement between the parties. We are only deciding that where a wholesale customer by the terms of his contract is entitled to benefit automatically from a rate reduction to other customers without reference to other contract changes, we should not deny him his contractual rights, at least without good cause being shown. The remaining issues in this same proceeding now underway will afford an opportunity to fix reasonable and nondiscriminatory rates on fair terms for all parties concerned.

We conclude, therefore, that St. Michaels is entitled by its contract to the advantage of the reduced charges provided by the new Eastern Shore tariff, and the Company has stated no grounds for denying St. Michaels its contract rights. St. Michaels is also entitled to a refund plus interest as ordered by the Examiner, covering the six months' period from the effective date of the new tariff to the date when the record before the Examiner was closed, October 30, 1963, and to a further refund covering the period subsequent to October 30, 1963.

The Commission orders:

(A) Eastern Shore is hereby directed to conform its FPC Electric Rate Schedule No. 7 for St. Michaels, filed with this Commission on March 29, 1962, to reflect the rates and charges as set forth in Eastern Shore's "Resale Service Schedule No. 1", filed with this Commission on April 18, 1963, as part of FPC Electric Tariff Original Volume No. 1, and to cease and desist immediately from charging, demanding or receiving from St. Michaels rates and charges other than those set forth in said Resale Service Schedule No. 1, unless and until such rates and charges are changed or cancelled in accordance with the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations under the said Act.

(B) Within 45 days from the date of issuance of this opinion Eastern Shore shall refund to St. Michaels the excess of the total amounts charged and collected since May 1, 1963, over and above the amounts which would have been charged for sales to St. Michaels under the rates prescribed by the aforesaid Resale Service Schedule No. 1, with interest at the rate of 6 percent per annum from the date of payment to Eastern Shore to the date of refund.

(C) Within 15 days of making the refunds required by paragraph (B) Eastern Shore shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with a copy of a release from St. Michaels.

(D) The Examiner's decision issued February 24, 1964 herein to the extent not inconsistent herewith is hereby adopted as part of this opinion and order.

(E) Exceptions not granted herein are hereby denied.

(F) Upon Eastern Shore's compliance with the decretal paragraphs herein, the overcharge phase of the hearing in Docket No. E-7114 shall be deemed terminated.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON COMPLAINT OF ALLEGED ILLEGAL OVERCHARGES UNDER SECTION 205 OF THE FEDERAL POWER ACT

(Issued February 24, 1964)

KANE, *Presiding Examiner:* This proceeding arises out of a formal complaint filed on July 12, 1963, by St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland (St. Michaels or Complainant) against the Eastern Shore Public Service Company of Maryland (Eastern Shore or Respondent) pursuant to Section 205 of the Federal Power Act. The complaint alleges *inter alia* that Eastern Shore has overcharged St. Michaels for deliveries of electrical energy after May 1, 1963, and has demanded and collected rates for such deliveries substantially in excess of the legal rates applicable to St. Michaels under Eastern Shore's Rate Schedule FPC No. 7, as supplemented. The alleged illegal overcharge is based upon the claim that Eastern Shore failed to give effect to a downward escalation clause contained in Article V, Section 2, of the Wholesale Power Contract portion of Eastern Shore's Rate

Schedule FPC No. 7, dated January 13, 1960. St. Michaels seeks correction of the alleged illegal rate and the immediate return of $9,095.22 together with interest thereon at the rate of 6 percent per annum.

The complaint in a separate count also alleges unlawful discrimination by Eastern Shore in favor of Choptank Electric Cooperative, Inc. (Choptank).

On October 11, 1963, Eastern Shore filed its answer to St. Michaels' complaint in substance denying any illegal overcharge to St. Michaels under Eastern Shore's Rate Schedule FPC No. 7. The answer also denies any unlawful discrimination. In addition Eastern Shore questions the Commission's jurisdiction over the matters alleged in the complaint. However, the Respondent does not press that question as an objective to be dealt with at this time reserving its right to present the matter at a future time. It is assumed for the purposes of this decision, however, that the Federal Power Commission has jurisdiction to regulate the transactions which are the subject of the complaint.

By motion dated September 17, 1963, St. Michaels moved to sever the unlawful discrimination issue from its complaint and to proceed immediately with the hearing and decision of the alleged illegal overcharge issue. By order issued October 20, 1963, the Commission granted the motion for severance of issues after the filing by Eastern Shore's answer to the motion stating that it had no objection to the prompt hearing and decision with respect to the illegal overcharge issue. The said order of the Commission set the matter down for hearing to be held on November 18, 1963.

Notice of intervention was filed on November 1, 1963, on behalf of the Public Service Commission of Maryland and a petition to intervene was filed on November 14, 1963, by Choptank Electric Cooperative, Inc. Choptank was permitted to participate in the hearing subject to the Commission's ruling on its petition. By order issued December 12, 1963, the Commission approved Choptank's intervention. The hearing commenced on November 18, 1963, as scheduled and was concluded the same day. The Public Service Commission of Maryland, although appearing at the hearing took no part therein and filed no brief. The case was fully submitted on December 23, 1963.

The phase of the hearing under consideration at this time presents very limited questions all of which are directed to the proper interpretation and application of the Wholesale Power Contract portion of Eastern Shore's Rate Schedule FPC No. 7. They may be summarized as follows:

1. Is St. Michaels entitled to the advantage of the reduced rates and charges contained in Eastern Shore's Electric Tariff filed as a rate schedule pursuant to Section 205 of the Federal Power Act by reason of the effect of Article V, Section 2, of Eastern Shore's Rate Schedule FPC No. 7, as supplemented?

2. In the event that the first issue be answered in the affirmative, should Eastern Shore be directed to cease and desist from charging, demanding or collecting from St. Michaels rates and charges other than the Respondent's legal rate as so determined?

3. In the event that the first issue be answered in the affirmative should Eastern Shore be required to establish an appropriate accounting reserve evidencing its obligation to St. Michaels to return all amounts collected from the town on and after May 1, 1963, in excess of Eastern Shore's legal rate together with interest thereon at 6 percent per annum?

While there is substantial disagreement as to the effects of the facts underlying the transactions involved herein, there is no substantial disagreement as to such facts.

Eastern Shore, the Respondent in this proceeding is a subsidiary of Delaware Power and Light Company, and is engaged in the generation, transmission, and distribution of electric energy in the State of Maryland. The Complainant, St. Michaels, operates a municipal electric distribution system on the Eastern Shore of Maryland serving the town of St. Michaels and the surrounding area. It also serves approximately 600 customers within its environs, and serves approximately 900 customers in surrounding rural areas of Calvert County, including three small villages, Claiborne, Newcomb and Royal Oak, Maryland. In addition, it serves 150 farms and numerous waterside residences and provides wholesale electric service to Choptank.

St. Michaels' total electric requirements are purchased from Eastern Shore at 12.5 kv under the latter's Rate Schedule FPC No. 7 and supplement Nos. 1 and 2, consisting of a Wholesale Power Contract dated January 13, 1960, as well as certain supplements thereto including a Supplemental Agreement dated November 8, 1960. The contract provides for the sale of electric energy to St. Michaels for resale by the latter in the town of St. Michaels and its environs. The contract and supplements were filed with the Commission by Eastern Shore as a rate schedule and were accepted for filing by the Commission effective April 9, 1962, as evidenced by a letter from the Commission dated May 7, 1962. The Supplemental Agreement dated November 8, 1960, revised Eastern Shore's fuel adjustment resulting in a reduction of its monthly fuel charge to St. Michaels in accordance with the provisions of Article V, Section 2, of the Wholesale Power Contract set out, *infra*.

By letter dated April 17, 1963, Eastern Shore filed with the Commission its FPC Electric Tariff Original Volume No. 1, consisting of a table of contents, preliminary statement, map of system, index of buyers, Resale Service Schedule No. 1, rider, general terms and conditions and form of service agreement.

At the time of the filing of the Tariff, Eastern Shore was serving four resale customers, Chestertown Electric Light and Power Company (Chestertown), Centreville Electric Plant (Centreville), Stockton Electric Light and Power Company (Stockton), and St. Michaels, each of which was eligible for service under the proposed tariff. At that time the four customers were being served under individual contracts each of which was an effective rate schedule on file with the Commission and each of which contained similar automatic reduction clauses. The tariff accepted by the Commission for filing on May 16, 1963, was made effective as of May 1, 1963, upon the Commission's waiving of the 30 day notice requirement. Centreville and Chestertown on May 22, 1963 and on May 31, 1963, respectively, each executed a new service agreement in the form provided in the accepted tariff which included the reduced rates and charges reflected in Resale Service Schedule No. 1. Eastern Shore also tendered the same reduced rates and charges reflected in Resale Service Schedule No. 1 to St. Michaels and the fourth company, Stockton, but, as in the case of the other two customers, only on the conditions set forth in the Tariff. St. Michaels advised the Respondent that it refused to execute the new service agreement and demanded the advantage of the reduced resale service schedule rates under FPC Electric Rate Schedule No. 7, the reduction to be effective on all wholesale power delivered to St. Michaels by Eastern Shore on and after May 1, 1963. This demand was refused by the Respondent and St. Michaels filed its complaint herein on July 12, 1963, seeking among other things the return of the payments of the alleged illegal overcharges.

During the period from May 1, 1963, through October 31, 1963, St. Michaels was charged the same rate previously applicable to it under the rate provisions of Eastern Shore's Rate Schedule FPC No. 7. Admittedly, this has resulted in the collection by Eastern Shore of $9,095.22 more from St. Michaels than it would have collected had St. Michaels been charged the reduced rates and charges contained under the 1963 filed tariff.

It is the Complainant's contention that the Respondent's Resale Service Schedule No. 1 containing reduced charges which had become effective upon the filing of the tariff with the Commission and the execution of new contracts with Chestertown and Centreville, two of the Respondent's resale service customers, constituted compliance with the single condition upon which St. Michaels' right to automatic rate reduction hinged; and that St. Michaels was automatically entitled to the advantage of the reduction in rates in the Respondent's Resale Service Schedule which had become effective May 1, 1963, for two of the Respondent's resale customers. Furthermore, the Complainant contends such automatic entitlement could not be conditioned upon the execution of any new service agreement since it was unconditionally entitled to the reduced rates under FPC Electric Rate Schedule No. 7.

The Staff, in effect, supports the Complainant's position. Thus, the Staff takes the position that Eastern Shore's Rate Schedule FPC No. 7, as supplemented, constitutes Eastern Shore's legal rate to St. Michaels and that the said schedule, by virtue of the effect of the provisions of Article V, Section 2, of the Wholesale Power Contract, guaranteeing the customers the benefits of any downward rate adjustments in Eastern Shore's resale rates, provides for the lower rates and charges which St. Michaels seeks. Furthermore, Staff asserts, Eastern Shore's refusal to file its Resale Service Schedule No. 1 as a part of Eastern Shore's Rate Schedule FPC No. 7, as supplemented, constituted a clear violation of the latter schedule since Eastern Shore's action of April 17, 1963, in filing its Resale Service Schedule No. 1 triggered its obligation to file the later schedule as a part of the earlier one, to wit, FPC No. 7. Therefore, Staff concludes, the rates as stated in Resale Service Schedule No. 1 are Eastern Shore's legal rates to St. Michaels on and after May 1, 1963, regardless of Eastern Shore's omission in completing a proper rate schedule filing. Accordingly, Staff concludes, St. Michaels has been and continues to be overcharged by Eastern Shore in the amount stipulated.

Eastern Shore takes the position that the tariff filed by it constitutes nothing more than its offer to provide service under a uniform tariff to all of its existing customers and that such offer is conditioned upon the agreement of such customers to be bound by all the tariff's terms and that until such time as a given customer agrees to the tariff's terms by executing a service agreement in the form required by the tariff, the tariff cannot, as a matter of law, be made applicable to such customer as an effective rate schedule. It concludes that to make the tariff rate schedule effective in the absence of the mutual consent of Eastern Shore and any of its customers to be contractually bound by the tariff's terms would, in effect, amount not only to an invalid obligation of the existing filed contract between Eastern Shore and the non-assenting customer in effect at the time of the filing of the tariff, but also would result in unduly preferential service to such customer over the consenting customers, Chestertown and Centreville, who have agreed to the terms of the tariff and have executed the required new service agreements.

Before considering the merits of St. Michaels' complaint, it is necessary to dispose of its contention that the Respondent has the burden of proof in this proceeding.

The Complainant citing as authority the case of *United States* v. *Kansas Gas and Electric Company*, 215 F. Supp. 532, contends that the Respondent having drafted the 1960 contract and filed it with the Commission as its

Electric Rate Schedule FPC No. 7, has the burden of proving that the reduced charges to Chestertown and Centreville resulting from the changes in its Resale Service Schedule No. 1 should not automatically be made available to St. Michaels by reason of Section 2 of Article V of the 1960 agreement, and that it has failed to sustain such burden. The cited case does not stand for any such proposition. Since it is generally accepted that the burden of alleging and proving facts upon which the Complainant's remedial right depends rests upon such Complainant, this Examiner can find no basis for the claim that the burden of proof shifted to the Respondent in this action. Consequently, he rejects that portion of Complainant's contention which is based on the Respondent's alleged failure to sustain the burden of proof. (See Order of the Commission *Carolina Pipeline Company* v. *Southern Natural Gas Co.*, 29 FPC 149.) The decision herein is rather directed to the basic issue of contract interpretation involving the provisions of Eastern Shore's Rate Schedule FPC No. 7, particularly the provisions of Article V, Section 2, of the Wholesale Power Agreement and the effect upon St. Michaels' rates of the reduction in rates and charges to Chestertown and Centreville under Eastern Shore's FPC Electric Tariff Original Volume No. 1.

The resolution of the main issue herein in essence involves a rate schedule interpretation, a matter, while primarily legal in nature, necessarily rests upon the basic jurisdiction of the regulatory agency with whom it is filed.

The Commission has not prescribed any special format of rate schedule under the Federal Power Act such as the Tariff Service Agreement form prescribed under the Natural Gas Act for the use of natural gas pipelines. (Sections 154.21-.41 of the Commission's Regulations Under the Natural Gas Act). The Power Act, however, expressly recognizes that rates to particular customers may be set by individual contracts by requiring such contracts to be filed. Section 205(c). Thus public utilities may employ the language of wholesale power contracts in preparing their rate schedules.

In accordance with such statute and the Rules and Regulations of the Commission, the Wholesale Power Contract involved herein was filed as part of Eastern Shore's Rate Schedule FPC No. 7. The contractual obligations between Eastern Shore and St. Michaels were accordingly embodied in that rate schedule, *Public Service Company of Oklahoma*, 25 FPC 656, 657, which also included Eastern Shore's filed rates and charges to St. Michaels under Eastern Shore's Resale Service Schedule attached to and made a part of the Wholesale Power Contract. Eastern Shore has undertaken (contractually and as a term of its rate schedule) to supply the electric power and energy needs of St. Michaels under Eastern Shore's Resale Service Schedule as it existed not only at the time of Eastern Shore's January 13, 1960, contract and its filing as a rate schedule pursuant to Section 205 of the Federal Power Act, but also as that schedule may be changed from time to time. The interpretation of the contractual documents, therefore, cannot be made except against the backdrop of the rate schedule's terms and conditions. Whatever obligation Eastern Shore has undertaken with respect to the rates and charges to St. Michaels must be measured by the terms of that contract, the pertinent provisions of which are as follows:

ARTICLE V

> Section 1. Bills shall be computed in accordance with the COMPANY'S Resale Service Schedule attached hereto and made a part of this contract.
>
> Section 2. COMPANY agrees that if during the life of this agreement there are any changes made in its Resale Service Schedule which would

> reduce the charges to CUSTOMER, CUSTOMER shall automatically receive the advantage thereof; CUSTOMER agrees that if any changes are made in COMPANY'S Resale Service Schedule which would increase charges to CUSTOMER, CUSTOMER will pay such increased charges but shall have the right to cancel this contract upon giving the COMPANY six months' notice of its intention to do so.
>
> Section 3. The COMPANY retains the right during the life of this contract, subject to the provisions of Section 2 above and the approval of any Regulatory Authority which may have jurisdiction in the matter, to change the provisions of its Resale Service Schedule, including the right to increase or decrease the rates for service set forth therein.

There appears to be no ambiguity in Article V, Section 2, of the Wholesale Power Contract. Its clear meaning reveals the intent of the parties without resort to parole evidence. The clear and unambiguous language permits of only one conclusion, to wit, Eastern Shore agreed to grant St. Michaels the advantage of any downward revision of charges resulting from changes in the Resale Service Schedule. The contract, thus, had built into it an automatic downward revision device in the event that changes in the resale service schedule resulted in reduced charges. In the final analysis, Eastern Shore had thereby obligated itself, as a term of FPC Electric Rate Schedule No. 7, to pass on automatically to St. Michaels the benefits of rate reductions made under any changes of the resale service schedule.

Notwithstanding this automatic triggering device and the fact that its resale service schedule is a class rate which is incorporated within Electric Rate Schedule FPC No. 7, as supplemented, Eastern Shore tendered the reduced rates and charges reflected in Resale Service Schedule No. 1, a part of the electric tariff, to St. Michaels but only upon acceptance of all the conditions set forth in the tariff. However, nothing expressly or impliedly made the downward revision contingent upon execution of a new agreement or acceptance of any other conditions. Had the parties intended that execution of a new agreement would be necessary to effectuate such changes it would have been simple so to state rather than by using the terms "customer shall automatically receive the advantage thereof." Eastern Shore may not now read into the contract terms conditioning the automatic revision upon acceptance of all the provisions of the new contract as embodied in the Resale Service Schedule No. 1 or the general terms and conditions of the new tariff. *Cf. Mississippi River Fuel Corporation* v. *Federal Power Commission*, 281 F. 2d 919, 925.) There is no basis for reading any such condition into the contract. (*Cf. Cities Service Gas Producing Company* v. *Federal Power Commission*, 233 F. 2d 726, 729; cert. denied 352 U.S. 911.)

The language which it contains is clearly broad enough to encompass the very transactions which it is claimed triggered the downward revision clause. Any other interpretation would do violence to the language of an agreement which simply provides for automatic advantage of reduced charges in the event there was any change in the Resale Service Schedule which resulted in reduced charges.

The Respondent claims, however, that the previous conduct of the parties in connection with the execution of the Supplementary Agreement of November 8, 1960, resulting in the reduction of the fuel adjustment charge, reflects the intent of the parties to the effect that a new agreement was required before the Complainant would be entitled to any reduction of charges. Suffice it to say, however; a case of consistent prior practice has not been made out if indeed such practice could be deemed a relevant consideration. Furthermore, the fuel adjustment Supplemental Agreement of November 8, 1960, would be deemed to be simply executory of, and represented action taken under, the pre-existing contract between the parties. *Cf. Texas Gas Transmission Corp. v. Shell Oil Co.*, 363 U.S. 263, 272.

As has been determined above, the proper interpretation of the terms of Rate Schedule FPC No. 7, as supplemented, as well as the contractual undertaking contained in Article V, Section 2, of the Wholesale Power Contract, compels the conclusion that Eastern Shore had obligated itself to pass on automatically to St. Michaels the benefits of all rate reductions resulting from any change in the Resale Service Schedule. The requisite change in the Resale Service Schedule triggering such obligation was occasioned by the filing of Resale Service Schedule No. 1, with its reduced charges, as part of Eastern Shore's Electric Tariff on April 17, 1963.

The record discloses that (1) Chestertown, Centreville and St. Michaels, the customers considered in these proceedings, are apparently all in the same class, to wit, resale customers and the same kind of service under substantially similar conditions is rendered to each of them; (2) there is an absence of any showing that there is any substantial difference in the cost of service or operating conditions existing which would justify the differences now existing in rates charged Centreville and Chestertown, the customers accepting the tariff, under Resale Service Schedule No. 1 and those charged St. Michaels under the earlier Resale Service Schedule; (3) the Respondent has voluntarily made available to Chestertown and Centreville the rate currently charged them; (4) although St. Michaels is a resale customer within the same classification as Centreville and Chestertown and under its contract with Eastern Shore is automatically entitled to the lower rate, the Respondent has failed to make such lower rate available to St. Michaels although it has offered to make the lower rates available, but only under conditions not warranted by the subsisting contract between them.

The Resale Service Schedules involved (both the earlier one and No. 1) serve the same purposes, to wit, the stating of Eastern Shore's wholesale rates and charges to a class of resale customers. The changes in the tariff, accepted by Chestertown and Centreville, in no way changed their electric operations for purposes of classification as resale customers. They remain, as before, substantially all requirement customers in the same classification as St. Michaels. There is no indication that they suffered any substantial variation in the service conditions or in the characteristics of the delivery and sale of the electric energy. Furthermore, there is no evidence in the record to refute Eastern Shore's clear obligation to afford all purchasers equality of rate treatment on a class basis and to pass on automatically any reduction in charges to its resale purchasers.

The testimony regarding any substantial differences in service to be incurred by St. Michaels under the electric tariff as opposed to Rate Schedule FPC No. 7 was at best meager. Counsel for the complainant attempted to fill the void by argument but the General Manager who testified on behalf of St. Michaels failed to translate the apparent differences in the language of the two service agreements into every day operating consequences as respect St. Michaels' day to day utility operations. However, an examination of the two documents, which speak for themselves, clearly reveals certain significant differences. St. Michaels would, under the electric tariff, undoubtedly experience some loss in the amount of contractual protection which it now enjoys against encroachment of its service, territory, availability of supply, and rate stability. However, the Examiner does not consider resolution of this issue necessary, since in the final analysis however substantial the alleged differences were deemed to be, and St. Michaels apparently did consider them to be substantial, St. Michaels, in any event, was not contractually obligated to accept any new conditions or contract, but was entitled to rely upon the unconditional automatic advantage clause contained in its contract with Eastern Shore.

However denominated in practical operation, the schedule of charges and rates in Resale Service Schedule No. 1 effected a reduction of the charges paid, and to be paid, by Chestertown and Centreville for a given quantity of electrical energy within a given period. St. Michaels is entitled to the same advantages pursuant to the provisions of Section 2, Article V, of the Wholesale Power Contract. That contract between the parties is controlling and cannot be unilaterally changed by the action of one of the parties. See *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332, *F.P.C.* v. *Sierra Pacific Power Company*, 350 U.S. 348. Consequently, the reduced rates contained in Resale Service Schedule No. 1 are the legal rates of Eastern Shore after May 1, 1963, notwithstanding its omission to complete a proper rate schedule filing. See *City of Colton* v. *Southern California Edison Company*, 26 FPC 223, 232.

In view of the conclusion arrived at herein, to wit, that from May 1, 1963, through October 31, 1963, St. Michaels was entitled to the lower rates and charges contained in Resale Service Schedule No. 1, it did, in fact, pay rates in excess of those provided in its rate schedule. Accordingly, Respondent, Eastern Shore, received and had the use of the overpayments admittedly amounting to $9,095.22. The situation is little different from what it would be if the Commission after a Section 205 investigation had determined that the rates then in effect were too high and ordered refunds. The Federal Power Act in that situation clearly allows a refund with interest. Accordingly, it is held herein that an interest payment of 6 percent per annum is allowed. *Cf. Mississippi River Fuel Corp.* v. *Federal Power Commission*, 281 F. 2d 919, 927.

ADDITIONAL FINDINGS AND CONCLUSIONS

The following findings and conclusions, made upon consideration of the record made in these proceedings, are deemed to be supplementary and in addition to those hereinabove stated:

(1) Eastern Shore's Rate Schedule FPC No. 7, as supplemented, on file with this Commission and effective on and after April 9, 1962, provides for wholesale electric service by that company to the town of St. Michaels at the rates and charges contained in Eastern Shore's Resale Service Schedule.

(2) The provisions of Article V, Section 2, of the Wholesale Power Contract, a part of FPC Rate Schedule No. 7, provide for the automatic advantage to St. Michaels of any reduced charges resulting from a change in the Resale Service Schedule.

(3) Effective May 1, 1963, St. Michaels is entitled to the advantage of the reduced charges set forth in Eastern Shore's "Resale Service Schedule No. 1" filed with this Commission on April 18, 1963, as a part of its FPC Electric Tariff Original Volume No. 1.

(4) Eastern Shore by reason of its rate and billing practices has charged, and collected from, St. Michaels for the period from May 1, 1963, through October 31, 1963, the sum of $9,095.22 in excess of the just and reasonable rates.

(5) St. Michaels is entitled to a refund from Eastern Shore because of such excess charges in the amount of $9,095.22 with interest thereon at the rate of 6 percent per annum.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission on appeal or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Eastern Shore is hereby directed to cease and desist immediately from charging, demanding or receiving from St. Michaels rates and charges other than those set forth in Eastern Shore's "Resale Service Schedule No. 1", filed with this Commission on April 18, 1963, as part of FPC Electric Tariff Original Volume No. 1, unless and until such rates and charges are changed or cancelled in accordance with the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations under the said Act.

(B) Eastern Shore shall account for all monies collected from St. Michaels on and after May 1, 1963, which are in excess of Eastern Shore's legal rate referred to in Finding (3) above.

(C) Eastern Shore shall establish, within thirty days of the issuance of this order, a special reserve account in an amount equal to the difference between the amount collected from St. Michaels on and after May 1, 1963, and the amount which would have been collected under the rates and charges referred to in Finding (3) above, totalling $9,095.22 for the period May 1, 1963, through October 31, 1963, with interest at the rate of 6 percent per annum from the dates on which the excess amounts were collected until the date of compliance with paragraphs (B) and (C) hereof.

(D) Within 60 days after the issuance of this order, Eastern Shore shall submit to the Commission certified accounting entries reflecting the establishment of the special reserve account referred to in paragraph (C) hereof, together with a proposed plan for the prompt disposition of the amount in the said account to St. Michaels.

(E) Upon Eastern Shore's compliance with the decretal paragraphs herein, the overcharge phase of the hearing in Docket No. E-7114 shall be deemed terminated.

MAX L. KANE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. RP64-31

ORDER CONDITIONALLY PERMITTING REVISED TARIFF SHEETS TO BECOME EFFECTIVE AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued May 14, 1964)

Southern Natural Gas Company (Southern), on April 1, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Sixth Revised Volume No. 1.[1] The proposed change in rates would make effective as of April 1, 1964, a reduction in Southern's jurisdictional rates in the sum of approximately

---

[1] Fourth Revised Sheets Nos. 11C, 29A, and 30; Fifth Revised Sheets Nos. 5, 9, 12, 16, 23 and 27.

$1,500,000 annually, based upon operations for the twelve months ended October 31, 1963, adjusted to reflect its operations with additional facilities authorized in our Opinion No. 424 in Docket No. CP63-26. The filing of the proposed rates, which we have docketed as shown above, also includes a proposal to make further rate reductions subject to certain terms and contingencies summarized in part below.

Southern's rate reduction proposal has resulted from conferences with the Commission staff. The conferences were initiated by letter of the Executive Director on September 27, 1963, as a consequence of the staff's continuing supervision and periodic review of the reports filed with the Commission by natural gas companies.

The proposal is summarized in part as follows:

(1) Effective as of April 1, 1964, Southern's jurisdictional rates shall be reduced to the levels set forth in Appendix A hereto; and effective on January 1, 1965, Southern shall file further rate reductions to reflect the reductions set forth in Appendix A hereto.

(2) Southern's proposed reduced rates to become effective as of April 1, 1964, give effect to the reduction in the Federal corporate income tax rate from 52 percent to 50 percent which became effective January 1, 1964, and also give effect to the rate treatment of liberalized depreciation and related accumulated deferred income taxes, as provided in the Commission's Opinion No. 417, *Alabama-Tennessee Natural Gas Co.*, Docket No. G-5471, *et al.*, 31 FPC 208 with respect to plant additions placed in service prior to January 1, 1963, on which liberalized depreciation tax deductions have heretofore been taken. Southern will continue to take liberalized depreciation deductions with respect to such plant additions, and pursuant to Account 282, Subparagraph D, of the Commission's Uniform System of Accounts, requests that it be permitted to discontinue, effective January 1, 1964, its deferred tax accounting with respect to such plant additions. Southern has elected to use, for tax purposes, straight line tax depreciation, effective January 1, 1964, for plant additions placed in service on and after January 1, 1963.

(3) The proposed rate reductions of approximately $500,000 annually, to become effective on January 1, 1965, give effect to the reduction in the Federal corporate income tax rate from 50 percent to 48 percent. Such reductions are set forth in Appendix A hereto.

(4) Southern shall be relieved of all obligations relating to: the recently enacted reductions in the Federal income tax rates; the condition contained in Ordering Paragraph (D) of Opinion No. 379, *Southern Natural Gas Company*, 29 FPC 323, relating to the treatment of liberalized depreciation and accumulated deferred taxes; the Commission's policies with respect to such treatment in Opinion No. 417, *supra;* and the informal investigation of Southern's rates initiated on September 27, 1963, referred to above.

(5) Southern shall continue to be obligated to pass on gas supplier refunds applicable to the period April 16, 1958 through October 31, 1959, pursuant to order of the Commission issued April 18, 1958, in Docket No. G-13258, and refunds applicable to the period June 1, 1960, through March 31, 1964, pursuant to Opinion No. 379.[2]

(6) Southern shall be obligated to pass on to its customers gas supplier refunds applicable to the period commencing April 1, 1964, and during the term of this rate agreement with respect to the pending gas supplier proceedings listed in Appendix B hereto (and any such proceeding inadvertently

---

[2] Southern's obligation to make refunds, if any, applicable to the period November 1, 1959, through May 31, 1960, remains subject to the Commission's order in Docket No. G-18512, now pending before the Commission upon Southern's Motion to Terminate.

omitted therefrom). Southern shall flow-through to its jurisdictional customers the proportionate parts of any such refunds (including interest thereon received by Southern) as more specifically provided in the agreement.

(7) Southern shall reduce its rates to reflect reductions in the rates of its gas suppliers with respect to the period commencing April 1, 1964, and continuing during the term of this agreement, with respect to the proceedings listed in Appendix B hereto, to the extent that such reductions result in an average cost of purchased gas less than 20.81 cents per Mcf based upon an actual 12-months' weighted average basis.

(8) Since the gas supplier rates reflected in Southern's rates proposed herein include the rates reduced by the following Commission orders in the proceedings in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, Southern shall be relieved of any further obligation to reflect such supplier rate reductions:

Producers	Docket Nos.	Orders issued
Gulf Oil Corp. and Socony Mobil Oil Co., Inc.	G-19062, *et al.*	Oct. 9, 1963
Cabot Corp.	CI60-414, *et al.*	Oct. 25, 1963
Sinclair Oil & Gas Co.	G-17917, *et al.*	Oct. 28, 1963
Union Producing Co.	CI60-414, *et al.*	Oct. 29, 1963
Perry R. Bass (Operator), *et al.*	CI61-406, *et al.*	Jan. 7, 1964

(9) Southern shall tender for filing new rate schedules providing for Optional CD and CDL services under which Billing Demand will be equal to Contract Demand.

(10) Southern's proposal also provides that it is submitted without prejudice and without agreement as to principles and methods; that it shall terminate on the effective date of either a change in rates filed by Southern or ordered by the Commission as a result of any future investigation of Southern's rates. Southern requests that the Commission waive compliance with the requirements of the General Rules and Regulations, particularly Part 154 thereof, to the extent necessary to permit the proposed changes to become effective as of April 1, 1964.

Southern, on March 30, 1964, served copies of the proposed tariff revisions and agreement, and on April 20, 1964, served copies of the related cost-of-service study upon all customers and interested State commissions. Notice of the tariff filing and rate reductions was published in the Federal Register on April 8, 1963, with the request that comments on the filing be submitted by April 24, 1964.

Southern's filing states that its cost of service reflects the Commission's decision in Opinion No. 417, *Alabama-Tennessee Natural Gas Company*, issued February 3, 1964, requiring tax savings on liberalized depreciation deductions to be flowed through to customers and the rate base reduced by the amount of the balances of accumulated deferred taxes in Account 282. The amount of the rate base reduction is $8,254,000. Likewise, the cost of service reflects the recently reduced Federal corporate income tax rate, 50 percent, and Southern's agreement provides for the reduction, effective January 1, 1965, to reflect the further reduction in that tax rate to 48 percent. The cost of service for jurisdictional sales is $1,411,768 less than revenues, and Southern's proposed reduction is approximately $1,500,000 annually. The costs included are those based upon operations for the twelve months' period ended October 31, 1963, as adjusted to reflect changes in operations with the facilities approved in Opinion No. 424, and are consistent with the principles of Opinion No. 379, issued February 18, 1963, 29 FPC 323.

Carolina Pipeline Company (Carolina), a customer purchasing gas under Southern's Rate Schedules CDL-3 and AOL-3, filed its comments in a letter dated April 8, 1964. Carolina requested information and data relating to Southern's cost of service underlying the proposed rates and the manner in which the rates were designed. It also asserts that no justification has been shown by Southern for making the rates effective on April 1, 1964, rather than upon January 1, 1964, as had been done by some other companies. Further, Carolina comments upon the fact that no reduction in the AOL-3 Rate Schedule is proposed, and contends that this is an undue discrimination against Carolina and other high load factor customers since Carolina would be required under the proposal to "pay more in the aggregate" than would be paid by the low load factor customers. It, therefore, objects to any action which would permit the filing to become effective.

On April 29, 1964, Carolina Pipeline Company filed a letter commenting further upon Southern's proposed rate reduction, particularly concerning the cost information provided by Southern, accompanying its letter of April 20, 1964. Carolina's letter requests that it be afforded an opportunity to examine the underlying cost-of-service data and schedules which may have been supplied to the Commission staff, or at least that it be provided with Statements L, M, and N which are required to be filed in support of proposed rate *de*creases by Section 154.63(b)(4) of Commission Regulations under the Natural Gas Act.

On this point we believe Carolina's comment to be well taken, and we shall require Southern to file with the Commission, and serve on all its customers and interested State commissions, the studies required in Statements L, M, and N of Part 154 of the Regulations. Due consideration and appropriate prospective action will be taken by the Commission if warranted by any comments filed with respect to such studies. To the extent that Southern's filing requested waiver of the requirements of Part 154 of the Regulations other than the 30-day notice requirements, it should be denied.

We do not believe that Southern's failure to serve the studies referred to above on its customers and interested State commissions should be allowed to delay making Southern's rate reduction effective as of the April 1, 1964 date specified in the filing until we can consider any possible further objections Carolina or other parties may wish to raise. The proposal before us, in our opinion, clearly places all of Southern's customers in a better position than they are under Southern's existing rates and should become effective as of the date specified in the filing, as soon as possible. Contrary to Carolina's suggestion, we would not have the authority, were we to reject the filing or indefinitely postpone its effectiveness, to subsequently order that any rate reduction be made effective as of January 1, 1964.

Carolina's assertion that the failure to reflect any reduction in the AOL-3 rate schedule constitutes undue discrimination in favor of low load factor customers, is without merit. Its statement that Carolina would be required to "pay more in the aggregate" than it would be paid by low load factor customers runs counter to the Commission's finding in Opinion No. 423 (31 FPC 705 at 707) that—

> The average cost to Carolina of both firm and interruptible gas purchased from Southern in 1962 was some *four cents less* than the next lowest cost of any of Southern's major resale customers in any zone. [Emphasis added.]

Obviously, these are high load factor customers, and low load factor customers had even higher average costs.

In our Opinion No. 379, *Southern Natural Gas Company*, issued February 18, 1963, 23 FPC 323, 353, in order to set commodity charges for industrial sales "at the maximum which Southern can charge and still retain its interruptible loads", we prescribed CD (demand-commodity) rates containing two separate blocks for commodity charges. We prescribed the two blocks in order to provide higher charges in Block 1 for those customers purchasing at lower load factors. We observed that . . . "the second block applies primarily to gas sold for industrial use." In Zone 3, in which Carolina purchases gas, the Block 2 charge was set at the currently charged commodity level, 23.67 cents per Mcf. Subsequently, we authorized Southern to sell gas to Carolina under Rate Schedule CDL-3 (Limited Service) and AOL-3 (Authorized Overrun Service). The Block 2 commodity level of CDL-3 and the single commodity charge of AOL-3 are identical with the Block 2 charge of CD-3, *i.e.*, 23.67 cents per Mcf.

Southern's proposal reflects the $1.5 million reduction in jurisdictional cost of service by first reducing the G rates by the overall percentage reduction of 1.3 percent. The remainder of the reduction was then applied to the *first* block commodity charges in all of the CD and CDL rates. The AOL rates, about which Carolina complains, reflects only the *second* block commodity charges of the CD rates, and, therefore, were *not* reduced. The reduction applied to the first block commodity charge was 3.77 percent, based upon the average reduction of the first block commodity revenues. (Appendix A hereto)

The principal reason for *not* reducing the Block 2 and AOL rate levels, therefore, is that they were set by us at those levels to meet competitive fuel prices. We know of no justification for lowering these levels further to meet competition, and Carolina makes no allegation that such justification exists. On the contrary, it would appear from findings in Opinion No. 423, issued March 30, 1964 in Docket No. RP63-4, that Carolina has had no difficulty selling gas to industry on the basis of paying Southern 23.67 cents per Mcf for over-run gas. In that proceeding, Carolina's complaint was that it desires to purchase gas under the CD-3 rate schedule (which contains the Block 2, 23.67 cents per Mcf, rate level for over-run gas) in order to sell *more* over-run gas to industrial consumers during winter periods.

Moreover, as shown in Southern's proposal (Art. VI, p. 9), its cost of purchased gas has risen to 20.81 cents from the 20.28 cents per Mcf reflected in existing rates. In view of that fact, and of the fact that the Block 2 and AOL rate levels remain unchanged in Southern's proposal, the 23.67 cents per Mcf paid by Carolina now contributes 0.53 cents *less* to transmission and other costs than it does under existing rates. Under the above circumstances, it is obvious that confining this reduction in rates to the Block 1 commodity charges is appropriate.

Carolina also complains that Southern discriminates against it in denying Carolina service under Rate Schedule CD-3, alleging that it unjustly receives inferior service. We have recently given full consideration in Carolina's complaint in this regard in Opinion No. 423, issued March 30, 1964. Further consideration to that issue need not be given here.

One further comment needs to be made with respect to Southern's request, pursuant to Account 282 of the Commission's Uniform System of Accounts that we grant permission to discontinue its deferred tax accounting with respect to plant additions made prior to January 1, 1963. In Opinion No. 417, with which Southern offers to comply, we discussed the various alternatives for dealing with the accumulated deferred tax balances in Account No. 282. Our considerations were based upon the assumption that a given company may continue to take liberalized depreciation on all of its plant additions, both past and future. Southern, on the other hand, proposes to continue to use these deductions only with respect to past plant additions and to take straightline depreciation with respect to future plant additions. As a consequence of that election and Southern's proposal to discontinue deferred tax accounting, the accumulations in Account No. 282 may be expected to gradually dissipate. This is consistent with our intention and policy contained in Opinion No. 417. We shall, therefore, provide that our waiver of Southern's obligations under Subparagraph A[3] and these balances shall remain subject to the other provisions of Account 282 and to our further order in any general rulemaking proceeding governing the dissipation of such balances consistent with the policy decided upon in Opinion No. 417.

The Commission finds:

(1) Good cause exists for waiving only the 30 day notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Southern's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30 day notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to terms and conditions of this order and of the rate reduction proposal.

(B) Within twenty (20) days after the issuance of this order, Southern shall file with the Commission, and serve on its customers and interested State commissions, copies of Statements L, M, and N, pursuant to Section 154.63 (b) (4) of the Commission's Regulations under the Natural Gas Act in support of its proposed rate reductions. Comments thereon, if any, shall be filed within thirty (30) days after service by Southern of such Statements.

(C) The revised tariff sheets specifically described herein are accepted for filing to become effective as of April 1, 1964, as proposed by Southern's filing on April 1, 1964, subject to the terms and conditions of this order.

(D) Southern's request, pursuant to Account 282, Subparagraph D of the Commission's Uniform System of Accounts, that it be permitted to discontinue, effective January 1, 1964, its deferred tax accounting with respect to plant additions placed in service prior to January 1, 1963, is hereby granted; *provided, however*, that this permission is deemed to be a waiver of compliance of Subparagraph A of Account 282 only and is not to be considered a waiver of other subparagraphs of Account 282; and *provided, further*, that the balances of accumulations in said Account 282 shall also be subject to any further general order of the Commission concerning the dispositions of the balances in Account No. 282 which may result from the rule-making proceeding to implement the policy decided in and consistent with Opinion No. 417 (31 FPC 208 at 219–221), or any other proceeding for that purpose.

(E) Southern shall comply with each of the provisions of its agreement and rate-reduction proposal relating to future refunds and rate reductions.

(F) Within twenty days of making refunds in accordance with paragraph (E) herein, Southern shall report to the Commission, in writing and under oath, the amount of principal and interest so paid, together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund, and upon interested State commissions.

---

[3] Subparagraph A requires Account No. 282 to be credited with amounts equal to that by which taxes on income are lower because of the use of liberalized depreciation as compared to depreciation on a straight-line basis.

(G) All natural gas companies subject to the jurisdiction of the Commission which directly or indirectly receive gas supplier rate reductions and refunds as a result of this order shall proportionately reduce their rates and refund to their customers without additional interest all refunds received from Southern Natural Gas Company within 45 days of receipt of reductions and refunds. If any such natural gas company objects to making reductions and refunds, it shall file a protest with the Commission and before being required to make such reductions and refunds will be afforded a hearing. Within 30 days after making the refunds required by this paragraph, all such natural gas companies shall report to the Commission in writing and under oath the manner of making such refunds, including a list of customers and the amount refunded to each customer.

(H) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Southern Natural Gas Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Southern Natural Gas Company or any other persons or parties affected by this order.

Commissioner Woodward *not participating.*

APPENDIX A

SOUTHERN NATURAL GAS COMPANY

PRESENT RATES AND RATES PROPOSED TO BECOME EFFECTIVE APRIL 1, 1964 AND JANUARY 1, 1965

Rate schedule	Present rates	4-1-64 rates	4-1-64 reduction	1-1-65 reduction
Zone 1				
CD-1:				
Demand charge	$1.27	$1.27	--------	--------
Commodity charges:				
First block	22.54¢	21.69¢	0.85¢	0.28¢
Second block	20.24¢	20.24¢	--------	--------
CDL-1				
Demand charge	$1.27	$1.27	--------	--------
Commodity charges:				
First block	22.54¢	21.69¢	0.85¢	0.28¢
Second block	20.24¢	20.24¢	--------	--------
G-1	36.1¢	35.6¢	0.50¢	0.10¢
Zone 2				
CD-2:				
Demand charge	$1.93	$1.93	--------	--------
Commodity charges:				
First block	24.39¢	23.47¢	0.92¢	0.31¢
Second block	22.37¢	22.37¢	--------	--------
G-2	40.3¢	39.8¢	0.50¢	0.20¢
Zone 3				
CD-3:				
Demand charge	$2.42	$2.42	--------	--------
Commodity charges:				
First block	28.37¢	27.30¢	1.07¢	0.36¢
Second block	23.67¢	23.67¢	--------	--------
CDL-3:				
Demand charge	$2.42	$2.42	--------	--------
Commodity charges:				
First block	28.37¢	27.30¢	1.07¢	0.36¢
Second block	23.67¢	23.67¢	--------	--------
G-3	46.8¢	46.2¢	0.60¢	0.20¢
Zone 2 and Zone 3				
EX-1	31.3¢	30.95¢	0.35¢	0.11¢

APPENDIX B

SOUTHERN NATURAL GAS COMPANY

NAME OF SUPPLIER, FIELD AND FPC DOCKET NUMBER OF ALL SUPPLIER RATES SUBJECT TO REFUND AT MARCH 30, 1964

Supplier	Field	Docket No.
David Crow	Bear Creek—Bryceland	G-17714
L. E. Smith and L. G. Cameron	Bear Creek—Bryceland	G-17679
H. T. Shalett and David Crow	Bear Creek—Bryceland	RI60-393
Skelly Oil Co	Dexter—Extended area	G-14712
Joseph E. Seagram & Sons, Inc	Dexter	RI63-183
Union Producing Co	Dexter—Extended area	G-15077
British-American Oil Producing Co	Gwinville	G-14630
Humble Oil & Refining Co	Gwinville	G-14107
Humble Oil & Refining Co	Gwinville	RI63-194
Socony Mobil Oil Co., Inc	Gwinville	G-14277
Richardson Oils, Inc	Gwinville	RI61-280
Sun Oil Co	Gwinville	G-13664
Sun Oil Co	Gwinville	RI63-36
Superior Oil Co	Gwinville	G-14106
Phillips Petroleum Co	Bastian Bay	G-17156
Continental Oil Co	Bayou Long—Extended area	G-19437
The California Co	West Black Bay	G-20346
Phillips Petroleum Co	Breton Island	G-16083
Phillips Petroleum Co	Breton Island	G-17920
Kerr-McGee Oil Industries, Inc	Breton Island	G-16082
Kerr-McGee Oil Industries, Inc	Breton Island	G-17882
Kerr-McGee Oil Industries, Inc	Breton Sound	G-17155
Phillips Petroleum Co	Breton Sound	G-17267
Mississippi River Fuel Corp	Coquille Bay	G-17715
H. L. Hawkins & H. L. Hawkins, Jr	Epps	G-11625
Pan American Petroleum Corp	Grange	CI62-46
Tidewater Oil Co	Grange	CI61-1689
The California Co	Hub	G-19345
Humble Oil & Refining Co	Hub—Original area	G-19200
Pan American Petroleum Corp	Hub	CI60-128
Humble Oil & Refining Co	Knoxo—Original area	CI62-129
Humble Oil & Refining Co	Kokomo	CI62-130
Sun Oil Co	Kokomo	CI62-156
U.S. Oil of Louisiana, Inc	Lake Washington—CC-9 Gas	CI61-173
Continental Oil Co	Little Bayou Pigeon	G-17521
Kerr-McGee Oil Industries, Inc	Main Pass Block 47 and 53	G-17155
Humble Oil & Refining Co	Sandy Hook	G-9679
Humble Oil & Refining Co	Sandy Hook	G-11539
Humble Oil & Refining Co	Sandy Hook	G-16958
Humble Oil & Refining Co	Sandy Hook	RI63-186
Southeastern Public Service Co	South Section 28	RI63-361
British-American Oil Producing Co	Tantine	RI61-174
The California Co	Various 7-31-51 Contract	G-16682
Phillips Petroleum Co	Various 2-26-57 Contract	G-17156
United Gas Pipe Line Co	Perryville	RP61-18
United Gas Pipe Line Co	Perryville	RP63-1
United Gas Pipe Line Co	Kosciusko	RP61-18
United Gas Pipe Line Co	Kosciusko	RP63-1

OPINION NO. 428

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-1

OPINION AND ORDER DETERMINING RATES AND PROVIDING FOR REFUNDS

(Issued May 14, 1964)*

Syllabus

1. Historically, Commission has used a test period with adjustments for known changes occurring within reasonable time. P. 1186.

---

*Initial decision appears on P. 1222. Rehearing granted for purposes of adequate consideration, 31 FPC 1629; see also settlement order at 32 FPC 1515.

Petition to Review dismissed *sub nom. Texas Eastern Transmission Corp.* v. *F.P.C.*, 357 F. 2d 232 (CA5–1966) [Refund review proceeding].

Set aside *United Gas Pipe Line Co.* v. *F.P.C.*, 357 F. 2d 230 (CA5–1966); cert. granted 384 U.S. 984 [Tax issue]; affirmed, 386 U.S. 237 (1967).

2. Since here extensive facilities were put in service in 1962, substantially changing company's operations in 1963, it was proper to employ 1963 gas volumes with proposed March 31, 1962 test year cost of service adjusted incrementally to such increased volumes. P. 1186.

3. Commission would be remiss in accepting producer-affiliate's filed rates for pipeline's purchased gas costs, but is not required to include full-blown inquiry into such rates in instant proceeding. P. 1187.

4. Question of cost of gas purchased from producer-affiliate deferred until decision in affiliate's pending rate case. P. 1188.

5. Reasonable contributions to recognized charities constitute a proper operating expense. P. 1189.

6. Federal income tax allowances computed on basis of 52 percent rate in effect when record closed; however pipeline is required to file rate changes to reflect statutory rate of 50 percent in 1964 and 48 percent in 1965, as prescribed by Revenue Act of 1964. P. 1190.

7. Using the five-year period 1957-1961, and *Cities Service* method for determining effect of consolidated tax return, Commission *finds* pipeline's share of parent's consolidated tax return to represent an effective tax rate of 50.04 percent. P. 1191.

8. Commission *rejects* contention that in computing United's income tax liability it should treat pipeline as if it had availed itself of statutory liberalized depreciation and guide-line depreciation rates irrespective of whether parent had in fact actually utilized such depreciation provisions. P. 1191.

9. Since prepayments [for gas paid for but not actually taken] are non-recurring, they should not be deducted in determining United's tax allowance. P. 1192.

10. Accumulated gas prepayments should be included in working capital, being amounts expended to retain available supply of gas, prior to receipt of related revenues upon which return should be realized. P. 1192.

11. Question of regulatory treatment of investment tax credit has been rendered moot by Congressional prescription that regulatory agencies shall not use such taxes for purpose of establishing company's cost of service without company consent. P. 1193.

12. In determining rates for future period beginning January 1, 1963, it was proper to adjust rate base to include plant put in service after proposed test year. P. 1194.

13. Historically, Commission has favored rolled-in methods of allocation so that all customers share equally in pipeline's cost—unless length of pipeline required zone differentials. P. 1195.

14. In prior United order, so-called Method 8 allocation was justified on ground that pipeline's system was two separate systems, with smaller interconnecting facilities. P. 1196.

15. Pipeline's system being not developed to stage where rolled-in allocation may be applied, any rates established under such allocation would be too disruptive of pipeline's business relationships in view of historical pattern; accordingly, Commission *disapproves* proposed roll-in of costs, but expects in future allocations that United's costs will trend in direction of complete roll-in. P. 1197.

16. Desirable principle of rate-making is to assign cost directly when feasible and employ cost allocation only when necessary. P. 1197.

17. Operation of new 30-inch pipeline basically changes operation of United's system, requiring departure from Method 8 allocation. P. 1198.

18. Commission *adopts* roll-in of pipeline's two northern zones, but extends such allocation to transmission and purchased gas costs prior to an allocation between jurisdictional and non-jurisdictional customers, thus carrying out intent to treat the two zones as one. P. 1198.

19. Giving weight to both historical and cost considerations, Commission *approves* 3.5 cents per Mcf differential in commodity components between Central and Jackson rate zones. Pp. 1198, 1199.

20. Because of competition, it has generally been necessary to establish a balance between demand and commodity factors differing from standards set forth in *Atlantic Seaboard*. P. 1200.

21. Rates fixed here will prevent loss of sales without placing unnecessary burden on domestic and commercial ultimate consumers. P. 1201.

22. While Commission under Section 5(a) has no authority to order rate increases, it may determine appropriate differentials in rates and authorize pipeline to balance its revenues. P. 1201.

23. Under Section 4(e), Commission is not required in a general rate increase proceeding to exempt from refund provisions separate schedule filings representing decreases. P. 1202.

24. Parties not deprived of due process in exclusion of evidence, since Commission determination on allocation and rate design were based on other evidence in record, and thus parties have not been prejudiced. p. 1203, 1204.

25. In proceeding arising under Section 4(e) of the Natural Gas Act, Commission *determines* just and reasonable rates and *provides* for refunds.

Commissioner O'Connor *concurs*, except as noted.

Commissioner Woodward *concurs in part; dissents in part.*

***Thomas Fletcher* for United Gas Pipe Line Company.**

***Robert O. Koch, William Feldhaus, Daniel O'Connell, Richard J. Connor, Christopher T. Boland,* and *George J. Meiburger* for Texas Gas Transmission Corporation.**

***Keith M. Pyburn, Jack D. Head,* and *Joseph F. Weiler* for Texas Eastern Transmission Corporation.**

***Charles C. McDugald* for Natural Gas Pipeline Company of America.**

***W. Russell Gorman, John H. Hendren,* and *Cleon L. Burt* for Mississippi River Fuel Corporation.**

***Charles E. McGee* and *James D. McKinney, Jr.* for Algonquin Gas Transmission Company.**

***William S. Tarver* and *Hugh J. Morgan, Jr.* for Southern Natural Gas Company.**

***William R. Duff* for Public Service Electric and Gas Company.**

***George Spiegel, Reuben Goldberg,* and *George E. Morrow* for Memphis Light, Gas and Water Division of the City of Memphis, Tennessee.**

***Bryce Rea, Jr.* and *Thomas M. Knebel* for Willmut Gas & Oil Co. and Tyler Gas Service Company.**

***George C. Williams* for The East Ohio Gas Company.**

***Thomas A. White* for Hope Natural Gas Company and The River Gas Company.**

***G. Kirby Herrington* for New York State Natural Gas Corporation.**

***James B. Sayers* for Peoples Natural Gas Company.**

***C. William Cooper, H. B. Griffith, Jr.,* and *Norman A. Flaningam* for The East Ohio Gas Company, Hope Natural Gas Company, The River Gas Company, New York State Natural Gas Corporation, and The Peoples Natural Gas Company.**

***Thomas F. Brosnan* for Western Kentucky Gas Company.**

B. Hudson Milner and *Gavin H. Cochran* for Louisville Gas and Electric Company.

John H. Groves for Indiana Gas and Water Company.

Major James E. Macklin, Jr. for Department of Defense and all other executive agencies of the Federal Government.

John Kuykendall, Jr. for Mississippi Valley Gas Company.

James O'Malley, Jr., H. G. Skinner, Ronald D. Jones, and *Eugene Thomas* for Consolidated Edison Company of New York, Inc.

Vincent P. McDevitt, Samuel G. Miller, and *Henry P. Sullivan* for Philadelphia Electric Company.

James B. Williams for Alabama Public Service Company.

John E. Holtzinger for The United Gas Improvement Company.

J. David Mann, Jr. for Laclede Gas Company of St. Louis.

Richard Littell and *Robert E. Shaw* for Tennessee Gas Transmission Company.

Edwin F. Russell and *Harry G. Hill, Jr.* for The Brooklyn Union Gas Company.

James R. Wetherbee for Southern Union Gas Company.

John W. Glendening, Jr., John S. Schmid, and *John A. Gage* for Boston Gas Company.

John W. Glendening, Jr., John S. Schmid, and *Richard A. Sullivan* for Bristol and Warren Gas Company.

John W. Glendening, Jr., John S. Schmid, Richard L. Brickley, and *Halycon G. Skinner* for Brockton Taunton Gas Company.

John W. Glendening, Jr., John S. Schmid, and *H. Bissell Carey, Jr.* for the Hartford Electric Light Company.

John W. Glendening, Jr., John S. Schmid, and *Robinson, Robinson and Cole* for The Hartford Gas Company.

John W. Glendening, Jr., John S. Schmid, and *Cornelius C. Moore* for The Newport Gas Light Company.

John W. Glendening, Jr., John S. Schmid, and *John N. Worcester* for North Attleboro Gas Company.

John W. Glendening, Jr., John S. Schmid, and *D. G. Allen* for Norwood Gas Company.

John W. Glendening, Jr., John S. Schmid, and *Hinckley, Allen, Salisbury & Parsons* for Providence Gas Company.

John W. Glendening, Jr. and *John S. Schmid* for Buzzards Bay Gas Company, Cambridge Gas Company, The Connecticut Gas Company, Fall River Gas Company, New Bedford Gas and Edison Light Company, New Haven Gas Company, City of Norwich, Department of Public Utilities, The Pequot Gas Company, South County Gas Company, Tiverton Gas Company, and Worcester Gas Light Company.

Kent H. Brown and *Barbara M. Suchow* for New York Public Service Commission.

Arnold D. Berkeley and *Harwood G. Martin* for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

BLACK, *Commissioner:*

This proceeding arises under Section 4(e) of the Natural Gas Act upon a filing by the United Gas Pipe Line Company on June 15, 1962, seeking an annual increase in the rates and charges to United's jurisdictional customers of approximately $5,600,000, to be effective August 1, 1962. The United Gas Pipe Line Company is a large pipeline system operating in Texas, Louisiana, Mississippi, Alabama and Florida. (See map, Appendix 1). It purchases gas from producers including its affiliate Union Producing Company and sells gas for direct consumption by industrial customers and for resale by towns, distribution systems and pipelines which in turn transport gas to the mid-continent and the eastern seaboard. Both United and Union are owned entirely by United Gas Corporation which also operates distribution systems in Texas, Louisiana and Mississippi. Events subsequent to United's filing, primarily producer rate reductions, so reduced United's jurisdictional costs that the jurisdictional increase became a net rate increase of only $1,600,000 as of January 1, 1963.[1]

By Commission order of July 27, 1962, the proposed increased rates were suspended until January 1, 1963, on which date they became effective,[2] subject to refund of all amounts collected above those found to be just and reasonable in this proceeding. The hearing commenced on November 27, 1962, after service of the direct case in chief and exchange of proposed testimony and exhibits pursuant to the expedited hearings procedure prescribed by the Commission on August 6, 1962 (28 FPC 295).[3] The examiner's decision was issued on June 17, 1963, and upon request of the parties in their exceptions thereto,[4] oral argument was held before the Commission on September 20, 1963. The proceedings, involving numerous issues, are now before us on these exceptions to the examiner's decision.

On some of the issues there is no dispute. One of these is the rate of return on which United presented evidence, but the staff, United and all participants stipulated 6.5 percent as the fair rate of return. Other matters not in dispute are depreciation and taxes other than income tax. Included in the cost of purchased gas are payments under rates which are subject to Commission proceedings; United therefore agrees that the rates determined in this proceeding will be subject to adjustment to reflect final determination of any such conditionally effective gas purchase prices included in the cost of service. The remaining issues relating to (1) the test period, (2) the cost of service including the cost of purchased gas, federal income taxes, the amount of prepaid gas in the rate base, (3) allocation of costs, and (4) the design of rates, are strongly contested by the parties. Also certain interveners contend that the expedited hearing procedures have substantially deprived them of their rights to due process. Included within the issue pertinent to federal income taxes was a question of far reaching significance to the natural-gas and electric utility industries as a whole, the proper treatment for rate making purposes of the investment tax credit authorized by the Internal Revenue Act of 1962. However, subsequent to the argument of this case Congress has prescribed that such investment tax credits shall not be used to reduce the pipeline's federal income taxes for the purpose of establishing the cost of service without the consent of the company. Therefore this is no longer an issue in the case.

---

[1] Since the close of the record there have been further producer rate reductions so that the jurisdictional increase of $1,600,000 would become a $600,000 net decrease as of August 30, 1963.

[2] On December 19, 1962, United filed substitute rates to reflect the reduction in its costs which had occurred and these were permitted to become effective January 1, 1963, by Commission order of January 17, 1963.

[3] The order of August 6, 1962 directed United to serve its direct case in chief by August 21, 1963, interveners and staff to serve their proposed testimony and exhibits by October 1, 1962, and that a pre-hearing conference be held on October 22, 1962. These dates were complied with by the parties. The pre-hearing conference set November 19, 1962, as the date for filing of United's rebuttal case. The hearing lasted from November 27, 1962 through January 28, 1963. Briefs and reply briefs were thereafter exchanged.

[4] Mississippi River Fuel Corporation, Mississippi Valley Gas Company, United Gas Pipe Line Company (7/5/63); Texas Eastern Transmission Corporation, Southern Natural Gas Company, Commission staff, Memphis Light, Gas and Water Division, Willmut Gas and Oil Company, Laclede Gas Company, Texas Gas Transmission Corporation and Louisville Gas and Electric Company, Western Kentucky Gas Company, Public Service Electric and Gas Company, *et al.* (Eastern Intervenors), Natural Gas Pipeline Company of America (7/8/63); Southern Union Gas Company, Tyler Gas Service Company (7/9/63).

TEST PERIOD

United filed its rate increase on June 15, 1962, with a base period of 12 months ending March 31, 1962, with adjustments for newly constructed facilities to go into service before November 30, 1962. United contends, and the examiner agrees that this is in compliance with Section 154.63(e)(2)(1) of the Commission's regulations, which provide in part as follows:

> . . . based upon a test period which shall consist of a base period of 12 consecutive months of most recently available actual experience, adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of the filing, and which will become effective within nine months after the last month of available actual experience utilized in the filing, but in no event shall such test period extend six months beyond the date of filing.

Staff, however, argues that rates for the future are not set for a single year but for a future period of indeterminate duration upon the basis of normalized conditions. Thus staff contends that we should make adjustments to the test year sales presented by United so that we would reflect the revenue increase experienced by the company as a result of its investment in new facilities put in service April 1, 1961 through November 30, 1962, and included in the test year rate base. For this purpose the staff adopted an estimate of 1963 sales presented by United. On the other hand United argues that staff use of estimated 1963 sales has the same effect as if staff were to use an estimated 1963 test year in violation of the Commission's historic policy requiring filing data based on a test period of the latest 12 months of actual experience adjusted for known changes occurring within a stated period.

Of course, it is common in rate cases to adjust cost of service items, particularly items of expense, where a change has been made after the end of the test year. In the present case the situation is peculiar, and something more than the usual adjustment is required. United's claimed rate base includes $56,248,618 of newly certificated gas facilities which were not in service throughout the base period, but were scheduled to become operative on or before November 30, 1962. These facilities include the important new line from southern Louisiana to Sterlington in northern Louisiana. Costs associated with the new facilities include depreciation, return, and state and federal taxes. The record shows that these new facilities would be used for sales made after the proposed rates took effect on January 1, 1963. In supporting its proposed rates for a future period it was proper for United to include these facilities, for if it had confined its presentation to an average of net plant in existence during the period ending March 31, 1962, the cost results would not have been representative of the future period when the rates would be in effect. By the same token the staff was also proper in contending that 1963 sales should be taken into account instead of the test year sales presented by United. The 1963 sales amount to 1,343,703,213 Mcf at 14.9 psia, as shown by United in its rebuttal case and as adopted by the staff. Furthermore, upon consideration of certain adjustments made by the staff, the record shows that this volume of gas is not an estimate of all the gas to be delivered in 1963 but is limited to that which can be handled by the normalized March 31, 1962, test year facilities.

In our opinion, United misconceives the purpose of the Commission's regulations with respect to a filing of a proposed rate change. The Commission intended, as United notes, that its amended regulations expedite proceedings by providing for the submission of extensive data in support of the rate filing, so that this material would not have to be obtained in a time consuming investigation after the filing of the proposed changes. The Commission stated in amending its regulations, again as noted by United, that the applicant might adduce additional material or present data on a different basis to the extent desirable, but that the supplemental material must relate to the prescribed test year (28 FPC 495). Obviously adjustment by the company may require offsetting adjustments by other parties. In the past we have used a test year "with adjustments for known changes occurring within a reasonable time." *Panhandle Eastern Pipe Line Co.*, 25 FPC 787, 795, remanded on other grounds *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763, (CADC, June 30, 1962), certiorari denied 372 U.S. 916; see also *El Paso Natural Gas Co.*, 22 FPC 260, 263, remanded on other grounds *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567 (CA5), certiorari denied 366 U.S. 912. The objective is to present adjustments to the test year figures which will match additional expenses with additional income as close as is reasonably possible. What is reasonable obviously depends upon the circumstances. Since extensive facilities were put into service in 1962, so as to change the company's operations substantially in 1963, it was proper to employ 1963 volumes of gas with the March 31, 1962 test year cost of service adjusted incrementally to these increased volumes of gas.

COST OF SERVICE

There are several cost of service matters at issue between the parties. These include purchased gas costs (including the amount paid to United's affiliate, Union Producing Company), federal income taxes, and the computation of the rate base including the question whether there should be an allowance for prepaid gas costs.

A. *Purchased Gas Costs*—The cost of purchased gas represents about 75 percent of United's cost of service.[5] Controversy arises over the estimated purchasing pattern for the year 1963 compared with the test year ending March 31, 1962. United's average cost of gas purchased during the base year was 17.71 cents per Mcf. Under its adjusted gas purchase pattern for 1963, including increased takes from the higher priced fields in southern Louisiana, the unit cost rose to 18.40 cents. The witness for United testified that the purchase pattern was one of judgment in applying a formula which took into account a number of factors including the capacity of its system, availability of gas, state conservation statutes, the takes of other purchasers within the field and drainage conditions. The staff, on the other hand, argued that United had not taken into account the element of cost. It constructed a purchase pattern of its own for the Houston and Lafayette districts. It used United's adjusted average cost of gas derived from United's adjustment of test year costs and volumes to November 30, 1962. On our part we are convinced by the evidence that the dispatching of gas from the various fields to meet the obligations of the pipeline is a very complicated activity particularly in view of contract obligations and the state regulation of takes. An adequate supply of gas might be threatened if United were to be required to take the lower priced gas. It seems obvious to us that if United were required to use the lowest priced gas first, it would result in an accelerated increase in purchased gas costs.

---

[5] $249,169,755 out of a total cost of service of $325,731,603, as determined herein.

As set forth by the examiner whose views we are adopting here, United included in its purchased gas costs approximately $18,600,000 paid to Union, a wholly owned gas producing subsidiary of United's parent, for approximately 131,000,000 Mcf of gas at an average cost of 14.2 cents per Mcf. The prices used by United are based on rate schedules of Union filed with this Commission. To support the prices paid, United put in a complete cost of service case based on Union's 1961 costs. Staff and interveners moved to dismiss this evidence on the ground that Union's rates were the subject of a proceeding in Docket No. G–13811. The examiner granted the motion on the ground that the Union proceeding provided an adequate vehicle for the determination of that portion of United's cost of service represented by gas supplied by Union and to turn this pipeline rate proceeding into a de novo full-blown investigation of the economic justification of Union's price to United would duplicate a producer rate proceeding. In his decision the examiner reaffirmed this position.

Applicable to this proceeding is the authority of *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (CADC), certiorari denied 355 U.S. 904. There in a case involving United's rates the Commission said that while it was empowered to inquire into United's contract prices with Union, it was not required to do so and its not doing so was a reasonable exercise of administrative discretion. The court, however, held that the Commission should have inquired into Union's prices saying:

> Therefore we think the Commission must at least inquire into the factual justification for the price increases paid by United to Union. By this we mean that to include the increased prices in the costs of United the Commission must at least determine that the increases were justified by reason of Union's costs or by reason of some other stated end of the Natural Gas Act; the Commission must ascertain that they were not mere bookkeeping or intra-corporate-system adjustments. We must remand the case for that inquiry. We do not hold that a full-blown inquiry into the rates of Union is necessary. Subsequent developments in the proceeding may or may not indicate such a necessity.

In *Willmut Gas and Oil Company* v. *F.P.C.*, 299 F. 2d 111 (CADC) the Commission also had rates of United before it. After the decision in the *Mississippi River Fuel* case United sought to reopen the hearing so that evidence might be offered to substantiate the amounts for cost of gas purchased from Union. The Commission refused to receive such evidence, but on review confessed error and asked that matters be remanded for further proceedings concerning the factual economic justification for Union's charges.

In view of these decisions it is entirely clear that we would be remiss in accepting Union's filed rates for United's purchased gas costs. The courts, in effect, place the filed rates of an affiliate in a different category than those of a non-affiliate. This follows reasonably because, as the court said, we are dealing with a single corporate structure. We must therefore do something more than accept the filed rates, as United would have us, but we are not required to include a full-blown inquiry into Union's rates in the present proceeding.

We have a means of meeting the requirements of the court in these cases without initiating another rate case for Union. We have had before us the proceeding in Docket No. G–13811, *et al.*, relating to Union's rates. This is an investigation under Section 5(a) of the Act consolidated with eight Section 4(e) dockets covering nine rate schedules of Union's charges to United. Of the eight Section 4(e) dockets involved[6] only three have not been superseded by subsequent rate filings and represent sales in 1963.[7] In our Opinion No. 414 issued on January 9, 1964 we determined that Union had failed in its proof to support the Section 4(e) rates, but that the record was not sufficient to make a determination of Union's rates for the future particularly with respect to the matter of depletion. Therefore we disallowed Union's increased rates proposed in the Section 4(e) dockets and remanded the proceedings so that the record could be amplified for the purposes of the Section 5(a) investigation (Docket No. G–18354). In doing so we required that Union adduce evidence with respect to a more current test year.

In the present proceeding it would be inappropriate to determine Union's rates even if the record were complete, for it would be wasteful to determine Union's rates in two proceedings possibly with inconsistent results. We shall therefore leave the question of the cost of gas purchased from Union undecided to await the final result in the *Union* case. This, in our opinion, will meet the criteria of the court in the *Mississippi* case that a factual economic justification for Union's rates be shown. For the period here involved beginning with January 1, 1963, we shall accept as United's purchased gas costs Union's filed rates (even though subject to suspension in other proceedings) except for the filed rates covered by dockets in the *Union* case and still not superseded. In the case of those unsuperseded Union rates we shall accept only the rates in effect previous to the *Union* case filings, for we have already found those rates unjustified. Upon final determination of Union's rates we shall require United to file rate reductions if appropriate and to refund to its customers amounts which represent the difference between what it has paid for gas and what it should have paid if the rates finally determined in the *Union* case had been in effect.

B. *Adjustments to Operating Expenses—Other than Purchased Gas Costs*—The use of 1963 volumes for gas sales requires an adjustment to United's operating expenses in addition to purchased gas costs, so that expenses will correspond to sales in the cost of service. The controversy arises here because the staff has used an incremental adjustment amounting to 0.7 cents per Mcf for the amounts by which the 1963 volumes exceed the test year volumes, while United would use 2 cents per Mcf.

The staff supports its conclusion by a study of the trends of operating expenses and their unit cost over the period 1949 to 1961. Through formulas utilizing the historical operating expenses and volumes it arrived at an adjustment of the test year operating expenses so as to reflect the 1963 sales. The basis of this approach is that an increase in the volumes of gas sold will result in a lower unit cost of gas or, in other words, the additional volumes will have a lower cost per Mcf on an incremental basis. We do not deny that if the same facilities can be used and the other costs remain static, increased volumes can be sold at a lower operating expense per unit. The record shows that comparing certain years with other years this situation has occurred, but this does not reflect the recent trend. The staff shows unit costs as follows for the years 1953-1961 in cents: 2.00, 1.97, 2.00, 2.02, 2.05, 1.99, 1.97, 1.97, 2.03. Based on the year 1953 this would result in incremental costs as follows for the years 1954-1961 in cents: 1.49, 1.97, 2.15, 2.34, 1.96, 1.86, 1.87, 2.22. The staff studies, as noted, were based on a period extending back to 1949, but since the unit costs and incremental costs levelled out with some variations at about 2 cents in the 1954-61 period we shall use the rounded figure of 2 cents to compute the adjustment of operating expenses so as to reflect the 1963 gas volumes. This, of course, does not prevent us finding in another case and under different circumstances that additional volumes of a pipeline's gas can be sold without an equivalent increase in operating expenses so that the unit operating cost of the additional gas would, indeed be lower than the unit operating cost of the original gas. The Commission is not ruling that the method of determining incremental costs in this opinion is the only acceptable method.

---

[6] G–13811, G–13820, G–14114, G–14352, G–14553, G–16725, G–17589, and G–17606.

[7] G–14114, G–14552 and G–17589 excluding the effect of a filing to reflect the unconstitutional Louisiana gas gathering tax. (See Appendix 3.)

Apart from the 2-cent factor United has made certain errors, in computing its adjustment to operating expenses as contended by the Eastern Intervenors. United computed its incremental volume to be 86,868,613 Mcf apparently by deducting its adjusted March 31, 1962, test year volumes in the amount of 1,310,305,755 Mcf from the estimated 1963 volumes in the amount of 1,397,174,368 Mcf.[8] Its adjustment of the test year volumes was apparently to compensate for loss of certain sales, but it made no corresponding adjustment in operating expenses. Therefore we shall subtract the unadjusted test year volumes in the amount of 1,323,015,653 Mcf from the 1963 estimated volumes of 1,397,174,368 Mcf to arrive at an incremental volume of 74,158,715 Mcf and an incremental cost (at 2 cents per Mcf) of $1,483,174 instead of United's $1,737,372, thus reducing United's incremental cost by $254,198.

Further, United added $224,514 in operating expenses reflecting the new 30-inch North Louisiana pipeline and a 36-inch pipeline from the Bastian Bay Field. Since the 2-cent cost allowance is designed to take into account all increases in cost, this adjustment represents an additional allowance for the same thing and should not be included in the allowance for the additional volumes of gas. Also United indicated that an amount of $349,237 should also be eliminated from operating expenses representing expenses under an agreement with Texas Gas for transportation which had ceased. Therefore using the 2 cents per Mcf for the incremental gas and taking into account the adjustments shown above there results an allowance for operating expenses, other than purchased gas costs, in the amount of $27,001,997 as shown in Appendix 2 hereto.

As discussed below in connection with taxes there is an issue herein as to whether we should deduct charitable contributions in the amount of $163,322 in computing the income tax allowance. We believe that contributions of a reasonable amount to recognized and appropriate charitable institutions constitute a proper operating expense.[9] Corporations have an obligation to the communities in which they are located and they are expected to recognize this obligation. It is our opinion that these contributions have an important relationship to the necessary costs of doing business.

According to the record, the sum claimed by United is deductible for Federal income tax purposes. Moreover, it represents only about one-twentieth of one percent of United's cost of service. In these circumstances, we shall allow the item of $163,322 as an operating expense; take it into account in computing working capital like other operating expenses; and allocate it in proportion to administrative and general expense.[10]

---

[8] Composed of estimated transportation volumes of 53,471,155 Mcf and sales volumes of 1,343,703,213 Mcf.

[9] As a maximum we would allow contributions to those organizations included in the Cumulative List, Organizations described in Section 170(c) of the Internal Revenue Code.

C. *Federal Income Taxes*—In its cost of service United has included Federal income taxes in the amount of $12,751,454 calculated at the 52 percent statutory rate in effect at the time the record was closed. We shall use the 52 percent rate as a basis of our computations for it applied through 1963, the first year that our prescribed rates are effective. We shall require, however, that United file rate changes to reflect the statutory rates of 50 percent in 1964 and 48 percent in 1965 as prescribed in the Revenue Act of 1964.[11]

1. *The Effect of the Consolidated Return.*

A question is raised as to United's share of the federal income tax paid through a consolidated tax return filed by United Gas Corporation, its parent. Joined in the return are the subsidiaries, United, Union, and United Overseas Production Corporation. In most years Union shows a loss[12] with a resulting reduction in taxes for the consolidated group. However, United contends that it is entitled to apply to its taxable income the statutory income tax rate in computing the amount of federal income taxes includible in its cost of service unreduced by utilization of tax reductions and losses attributable to the unrelated, nonjurisdictional and non-utility-operations of affiliated companies.

The question here involved has already been determined by us in *Cities Service Gas Company*, 30 FPC 158, Opinion No. 396, Docket No. G-18799, issued July 15, 1963. In that proceeding we stated that the proper method was to (1) separate the companies into regulated and unregulated groups, (2) determine the net aggregate taxable income of each group, and (3) apportion the net total consolidated tax liability over a representative period of time between the two groups and among the companies in the regulated group, on the basis of their respective taxable incomes.

Before making the computation prescribed in *Cities Service*, it is necessary, as in that case, to decide on the period of time to be used in the computations. The record shows extensive data for the five-year period 1957-1961, and since there are substantial variations in the taxable income for those years, a period as long as this is reasonable. The record does contain some evidence on the year 1962; but, this evidence is in part composed of estimates, and, in any event 1962 is not a typical year for United for tax purposes, because of the rate refunds made that year. Therefore for the purpose of the tax computations we shall use the five-year period 1957-1961.

In making a separation between the regulated and non-regulated companies we find that United is largely a regulated company, and we shall designate it as such for the purpose of these computations. United Gas Corporation engages in the distribution of gas and its rates are variously subject to regulation by state commissions and municipalities. There is no regulation involved in connection with its sale of gas appliances, appliance repair services, research, and the receipt of interest and dividends. However, since this non-regulated portion of its business is closely connected with the regulated and the record makes no separation, we shall consider United Gas Corporation in the regulated category. Union is engaged in the sale of natural gas, natural gas liquids and oil. Only the sale of gas is subject to regulation. While the record would permit an allocation of Union's taxable income between its regulated and non-regulated business, arithmetically, this would make no difference because Union has a net taxable loss over the 1957-1961 period, and no part of the consolidated tax would be allocated to it whether it be classified as regulated or non-regulated. United Overseas operates entirely outside the United States and is engaged in an oil exploration project in Tunisia, North Africa, so that it is in the non-regulated category. No portion of the consolidated tax would be allocated to it in any case because it produced a loss.[13]

---

[10] I have prepared this opinion to express the views of the majority, but at this point note my individual disagreement with the Commission's new rate-making treatment of charitable contributions. Such payments, as commendable as they may be, are properly accounted for as income deductions, not operating expenses. They bear no relationship whatever to the necessary costs of providing utility service and therefore should not be borne by the utility customers. Charitable contributions, if made by the Company, should be the sole responsibility of the stockholders. It is argued that a public utility has a community and civic responsibility and should therefore be encouraged to support deserving charities. I agree. But the financial burden of donations to charities should not be shifted to the consumer who had no voice in their selection. A contribution to a charitable organization is uniquely a matter of personal choice and should not be hidden in a customer's gas bill, especially when its beneficial effect may be far removed from his community.

[11] Public Law 88-272.

[12] United Overseas was not included in the consolidated return until 1961 when it showed a small tax loss.

As shown in Appendix 5 hereto the net total consolidated tax liability for the United companies for the 1957-1961 period amounts to $57,199,881. The average for one year amounts to $11,439,976. In accordance with the *Cities Service* case the latter amount is allocated between United Gas Corporation and United Gas Pipe Line in proportion to their respective taxable incomes for the 1957-1961 period as shown in Appendix 5. United Gas Pipe Line's share, in accordance with this computation, amounts to $10,537,362, using the 52 percent statutory tax rate. This represents an effective tax rate of 50.04 percent based upon the five-year average. When this effective tax rate is applied to United Gas Pipe Line's test year, it results in a federal income tax allowance of $9,940,892 as shown in Appendix 4 below, subject, of course, to the rate reductions we require for the lowered tax rates in the year 1964 and again in 1965.

2. *Failure to Use Liberalized Depreciation and I.R.S. Guideline Depreciation Rates.*

Memphis contends that the tax laws, regulations and procedures permit the use of liberalized depreciation and of the guideline depreciation rates of the Internal Revenue Service[14] for determining United's income tax liability, and that the Commission in computing United's tax allowance for cost of service, should treat United as if it had availed itself of these statutory provisions, irrespective of whether the parent, United Gas Corporation, had in fact utilized them. Memphis has failed to make a showing that the public interest requires us in this case to treat the company as though it makes use of these statutory provisions contrary to its actual practices.

3. *Gas Prepayments.*

The issue of the tax effect of gas prepayments presents two important questions: the effect of the prepayments on the tax allowance in the cost of service; and the effect of the accumulated prepayments on the rate base. Technically, a gas prepayment is the amount that United has been required to pay in accordance with the take or pay provisions of its gas purchase contracts in excess of payments for gas actually taken. United claims these prepayments as deductions in its tax returns for the years in which they were made. However, in computing the test year cost of service in this proceeding United has treated the prepaid gas expense as deferred charges and has not included them in computing either its tax allowances or its cost of purchase gas in its cost of service for the test period. Thus only when delivery of the prepaid gas is ultimately taken would the cost of service reflect the corresponding prepayment charges. United does, however, include an amount of $5,937,060 representing an average test year balance of prepayments in its working capital for inclusion in the rate base.

---

[13] It appears in the consolidated return only in 1961 when its loss was $24,354.

[14] Section 167 of the Internal Revenue Code and Depreciation Guidelines and Rules, I.R.S. Publication No. 456; Tables for Applying Revenue Procedure 62-21, I.R.S. Publication No. 457.

Memphis contends that this is improper; that United is entitled to and in fact takes a tax deduction for these gas prepayment charges in the years in which they arise and that it should be required to reflect these actual tax deductions in the test year period as well. On the other hand, staff and the examiner, with certain modifications, accept United's position that prepayments should not be deducted in determining the tax allowance in the cost of service. We agree with this position. Test year costs must often depart from the actual results in order to reach rates reasonable for the future. The record shows that United expected to incur deficiencies in the volumes of gas taken in 1963, but, subject to several contingencies, expected to be in balance during 1964. Beginning in the year 1965 United anticipates that it can begin to make up the deficiencies previously incurred. Whether these predictions are precisely accurate, we can conclude that the prepayments are non-recurring. Since we are determining rates prospectively, any decrease in the actual taxes in the test year will disappear in those years when the prepaid gas is actually consumed, and this promises to be in the near future. Thus a more representative tax allowance can be computed by not using the gas prepayments as deductions.

Further, we agree with the staff and the examiner that accumulated prepayments should be included in working capital. These amounts are expended in order to retain an available supply of gas and precede by several years the receipt of the related revenues to be realized when the gas paid for in advance is made up and sold. While the record indicates that the balance of prepayments, amounting to $15,340,800 on December 1, 1962, may be reduced beginning in 1965, they represent an investment of cash on which a return should be realized for some years in the future. United would include in working capital only the average test year amount of $5,937,060 rather than the full accumulation. We think the lesser amount more representative of the future and shall employ it in computing working capital.

The examiner, following the contentions of the Eastern Intervenors, would reduce the credit to working capital for prepaid gas by the amount of taxes saved in using the prepayments as a deduction.[15] We agree with this in principle. If United has saved taxes in making its prepayments, its investment is correspondingly reduced. However, the record indicates that although the prepayments are claimed by United as tax deductions, they may eventually be disallowed. In that case United would have no way of recovering the revenues lost as a result of reducing the credit to working capital. We will provide that United shall adjust its rates and make appropriate refunds when and if it is finally determined that the prepayments were properly deductible on its tax returns. To achieve this result with a minimum of dispute, we shall direct United to establish a special account out of earned surplus to reflect deductions taken by virtue of these prepayments.

---

[15] The examiner used the accumulated prepayments in the amount of $15,340,800 less 52 percent less the related income tax reduction to working capital.

4. *Regulatory Treatment of the Investment Tax Credit.*

United's cost of service presentation makes no provision or allowance for reductions in its income tax expenses attributable to the investment tax credit authorized by the Internal Revenue Act of 1962.[16] Staff and Memphis argued that this was improper in that the investment tax credit was a tax reduction and hence an increase in United's net income. Thus they argued that, like any other tax reduction or savings, the credit must be reflected by an equivalent reduction in United's cost of service, with the result that these savings would flow through to net income and United's customers would have the benefit of the lower cost of service. As we have indicated, this issue has been rendered moot by the action of Congress prescribing that regulatory agencies shall not use such investment taxes for the purpose of establishing the company's cost of service without the consent of the company.[17] Our cost of service shall, therefore, make no adjustments for, or otherwise give consideration to the investment tax credits which United may qualify for under the tax law.

5. *Tax Deductions.*

The staff, and Memphis in part, have criticized the examiner for not finding that Federal and state income tax allowances should be based on (a) the more recent 1961 tax return data; (b) the five-year average of tax deductions for property abandonment losses, taxes capitalized, employee benefits capitalized and additional expenses capitalized during the years 1957-1961, inclusive, instead of the years 1956-1960, inclusive; (c) the $163,322 tax deduction for charitable contributions reflected in the 1961 return; and (d) the staff's proposed interest expense tax deduction of $10,772,145 based upon United's outstanding debt capital and actual interest rate as of November 30, 1962. In our opinion all of these factors except item (c), the charitable tax deductions, should be taken into account in computing United's tax allowance. Items (a) and (b) take advantage of more recent data available in the record, and United specifically does not object with respect to item (b), the five-year averages. Item (c), the charitable contributions, is being treated as an operating expense. As such it is automatically deducted in computing the income tax allowance since elements in the cost of service other than return are excluded from the computation. Accordingly, it should not be deducted a second time from return in completing the computation. On item (d), computation of interest as of November 30, 1962, United argues that this figure does not reflect the future in that its debt capitalization is subject to amortization and will be reduced after that date. Our purpose has been to adjust the base year ending March 31, 1962, in the light of the substantial amount of new facilities installed by United through November 30, 1962. Hence we have included in the rate base plant added up to that date. In our opinion the use of the additional plant in the rate base requires the use of the corresponding debt capitalization in the income tax computation.

D. *Rate Base*—The determination of the correct rate base for United is complicated by the adjustments that should properly be made to the test year plant in order to reflect additions to plant and corresponding sales and operating conditions for the future. United employed a gross plant in service of $550,530,859. This is based upon the average gas plant in service during the base period ended March 31, 1962, adjusted or normalized to include $56,248,618 of new gas plant put in service from April 1, 1961 to November 30, 1962. Because we are determining rates for the future beginning January 1, 1963, we think that the adjustment of the rate base to include plant put in service after the test year was reasonable. We have already discussed the corresponding necessity to use the 1963 volumes of gas sold limited to those sales which the record shows can be made with the 1962 normalized plant. In computing its rate base, however, United failed to deduct the corresponding reserves for depreciation. It deducted the average depreciation reserve for the base period ending March 31, 1962, but included no depreciation for the subsequent period up to November 30, 1962, during which additional plant included in the normalized rate base went into service. By this method United arrived at a net plant of $379,301,945.

---

[16] 26 U.S.C. § 38, 46–48.

[17] Revenue Act of 1964, Public Law 88–272, Section 203(e).

The staff in its brief, however, computed the net plant portion of the rate base somewhat differently. It started with the gas plant in service shown by the company as of March 31, 1962, normalized to include plant put in service up to November 30, 1962, amounting in all to $552,213,995. Because the staff used plant as of a date certain, namely March 31, 1962, it used the depreciation reserves as of that date plus the average depreciation that would accrue for the following year. This would take into account depreciation accruing after the end of the base period while the plant is in service.[18] The staff eliminated from the depreciation reserves as of March 30, 1962, the small amount of depreciation accrued on the portion of the $56,248,618 in additional plant that went into service before March 30, 1962, and arrived at an amount of $366,000,444 for net plant.

In general, we find that the staff's approach is correct. We agree with both company and staff that gross plant should be adjusted to reflect the new gas plant, including the Bayou Sale-Sterlington line, put in service between April 1, 1961 and November 30, 1962, for this is a significant factor in making rates for the future. We think the staff properly used an adjusted plant as of March 31, 1962, the last day of the test year, for, again, we are looking forward to the operation of an enlarged system.[19] However, United's presentation in the record shows that the corresponding depreciation reserve for the adjusted plant is $177,175,719 rather than the $176,209,678 used by the staff, and we shall deduct the $177,175,719 in determining the adjusted net plant. We agree with the staff that the average depreciation for the succeeding year in the amount of $8,347,684 should also be deducted. This follows again because we are concerned here with the operations of the enlarged plan in the future beginning with January 1, 1963. To include plant added after the end of the test year without making some adjustment for additional depreciation would distort the rate base. After deducting contributions in aid of construction in the amount of $1,835,567, about which there is no controversy, we arrive at net plant in the amount of $364,855,025.

The other important element in the rate base is working capital. This we compute in the usual way adding an allowance for gas prepayments as already explained:

---

[18] This approach was used in *Michigan Wisconsin Pipe Line Co.*, 21 FPC 306, affirming examiner's decision, 21 FPC 309, 315–317.

[19] See *Phillips Petroleum Co.*, 24 FPC 537, 565; affirmed *Wisconsin* v. *F.P.C.*, 373 U.S. 294, May 20, 1963.

Cash for operating expenses (45 days)	$2, 962, 881
Materials and supplies (average balance)	3, 237, 326
Prepayments—taxes, insurance, etc	774, 051
Prepayments—gas for future delivery	5, 937, 060
Underground storage gas	699, 219
	13, 610, 537
Less 50% of Federal income tax allowance	4, 971, 089
Net working capital	8, 639, 448

Accordingly the rate base is computed as follows:

Gross plant in service at Mar. 31, 1962, as adjusted	$552, 213, 995
Less depreciation	185, 523, 403
Less contributions in aid of construction	1, 835, 567
Net plant	364, 855, 025
Net working capital	8, 639, 448
Net investment rate base	373, 494, 473

E. *Conclusion on Cost of Service*—As set forth in Appendix 2 hereto, United's cost of service for the purposes of these proceedings is $326,056,503 after separation of the gasoline plant cost of service. This figure is some 6 million dollars less than the cost of service presented by the company based on estimated 1963 sales. It is applicable to the year beginning January 1, 1963, and is the basis for further adjustments and filings.

COST ALLOCATION AND ZONE RATE DIFFERENTIAL

This Commission has, historically, favored rolled-in methods of allocation so that all customers will share equally in the costs of a pipeline system, unless the length of the pipeline required zone differentials.[20] United, however, has traditionally been recognized as an exception to this principle, mainly because it has, in the past, operated two essentially separate jurisdictional systems, a line from Agua Dulce, Texas, extending northeasterly to Sterlington, Louisiana and a line from Lirette in southern Louisiana northward to central Mississippi through Jackson. But this is in the process of change as the result of the recently constructed line running from Bayou Sale in southern Louisiana to a point near Sterlington. The rates in each of these systems have in turn been subdivided into zones or rate areas where "substantially the same operating and natural conditions prevail, starting with the premise that the widest areas practicable in terms of average costs and physical characteristics of service should be designated."[21] There have been four zones called the Southwest, Central, New Orleans, and Jackson Zones as shown on the attached map.[22] Southwest and New Orleans are largely gas supply zones; Central and Jackson are largely gas sales zones. Thus, the problem of the allocation of

---

[20] *Trunkline Gas Co.*, 21 FPC 704, 711, aff'd as *Battle Creek Gas Co.* v. F.P.C., 281 F. 2d 42 (CADC–1960); *Kansas-Nebraska Natural Gas Co., Inc.*, 25 FPC 448, 453. See also *Louisiana Public Service Commission* v. *United Gas Pipe Line Company, et al.*, 3 FPC 402, 404, 405.

[21] *Louisiana Public Service Commission* v. *United Gas Pipe Line Company, et al.*, *supra.*

[22] The Southwest Zone included the Lafayette Zone now proposed by United.

United's cost of service and the formulation of just and reasonable rates is complicated by United's historical pattern of operations.

United's system of zone rate differentials has had a long history before the Commission.[23] It was considered most lately in the Commission's order of January 4, 1961, cited. There various modifications of the allocation of costs, known as "Method 8" and previously approved by the Commission, were proposed. Under Method 8 the purchased gas costs and the transmission costs of the New Orleans Zone were computed and applied to the New Orleans Zone and carried forward and applied with additional purchased gas and transmission costs of the Jackson Zone to that zone. Likewise, the costs of the Southwest Zone were applied to that zone and carried forward to the Central Zone and added to the costs of that zone. The effect of this was to permit the Southwest Zone customers in Texas, as well as the Central Zone customers, to benefit from the lower producers' prices of that zone. On the other hand the New Orleans Zone and Jackson Zone customers would be subject to the higher gas prices in Louisiana.

The Commission justified Method 8 in its January 4, 1961, order (25 FPC at p. 31) on the ground that United's system was, in fact, two separate systems with smaller interconnecting facilities. That is one system ran north from southern Louisiana and the other ran northeast from southern Texas. It also pointed out that the daily take from Texas sources was greater than necessary to serve all nonjurisdictional Texas customers, and that the direction of the gas flow on the Texas part of the system was away from the Southwest Zone and into the Central Zone. Likewise the flow from southern Louisiana sources was to nonjurisdictional customers in Louisiana and north into the Jackson Zone. The Commission noted it would take a major shutdown and flow reversal to cause any substantial flow of southern Louisiana gas into the Southwest or Central Zones.

As the examiner finds, there is a change in this pattern of operation today. The record shows that a large net flow still exists from the Southwest Zone to the Central Zone on the Agua Dulce and smaller lines and from the New Orleans to the Jackson Zone. However, it is now estimated that gas approximately equal to the other Southwest volumes would flow from the eastern part of the Southwest Zone, proposed to be called the Lafayette Zone, into the Central Zone on the new 30-inch pipeline during 1963 and that with additional capacity this flow would be greatly increased in the 1963-1964 heating season. There is also estimated a heavy flow from Bayou Sale in the New Orleans Zone into the proposed Lafayette Zone on the new 30-inch interconnection, and there is a relatively small flow (that has existed from 1950) from the Jackson Zone into the Central Zone on an 18-inch line. The record shows that the flow in the new 30-inch line from southern Louisiana into the Central Zone at Sterlington is to meet deficiencies in the supply of gas to the Central Zone customers and is an essential part of United's operations.

In the light of these developments a number of methods for allocating United's costs were proposed by various parties to the proceeding. United itself proposed a variant of Method 8 by establishing the separate Lafayette Zone shown on the map in Appendix 1 hereto, which was formerly a part of the Southwest Zone. United points out that gas flows from the New Orleans Zone to the proposed Lafayette Zone and, together with additional volumes contributed by the Lafayette Zone, is transported on the new 30-inch line up to the Central Zone. Alternatively on rebuttal United merged the Lafayette and New Orleans Zones, thus in effect transferring what was Southwest Zone territory to the New Orleans Zone. As a further alternative United would combine the Central and Jackson Zones. We agree with the examiner that the establishment of a new zone or the shifting of territory is not justified at this stage in the development of the system, which is becoming more unified and will call for more departures from Method 8 in the future as indicated below.

---

[23] See *United Gas Pipe Line Co.*, 3 FPC 402; 13 FPC 398; 14 FPC 353, 406, aff'd as to allocation *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (CADC 1957), cert. den. 355 U.S. 904; 25 FPC 26, January 4, 1961.

The staff, on the other hand, departed from Method 8. It allocated purchased gas costs directly to those of United's nonjurisdictional sales in the New Orleans and Southwest Zones that were made from facilities that were considered to be intrastate and physically separate from United's interstate system. The staff then rolled-in jurisdictional purchased gas costs on a systemwide basis. Adjustments were then made to give effect to the lower cost of sales in the New Orleans Zone and the lower cost of transportation in the Central Zone.

While we favor rolled-in methods of allocation, in our opinion the United system has not yet developed to this stage. Any rates established in line with such a rolled-in allocation would be too disruptive of business relationships in view of the historical patterns. Therefore we do not approve at this time of the staff's proposed roll-in of costs, but we expect that future allocations of United's costs will trend in the direction of a complete roll-in. However, we find that the staff's method of separating the purchased gas costs of nonjurisdictional sales made from intrastate facilities in the New Orleans Zone and in the Southwest Zone (including the proposed Lafayette Zone) was appropriate, and we have carried out that separation as shown in Appendix 6 hereto. As can be seen, almost all of the nonjurisdictional sales in the New Orleans Zone are subject to the direct assignment of purchased gas costs, and the greater part of those in the Southwest Zone are also treated in this way. We think it a desirable principle of rate making that costs should be directly assigned whenever feasible, and cost allocation with all of its complexities should be employed only when necessary. As witness for the Eastern Interveners testified, jurisdictional customers should not be burdened by the costs of nonjurisdictional purchases which are not subject to regulation by the Commission.

United objects to this separation of purchased gas costs contending that the intrastate facilities from which these nonjurisdictional sales are made are not, in fact, separable (at least in the Southwest Zone), and, further, that it is inequitable to make a separation of purchased gas costs without at the same time making a separation of transmission costs. The record shows the intrastate facilities in the New Orleans Zone are entirely separate; the books are separate; and operations are carried on in partnership with another company. In the Southwest Zone the separation is less simple. It appears that a relatively small amount of gas sold under rate schedules on file with the Commission is necessary in addition to the gas from unfiled rate schedules to make the full amount of sales from the facilities designated by the staff as intrastate. Furthermore, some of the separated sales of intrastate gas in Texas are made from facilities that may carry interstate gas. In spite of these possible qualifications, in our opinion, the staff made a reasonable separation of facilities and sales in the Southwest Zone that largely reflects the company's operations and is a closer approximation to reality than conventional allocation. With respect to transmission costs we would assign these directly as well as the purchased gas costs, but on the record the transmission costs are not separable so as to permit their direct assignment.

Memphis asks that the Southwest Zone be expanded to include low priced gas from Eugene Island to the Bayou Sale Junction. This represents a further attempt to reserve certain gas supplies for certain customers and is inconsistent with the development of the system. In any case the need is obviated by the examiner's solution to the allocation problem discussed below, particularly the roll-in of the Central and Jackson Zones.

Interveners, Texas Gas, Mississippi River Fuel and UGI urge the retention of Method 8 on the ground that there is no reason to deviate from a method used in the past. We think that the operation of the new 30-inch line basically changes the operation of the system, and the method of allocation must accordingly be changed.

In the light of the contentions of the parties the examiner arrived at a method of allocation and adjustment of the rate levels that reflects the historical pattern of rates in the past yet gives effect to the changes that have occurred. The examiner would retain the separation of the present Southwest and New Orleans Zones. While he would not make the direct assignment of purchased gas costs to intrastate sales as prescribed here, he would determine costs separately for the two southern zones and carry the costs forward to the two northern zones, Central and Jackson, and he would roll-in the purchased gas costs for these two zones. This properly reflects the fact that the Central Zone is receiving large amounts of gas from the New Orleans Zone via the new line and will receive larger amounts in the future.[24] We shall adopt the examiner's roll-in of the two northern zones as a logical outcome of the development of United's system. We shall extend this allocation to transmission costs as well as purchased gas costs, because the two northern zones are both becoming dependent on the producing regions of both southern zones. In performing the allocation we think that the two zones should be rolled-in before an allocation is made to jurisdictional and nonjurisdictional customers since it is our intention to treat the two northern zones as one.

While strictly a matter of rate design, the examiner's treatment of the rate levels in the Central and Jackson Zones should be considered in connection with his method of allocation. He found, we think with ample justification, that a differential between the two zones was necessary, for a roll-in of purchased gas costs with no price differential would increase the Central Zone rates by some six million dollars a year. In order to avoid this disruptive result he adopts a price differential of 3.5 cents in the commodity component of the rate to give weight to both cost and historical considerations. Furthermore, in order not to make a sudden change in prevailing rate patterns, he would leave the presently effective Central Zone rates in effect and apply all decreases in the cost of service, including reductions in purchased gas cost, to the Jackson rates until the 3.5-cent price differential is reached. We will adopt his differential between the zones, which, in our judgment is appropriate although we are aware that certain of the interveners contend it is too much and others contend it is too little. However, we do not adopt the examiner's conclusion that the presently effective Central Zone rates should remain in effect, and that the 3.5-cent differential should be reached only as a result of reductions in the cost of service. The amount of such reductions is unknown, and we think that a definite differential should now be put into effect representing a reduction in the present differential between the zones.

---

[24] A large part of this New Orleans Zone gas is low priced gas from Eugene Island through Bayou Sale, but some gas does come south to the junction point at Bayou Sale from Duck Lake. At any rate the low priced gas formerly went into the Jackson Zone and presumably is only available to the Central customers because the Jackson customers take larger amounts of other New Orleans Zone gas.

In our opinion the 3.5-cent differential represents a reasonable step in this transition period toward a more complete roll-in of United's costs. We note, furthermore, that the differential was around 3 cents in accordance with the Commission's approval of settlement rates in 1954,[35] but later filings have shown higher differentials ranging up to 8.00 cents per Mcf. More recently, however, these differentials have shown a tendency to decrease, reaching 5.76 cents in United's filing of substitute rates in RP63-1. Of course, settlement rates and filed rates are not evidence of what rates should be or differentials should be, but do indicate economic trends. The record here shows that the differential increased in response to the flow of higher priced southern Louisiana gas to the Jackson Zone, and decreased more recently because of the flow of southern Louisiana gas to the Central Zone and because of the tendency of gas prices to level off.

In conclusion we believe adoption of the examiner's approach as reflected in Appendices 2 and 6 attached gives weight to the methods of allocation used by us in the past, and to the changing pattern of operations. There is nothing to show that it will cause loss of United's nonjurisdictional business in Texas or will upset customer relationships in the two northern zones. It is to be understood that it is not the final word in the allocation of United's costs. In a future proceeding the United system may be found to be even more an integrated network than it is now. At that time a more complete roll-in of costs may be appropriate. As oft said, "The problem is to allocate to each class of the business its fair share of the costs. * * * Allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science." *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 588.

RATE DESIGN

Having determined the differential between the Central and Jackson Zones the principal question remaining in connection with rate design concerns the proper levels of the demand and commodity charges in those zones. This rate design question is important because a low demand charge with a correspondingly high commodity charge may cause a pipeline, or its resale customers, to lose large industrial customers, which take gas at a high load factor. On the other hand too high a demand charge will place too great a proportion of a pipeline's fixed charges on the low load factor customers and ultimate consumers while the industrial users will benefit at their expense. Since 1955 United's demand charge to its pipeline customers in these two northern zones has approximated its fixed costs, while the commodity charge has approximated the variable costs.[36] On the other hand the town border sales[37] have used comparatively high commodity charges. In the present proceeding United would continue to load the fixed costs heavily on the demand component of the rate. Certain interveners strongly object. The City of Memphis, for instance, would have us design rates strictly in accordance with the allocation of costs following the formula in the *Atlantic Seaboard* case, 11 FPC 43, 52–57 (1952).

---

[35] *United Gas Pipe Line Co.*, 13 FPC 398, 406.

[36] In the Central Zone under United's Rate Schedule PL–C the customers are Texas Eastern, Texas Gas, Mississippi River Fuel, Southern Natural and Natural Gas Pipeline, and in the Jackson Zone under Rate Schedule PL–J the customers are Texas Eastern and Southern Natural.

[37] Rate Schedules DG–C and DG–T in the Central Zone and DG–J in the Jackson Zone.

The staff and Laclede, a customer of Mississippi, take intermediate positions. The examiner, after considering the circumstances of the case, generally followed the staff position and arrived at rates close to those proposed by the staff. We agree with the same approach, but the rates we determine differ with those of the staff because of our different cost of service and allocations.

More specifically United and the staff propose the following rates based upon their respective cost of service and allocations in RP63–1:

	United		Staff	
	Demand	Commodity (cents)	Demand	Commodity (cents)
PL–C	$1.43	16.54	$1.03	18.26
PL–J	1.44	22.27	1.03	21.40
DG–C, DG–T	.35	22.7	.45	20.62
DG–J	.365	29.3	.45	23.62
G–C	----------	27.0	----------	25.05
G–J	----------	33.8	----------	28.05

The examiner would adopt staff's proposed rates except to use the $1.03 demand charge in the Central Zone with a commodity charge of 18.16 cents based on United's billing units with the 1962 test period as adjusted. Laclede advocates an 81-cent demand charge and 18.94-cent commodity charge, while Memphis, in the most extreme position, proposes a demand charge of 54 cents and a commodity charge of 20.39 cents.[28]

It seems clear to us that the demand commodity relationship proposed by Memphis is not appropriate in these proceedings. While it represents the standard set forth in the *Atlantic Seaboard* case, *supra*, it has generally been necessary because of the circumstances of competition to establish a balance between the demand and commodity factors differing from that advocated by Memphis. See *American Louisiana Pipe Line Co.*, 29 FPC 932, 937, Opinion No. 387; *Natural Gas Pipeline Company*, 28 FPC 730, Opinion No. 367; *Midwestern Gas Transmission Co.*, 21 FPC 653. The factual requirements for a different demand-commodity balance likewise exist in the present case.

In the first place, beginning with the rates filed in 1955 in Docket No. G–9547, there has been a considerable history of the PL-C commodity rate being set at a level based upon the variable costs rounded upward, and the proposed rates in the present docket were computed on the same theory. Furthermore, United is in competition with other pipelines and producers from whom its customers purchase gas. Its customers require low commodity charges in order to design their own rates so that they and their customers may obtain and keep interruptible sales. In addition to these factors United's gas purchase contracts, as we have seen, contain take-or-pay requirements that have required United to pay for gas not taken. While the exact behavior of United's customer cannot be predicted, the testimony shows that a relatively low commodity charge will have the effect of encouraging United's pipeline customers to take more gas from United, but a relatively high commodity charge might intensify the problem.

On the other hand the record does not support the high demand component proposed by United. We agree with the examiner that it is significant that the commodity rates charged by eight other pipelines in the area, except one,[29] are all higher than the 18.16-cent PL-C rate proposed by the examiner and prescribed by us. In fact the record indicates that United has not lost any pipeline customers during the 1960-1962 three year period, although there were losses of industrial customers to producers. While the record shows that United's annual sales volumes declined in 1960 and 1961, it was estimated that they would increase in 1962, 1963 and 1964. Also it appears that United would take 100 percent of its minimum take-or-pay contract quantities under its gas purchase patterns, which we have adopted here, and that by the end of 1965 should make up all of its prepaid gas. In light of these predictions we agree with the examiner that some increase in the commodity component of the PL-C rate is possible without serious loss of sales.

---

[28] The above figures are not all on a consistent basis, and so must be taken more as illustrative than exact comparison. Further, neither Laclede nor Memphis concede United's claimed costs used by them for the rate design figures.

[29] Texas Eastern whose sales do not appear competitive since Texas Eastern itself purchases gas from United.

In view of these considerations we have designed pipeline rates for United that depart from those proposed by United on the one hand and Memphis on the other. We think the balance at which we arrive will prevent loss of sales on United's part without placing an unnecessary burden on domestic and commercial ultimate consumers. However, we think that future purchased gas price reductions and other reductions should go to reduce the demand component, for the large increase in United's demand component that has occurred in successive filings does not reflect a corresponding rise in the level of fixed costs. However, we think that the demand component of the pipeline rates need be reduced no lower than $0.97, before further reductions be applied to both demand and commodity, and United's other rates. This level reflects the demand-commodity relationship approved by the Commission in the settlement of rates in 1954 in Docket No. G–1142 (13 FPC 398, 406).

The examiner had made certain adjustments in the design of United's DG rates applying to large volume distributors and the G rates applying to the small volume distributors. We adopt the examiner's discussion as a reasonable accommodation of the rate schedules to the record in this case. However, the point has been raised in connection with the adjustment of the DG rates as well as with the upward adjustment of the commodity component of the PL-C rate, which results in an overall increase to Texas Eastern, that under Section 5(a) of the Act we have no authority to order rate increases. That is so, but we may determine appropriate differentials in rates and authorize the pipeline company "to balance its revenues." *Interstate Power Co. v. F.P.C.*, 236 F. 2d 372 (CA8), certiorari denied 352 U.S. 967.

Apart from the levels of the rates themselves United's PL rate schedules include a 72 percent annual minimum take-or-pay provision plus a daily 40 percent minimum bill provision which requires its customers to take 40 percent of the maximum daily contract quantities each day or pay for that minimum quantity of gas. The examiner does not disagree with the provisions in themselves, but he is concerned that a pipeline customer may be penalized for the same failure to take gas under each of the provisions. He therefore would amend United's tariffs so as to deduct any payment made under the daily deficiency provisions from annual deficiencies. We agree with United that both provisions should apply, for it is important to United's operations both that the daily swings not be too great and that the customer take gas at close to the annual contract rate. If a customer was not able to take the required annual quantity, it might permit daily swings deleterious to efficient pipeline operation knowing that one penalty would offset the other.

REFUNDS AND RATE REDUCTIONS

As is authorized under Section 4(e) of the Gas Act the examiner ordered refunds from January 1, 1963, to reflect the rate reductions resulting from his determinations. We shall likewise order refunds here. In this connection

United points out that its substitute rate filings made on December 19, 1962, actually call for an increase of rates in the Central Zone in the amount of $3,642,306, but a reduction of $2,000,911 in the Jackson Zone.[30] United argues, in effect, that under Section 4(e) it should be required to make refunds only in connection with the rate schedule filings calling for increases. We do not agree with the company.

In this proceeding United filed revisions of all its rates in the Central and Jackson Zones, and these were all suspended by the Commission's order of July 27, 1962, and the use thereof deferred until January 1, 1963.[31] As recited in the Commission's order United relied on systemwide factors in supporting the need for an increase. These included a claimed increase in the cost of purchased gas, increased costs due to new facilities and the need for a 6.5 percent rate of return. By its order the Commission entered into a proceeding involving the general investigation of United's rates and their underlying justification with respect to costs, allocations and rate design when United made its rate filing with the object of increasing its revenues. To the extent these revenues were excessive after the rates became effective subject to refund, refund should be made whether a particular rate schedule represented an increase or a decrease. Otherwise United might earn more than the agreed upon rate of return of 6.5 percent from January 1, 1963, to the date of this order.

Section 4(e) is not inconsistent with this interpretation. There we are authorized to order a natural-gas company "to refund, with interest, the portion of such increased rates or charges by its decision found not justified." There is nothing to show here that a general rate increase must be split into separate rate schedules, and that those separately representing decreases must be exempt from the refund provisions, even though the rates involved are as unjustified or more unjustified than the rate involved in those rate schedules separately representing increases.

Procedurally, we shall require that United file rate changes to reflect the rates prescribed herein for the calendar year 1963. For succeeding years we shall require that United file further rate changes to reflect the decrease in the corporate income tax rate (50 percent in 1964 and 48 percent thereafter), reductions in purchased gas costs including reductions arising from the *Union* case in Docket No. G-13811, and final allowance of tax deductions for gas prepayments. We shall require that United make refunds to its jurisdictional customers of the difference between what it charged and what it would have charged under the prescribed rates as adjusted for the above factors. Where United receives refunds from its producer suppliers, we are requiring that these flow through to its customers. Likewise, where United's jurisdictional pipeline customers receive refunds from United, we shall require that these customers, all of which are parties to this proceeding, shall pass these refunds on to their customers, and we shall require that successive customers who are subject to our jurisdiction shall in turn pass the refunds on to their customers.

DUE PROCESS IN THE EXCLUSION OF EVIDENCE

Mississippi River Fuel and Southern Union allege that the Commission's procedural order of August 6, 1963, and the refusal of the examiner to allow them to present certain evidence claimed to be a defense to the issues raised by staff and interveners represents a denial of due process and a violation of Section 7(c) of the Administrative Procedure Act, which provides that every party shall have the right to submit rebuttal evidence.

---

[30] United also points out that by filing made March 18, 1963, it reduced effective as of January 1, 1963, its northwest Mississippi rate schedules by $106,457 annually although they were not involved in this proceeding.

[31] Substitute sheets were accepted for filing by the Commission's order of January 17, 1963.

The Commission's order of August 6, 1962 (28 FPC 295) provided for a three-stage submission of evidence: (1) United was required to serve the filings and prepared testimony constituting its case-in-chief by August 21, 1962; (2) Commission staff and all other parties "proposing to present evidence" were to serve their testimony and exhibits by October 1, 1962; and (3) after a pre-hearing conference, the examiner would set a date for service by United for its rebuttal case.[33] After the submission of evidence by United and then by staff and interveners, Southern Union on November 16, 1963, mailed to the Commission and served on all parties testimony and exhibits to show errors in the evidence of staff and interveners. The examiner ruled that this evidence was inadmissible, but allowed it to remain physically in the record as an offer of proof, which however has not been subject to cross-examination by the parties.

Southern Union's proffered testimony discusses the importance of distance in allocating costs and introduces an exhibit (28–1) setting forth distances from supply point to sale point. The testimony criticizes the staff differential of 3 cents between the Central and Jackson Zones and, based on differences in cost (both costs of production and distance), recommends that the Central Zone be broken into a Northern Louisiana and a Texas Zone and that the differential between the Jackson Zone and the Northern Louisiana area be 4.5 cents per Mcf. The accompanying exhibit (28–2), based on costs presented by the staff, sets forth unit costs for the various zones and parts of zones. The testimony also states that if a change in Method 8 is necessary, it is appropriate that the old New Orleans Zone be expanded to be a Southern Louisiana Zone supplying both Northern Louisiana and the Jackson Zone.

Mississippi on October 1, 1962, served its prepared testimony and exhibit proposing that United's jurisdictional costs of service be allocated on the basis of Method 8 rather than the method of allocation proposed by United. During the course of the hearing, in order to show the effect of an increase in United's commodity charge proposed by a witness for Laclede Gas Company, Mississippi presented an exhibit (41) and explanatory testimony concluding that its losses under Laclede's proposed rates would amount to $1,250,084 a year. The examiner refused to admit this testimony and exhibit, which were included in the record as an offer of proof, but, like Southern Union's offer of proof, was not cross-examined by the parties.

At the end of the hearing Mississippi made a motion to put in additional testimony showing the impact of the rates and allocation proposed by the staff and the rate design advocated by Laclede. No offer of proof was made, and Mississippi did not indicate clearly the nature of the evidence that it proposed to submit.

We have reviewed these offers of proof, and note that most of the evidence contained therein is already in the record; further, we reject as unfounded the contention that these parties could not have anticipated that the "Method 8" allocation and rate design were issues in the proceeding. We do not, however, decide whether or not the examiner was correct in excluding this material. We note instead that our conclusions on allocation and rate design were premised on other evidence in the record, and the results we reach here would not have been altered in any way, had the offered evidence been received, and subjected to cross-examination. Thus, we conclude that even if the examiner erred in excluding these offers from evidence, these parties have not been prejudiced.

---

[33] This procedure was in general conformity with the Commission's later amendment of its rules to expedite pipeline rate proceedings, 18 CFR § 2.59 added by Order No. 257, Nov. 6, 1962.

The Commission further finds:

(1) United is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this order are sales of natural gas in interstate commerce and are subject to the jurisdiction of the Commission.

(2) The proposed increased rates and charges filed by United in the present docket and contained in First Revised Sheets Nos. 5, 7, 9-A, 9-B, 50, 67, 75 and 84, Second Revised Sheet No. 3, Fourth Revised Sheet No. 99, Fifth Revised Sheets Nos. 1 and 102, Sixth Revised Sheets Nos. 34, 35, 44 and 45, Seventh Revised Sheets Nos. 103 and 104, Eighth Revised Sheets Nos. 4, 6, 10, 12, 16, 18, 21, 23, 25, 27, 28, 30, 32 and 100, and Ninth Revised Sheet No. 101 to United's FPC Gas Tariff, First Revised Volume No. 1, either as originally filed on June 15, 1962, or filed as substitute sheets on December 19, 1962, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act, and should be disallowed.

(3) The just and reasonable rates and charges for United's sales of natural gas subject to this proceeding are those set forth in Appendix 7 hereto subject to adjustment and the further filing requirements described below.

The Commission orders:

(A) The proposed increased rates filed by United referred to in paragraph (2) above are hereby disallowed.

(B) Within 45 days from the date of issuance of this order United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission containing the rates set forth in Appendix 7 hereto effective January 1, 1963 through December 31, 1963. However, where the rates prescribed in Appendix 7 would result in rate increases to one or more customers, United is not required to file rate changes for such customers. It is, however, authorized to file increased rates for such customers up to the levels prescribed in Appendix 7.

(C) Within 45 days from the date of issuance of this order United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective January 1, 1964 through December 31, 1964, which should reflect the rates filed pursuant to paragraph (B) above and the following:

(i) A Federal income tax rate of 50 percent adjusted to reflect the effect of the consolidated return.

(ii) Any purchased gas cost reductions occurring up till the date of this order with respect to any producer rates included in the cost of service used herein and conditionally effective January 1, 1963.

(iii) Final allowance of tax deductions for gas prepayments if it occurred before the date of this order.

(D) Before January 31, 1965, United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective January 1, 1965, until changed in acccordance with the Natural Gas Act or in accordance with paragraph (E), which should reflect the rates filed pursuant to paragraphs (B) and (C) above and the following:

(i) A Federal income tax rate of 48 percent adjusted to reflect the effect of the consolidated return.

(ii) Adjustments listed in paragraph (C)(ii) and (iii) above if they become effective during the year 1964 after the date of this order and have not already been given effect.

(iii) Any reduction in the rates of Union pursuant to the Commission's remand in Docket No. G-13811, *et al.*

(E) If any of the factors listed in paragraphs (C) and (D) become effective in the calendar year 1965 or any year thereafter, before January 31 of the succeeding year United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective as of the beginning of the year of filing until changed in accordance with the Natural Gas Act or in accordance with this paragraph (E). The changed rates so filed should reflect the rates filed pursuant to paragraph (B) and the factors listed in paragraphs (C) and (D).

(F) The independent filing of new rates by United shall not terminate its obligation to file rates under paragraphs (D) and (E), but when such new rates have become final either as a result of a rate proceeding or approval of a settlement, the rate filing requirements of paragraphs (D) and (E) shall cease.

(G) Within 45 days from the date of issuance of this order United shall refund to its jurisdictional customers the excess of the total amounts charged and collected since January 1, 1963, over and above the amounts which would have been charged for sales to such customers under the rates prescribed by paragraphs (B) and (C), with interest at the rate of 7 percent per annum from the date of payment to United to the date of refund. In computing the refund it shall be assumed that the cost reductions referred to in paragraph (C)(ii) and (iii) be given immediate effect in United's rates.

(H) Before January 31, 1965 and each succeeding year United shall make further appropriate refunds if any are due to reflect the difference between what United charged and what it would have charged since January 1, 1963, had the cost reductions referred to in paragraphs (C)(ii) and (iii) and (D)(iii) been given immediate effect in United's rates.

(I) All refunds received by United from producers either before or after the date of the issuance of this opinion shall flow through to its customers until the rates herein prescribed (and as modified by further filings required) are superseded by subsequent rates either filed and allowed to become effective without suspension or finally prescribed or approved by the Commission as the result of rate proceedings or settlements. In carrying out this direction United shall accumulate such producer refunds and refund them in turn to its customers, without interest, at the time of refunds required in paragraphs (G) and (H).

(J) The pipeline customers of United and all successive customers of these customers whose rates are subject to the jurisdiction of this Commission shall refund to their customers all refunds received from United within 45 days of receipt of such amounts without interest. Such customers, if they object to making such refunds, shall file a protest with this Commission and before being required to make such refunds will be afforded a hearing. Within 30 days of making the refunds required by this paragraph (J) such customers shall report to the Commission in writing and under oath the manner of making such refunds.

(K) Within 30 days of making the refunds required by paragraphs (G), (H) and (I) United shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with copies of releases from each of its jurisdictional customers.

(L) Upon completion of the refunds as ordered in paragraphs (G), (H) and (I) to the satisfaction of the Commission, and the reporting pursuant to paragraph (K), the undertaking given by United to make refunds shall be discharged and the proceedings shall be terminated.

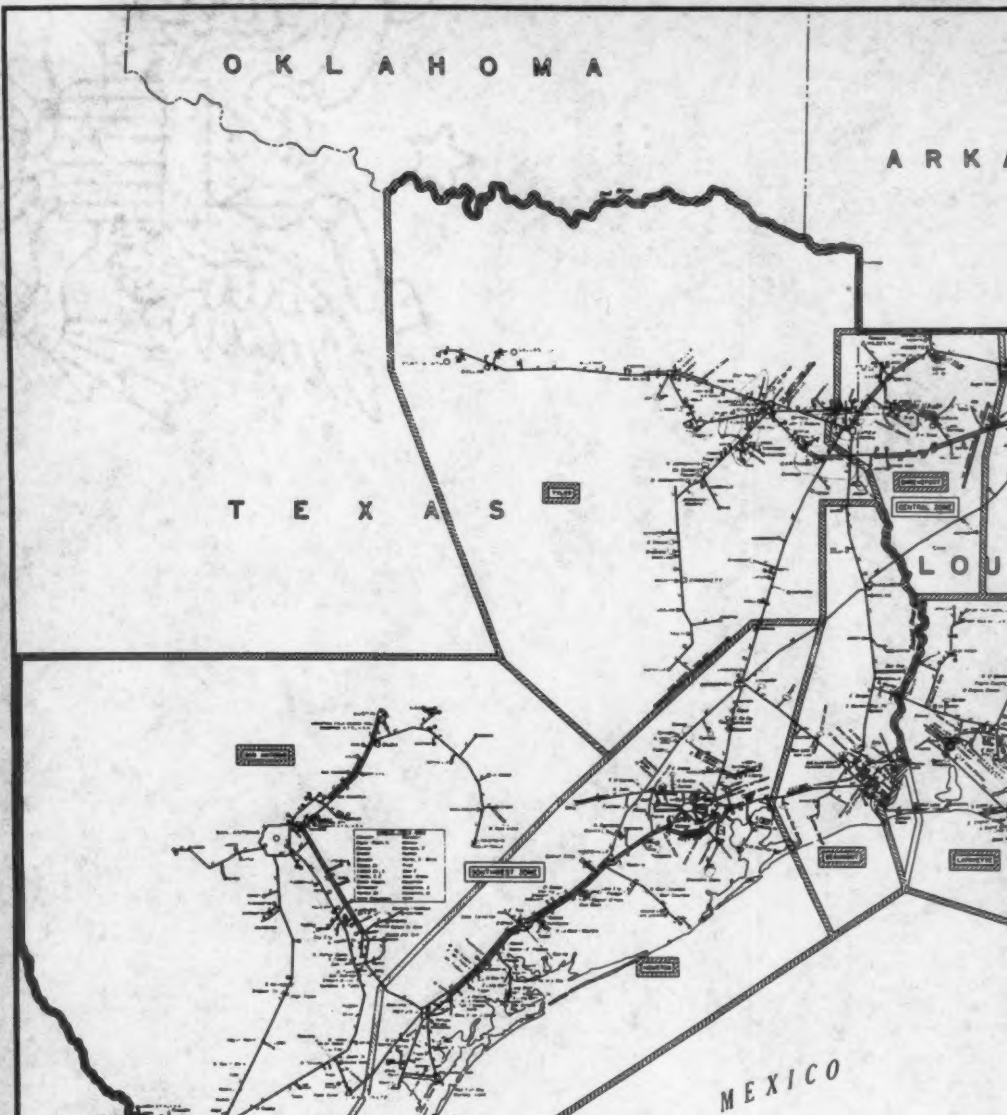
(M) If the question of the deduction of gas prepayments for income taxes has not been finally resolved at the time of issuance of this opinion, United shall establish a special reserve account on its books out of earned surplus and credit such reserve with the difference between revenues received and the revenues that would have been received if the prepayments added to working capital had been reduced by the taxes saved as a result of deducting such prepayments for income tax purposes. This reserve account shall be terminated upon paying the full amount of refund associated with the reduction in cost of service as a result of allowance of the tax deduction of prepayments.

(N) The examiner's decision issued June 17, 1963, herein to the extent not inconsistent herewith is hereby adopted as part of this opinion and order.

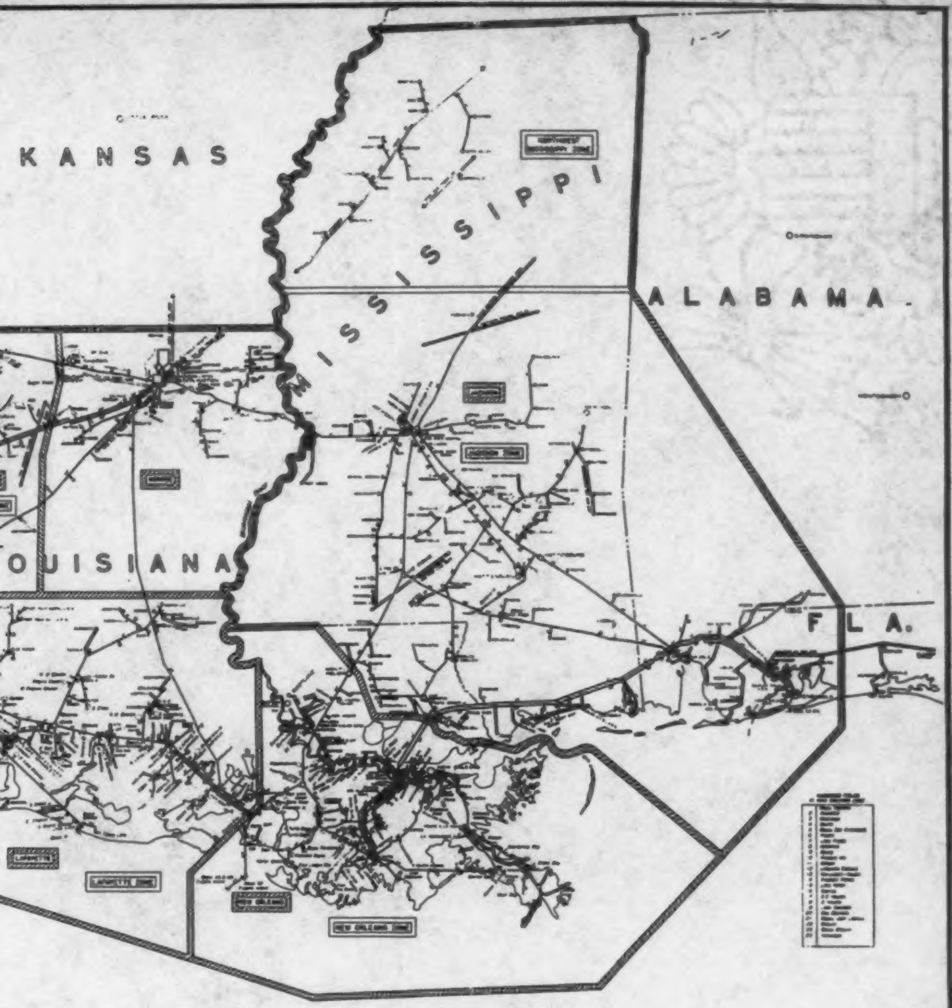
(O) Exceptions not granted herein are hereby denied.

COMMISSIONER O'CONNOR *concurs* except to the extent that this opinion and order is in conflict with his views with respect to the issue of consolidated taxes as expressed in the dissenting opinion in *Cities Service Gas Company*, Docket No. G-18799, 30 FPC 158, 171.

COMMISSIONER WOODWARD *concurring in part* and *dissenting in part*, *infra*, p. 1217.


OKLAHOMA
ARKA
TEXAS
CENTRAL ZONE
LOU
SOUTHWEST ZONE
GULF OF MEXICO
MEXICO

NDIX 1



MAP OF NATURAL GAS PROPERTIES OWNED AND OPERATED
BY

UNITED GAS PIPE LINE COMPANY

FOR
12 MONTHS ENDED, MARCH 31, 1962 - ADJUSTED

LEGEND
GAS PIPE LINES
LEASED LINE
PIPE LINES OWNED BY OTHERS
MAIN LINE INTERCONNECTION WITH OTHER COMPANY
JACKSON STORAGE FIELD
COMMUNITIES SERVED
MAJOR INDUSTRIAL DELIVERY
GOVERNMENT INSTALLATION
COMPRESSOR STATION
GASOLINE EXTRACTION PLANT
FIELDS SUPPLYING PIPE LINES
ZONE BOUNDARIES
DISTRICT BOUNDARIES

GRAPHIC SCALE
MILES

APPENDIX 2

UNITED GAS PIPE LINE COMPANY

RATE BASE AND COST OF SERVICE RELATED TO ESTIMATED 1963 SALES

	Total	Gasoline plants	Total excluding gasoline plants	Combined Central-Jackson zone			Northwest Mississippi zone	Southwest zone	New Orleans zone
				Central zone	Jackson zone	Total			
Rate Base									
Gas plant	$552,213,995	$14,213,546	$538,000,449	$107,652,181	$95,900,191	$203,552,372	$1,047,801	$209,509,508	$123,890,768
Reserve for depreciation	(185,523,403)	(12,305,456)	(173,217,947)	(49,504,024)	(25,203,097)	(74,707,121)	(334,380)	(66,796,279)	(31,380,167)
Contracts in aid of construction	(1,835,567)		(1,835,567)	(285,524)	(948,866)	(1,234,390)		(502,089)	(99,088)
Working capital	8,639,448	579,905	8,059,543	944,967	749,230	1,694,197	2,334	1,234,375	5,128,137
Total rate base	373,494,473	2,487,995	371,006,478	58,807,600	70,497,458	129,305,058	715,755	143,445,515	97,540,150
Return at 6.5% per annum	24,277,141	161,720	24,115,421	3,822,494	4,582,334	8,404,828	46,524	9,323,959	6,340,110
Cost of Service									
Operation and maintenance expense:									
Purchased gas	249,169,755		249,169,755	20,482,238	12,832,112	33,314,350	870,164	99,112,329	115,872,912
All other	27,001,997	5,207,155	21,794,842	5,178,540	4,210,842	9,389,382	53,494	8,685,718	3,666,248
Total	276,171,752	5,207,155	270,964,597	25,660,778	17,042,954	42,703,732	923,658	107,798,047	119,539,160
Other gas revenues	(1,575,752)	(29,575)	(1,546,177)	(567,854)	(182,704)	(750,558)	(1,344)	(614,443)	(179,832)
Depreciation	16,695,367	390,113	16,305,254	3,642,210	2,594,047	6,236,257	26,424	6,241,374	3,801,199
Taxes									
Federal income	9,942,179	66,229	9,875,950	1,565,420	1,876,596	3,442,016	19,053	3,818,426	2,596,455
State income	356,520		356,520	61,723	98,718	160,441	1,003	51,325	143,751
Ad valorem	4,308,591	91,050	4,217,541	985,052	1,125,056	2,110,108	8,355	1,192,364	906,714
All other	1,931,136	39,331	1,891,805	452,934	348,857	801,791	1,613	884,040	204,361
Return at 6.5% per annum	24,277,141	161,720	24,115,421	3,822,494	4,582,334	8,404,828	46,524	9,323,959	6,340,110
Total cost of service	332,106,934	5,926,023	326,180,911	35,622,757	27,485,858	63,108,615	1,025,286	128,695,092	133,351,918
Distribution of gasoline plant cost of service		(5,926,023)	5,926,023	4,278,806		4,278,806		1,647,217	
Gasoline plant revenues	(6,050,431)		(6,050,431)	(4,458,778)		(4,458,778)		(1,591,653)	
(Excess) or deficiency from gasoline plant revenues			(124,408)	(179,972)		(179,972)		55,564	
Total cost of service	326,056,503		326,056,503	35,442,785	27,485,858	62,928,643	1,025,286	128,750,656	133,351,918
Transfer of Cost of Service									
From southwest zone to central zone				50,621,942		50,621,942		(50,621,942)	
From New Orleans zone to southwest zone								18,716,618	(18,716,618)
From New Orleans zone to Jackson zone					73,195,045	73,195,045			(73,195,045)
Total transfers				50,621,942	73,195,045	123,816,987		(31,905,324)	(91,911,663)
Total cost of service			326,056,503	86,064,727	100,680,903	186,745,630	1,025,286	96,845,332	41,440,255

APPENDIX 3

UNITED GAS PIPE LINE CO., DOCKET NO. RP63-1

COMPUTATION OF PURCHASED GAS COST ADJUSTMENT RELATED TO ESTIMATED 1963 SALES

Union Producing Co. dockets not superseded by later filings	Field	Rates disallowed in Union case				Rates previously in effect				Decrease in cost (col. 6—Col. 10)
		Rate schedule	Price per Mcf (cents)	Volume in Mcf	Cost (col. 4×5)	Rate schedule	Price per Mcf (cents)	Volume in Mcf	Cost (col. 8×9)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
G-14114	Bourg	218	20.0810	4,625,905	$928,928	218	10.6603	4,625,905	$493,135	$435,793
G-14553	McFaddin	95	14.9640	1,583,697	236,984	95	8.3684	1,583,697	132,530	104,454
	North Field		14.9640	646,377	96,724		8.3684	646,377	54,091	42,633
G-17589	Delarge	228	21.8670	1,095,000	239,444	228	10.4096	1,095,000	113,985	125,459
	Dulac	229	21.8670	136,875	29,930	229	10.4096	136,875	14,248	15,682
										[1] 724,021

---

[1] Purchased gas cost $249,893,776
Less decrease 724,021

Adjusted purchased gas cost 249,169,755

APPENDIX 4

UNITED GAS PIPE LINE CO., DOCKET NO. RP63-1

COMPUTATION OF FEDERAL AND STATE INCOME TAX ALLOWANCES RELATED TO ESTIMATED 1963 SALES

Description (1)	Tax calculation (2)	Reduction of working capital for Federal income tax (3)	Return and tax (4)
Rate base:			
Net plant	$364,855,025		$364,855,025
Working capital	13,610,537	($4,971,089)	8,639,448
Total	378,465,562	(4,971,089)	373,494,473
Return at 6.5%	24,600,261		24,277,141
Less .484137D[1]: .484137×$14,350,856	6,947,780		
	17,652,481		
Return and tax $17,652,481+.515863[2]	34,219,320		
Computation of Federal income tax:			
Return and tax	34,219,320		
Less tax deductions	14,350,856		
Taxable income	19,868,464		
Tax at 50.04%	9,942,179		9,942,179
			34,219,320
50% of Federal income tax as source of working capital	4,971,089		
Computation of State income tax:			
Taxable income	19,868,464		
Tax at 1.7944%	356,520		

---

[1] Derivation of .484137D: .5004D less [(.065) (.50) (.5004)].

[2] Derivation of .515863: 1.000000 less .484137.

APPENDIX 5

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-1

COMPUTATION OF CONSOLIDATED EFFECTIVE TAX RATE

	Year 1957	Year 1958	Year 1959	Year 1960	Year 1961	Total	Percentage to total
Consolidated taxable income, exhibit 36 revised	$26, 089, 321	$30, 955, 531	$21, 924, 598	$15, 936, 714	$15, 515, 010	$110, 421, 174	
Deduct long-term capital gain			73, 688	60, 035	234, 798	368, 519	
Balance	26, 089, 321	30, 955. 531	21, 850. 910	15, 876, 679	15, 280, 214	110, 052, 655	
Tax at 52%	13, 566, 447	16, 096, 876	11, 362, 473	8, 255, 873	7, 945, 711	57, 227, 381	
Less surtax exemption	5, 500	5, 500	5, 500	5, 500	5, 500	27, 500	
Adjusted consolidated tax	13. 560, 947	16, 091, 376	11. 356, 973	8, 250, 373	7, 940, 211	57, 199, 881	
Taxable income, United Gas Corp., exhibit 36 revised	2, 743, 517	3. 528, 821	2, 939, 594	2, 700, 979	(2, 888, 741)	9. 024. 170	7. 89
Taxable income, United Gas Pipe Line Co., exhibit 36 revised	25, 615, 779	22, 573, 974	20, 943, 401	17, 569, 439	18, 588, 390	105, 290, 983	92. 11
Total						114, 315, 153	100. 00

Percentage of United Gas Pipe Line Co. to total	92. 11%
Consolidated tax for years 1957–61	$57, 199, 881
Average consolidated tax $57,199,881÷5 years	$11, 439, 976
Portion of tax applicable to United Gas Pipe Line Co. $11,439,976× 92. 11%	$10, 537, 362
Average taxable income of United Gas Pipe Line Co. $105,290,983÷5 years	$21, 058, 197
Consolidated effective tax rate, $10,537,362÷$21,058,197	50. 04%

APPENDIX 6

UNITED GAS PIPE LINE CO.

JURISDICTIONAL COST OF SERVICE RELATED TO ESTIMATED 1963 SALES

Description	Total	Combined Central-Jackson zone	Northwest Mississippi zone	Southwest zone	New Orleans zone
Jurisdictional cost of service:					
Production system:					
Pipeline	$235,495	$235,495	----------	----------	----------
Town border	10,568	10,568	----------	----------	----------
Total production system	246,063	246,063	----------	----------	----------
Transmission system:					
Pipeline	116,258,106	111,698,072	----------	$4,560,034	----------
Town border	27,276,481	23,080,255	$1,025,286	3,170,940	----------
Total transmission	143,534,587	134,778,327	1,025,286	7,730,974	----------
Total jurisdictional sales	143,780,650	135,024,390	1,025,286	7,730,974	----------
Tariff transportation	1,857,118	1,857,118	----------	----------	----------
Total jurisdictional service	145,637,768	136,881,508	1,025,286	7,730,974	----------
Nonjurisdictional service	180,418,735	49,864,122	----------	89,114,358	$41,440,255
Total cost of service	326,056,503	186,745,630	1,025,286	96,845,332	41,440,255

APPENDIX 6—continued

ALLOCATION OF COST OF SERVICE—COMBINED CENTRAL AND JACKSON ZONES RELATED TO ESTIMATED 1963 SALES

Description	Peak day	Annual volume	Metering units	Total cost of service	Production costs				Transmission costs			
					Total	Commodity		Other	Total	Demand	Commodity	Other
						Purchased gas	Other commodity					
Total gas available for sales and tariff transportation before receipts	1,215,033	277,502,665	10,534	$62,928,643	$35,937,765	$33,314,350	$2,615,019	$8,396	$26,990,878	$11,980,847	$14,635,178	$374,853
Less: Tariff transportation	176,760	52,829,193	139	1,857,118	--------	--------	--------	--------	1,857,118	853,362	997,531	6,225
Total gas available for sales before receipts	1,038,273	224,673,472	10,395	61,071,525	35,937,765	33,314,350	2,615,019	8,396	25,133,760	11,127,485	13,637,647	368,628
Gas transferred in from other zones:												
Southwest zone	764,705	220,515,731	--------	50,621,942	41,752,839	40,537,802	1,215,037	--------	8,869,103	3,813,201	5,055,902	--------
New Orleans zone	1,163,847	306,050,417	--------	73,195,045	64,810,607	63,522,726	1,287,881	--------	8,384,438	3,789,759	4,594,679	--------
Total gas available for sale	2,966,825	751,239,620	10,395	184,888,512	142,501,211	137,374,878	5,117,937	8,396	42,387,301	18,730,445	23,288,228	368,628
Allocation of cost of service:												
Sales from production system:												
Direct	711	208,840	180	39,443	39,443	30,967	2,431	6,045	--------	--------	--------	--------
Resale:												
Pipeline	4,000	1,460,000	60	235,495	235,495	216,487	16,993	2,015	--------	--------	--------	--------
Town border	564	63,982	10	10,568	10,568	9,487	745	336	--------	--------	--------	--------
Total sales from production system	5,275	1,732,822	250	285,506	285,506	256,941	20,169	8,396	--------	--------	--------	--------
Sales from transmission system:												
Direct	700,519	204,990,970	3,542	49,824,679	38,896,159	37,501,913	1,394,246	--------	10,928,520	4,430,461	6,369,357	128,702
Resale:												
Pipeline	1,524,965	462,002,611	971	111,698,072	87,663,017	84,520,708	3,142,309	--------	24,035,055	9,644,704	14,355,069	35,282
Town border	736,066	82,513,217	5,632	23,080,255	15,656,529	15,095,316	561,213	--------	7,423,726	4,655,280	2,563,802	204,644
Total sales from transportation system	2,961,550	749,506,798	10,145	184,603,006	142,215,705	137,117,937	5,097,768	--------	42,387,301	18,730,445	23,288,228	368,628
Total cost of service—Sales	2,966,825	751,239,620	10,395	184,888,512	142,501,211	137,374,878	5,117,937	8,396	42,387,301	18,730,445	23,288,228	368,628
Tariff transportation	--------	--------	--------	1,857,118	--------	--------	--------	--------	1,857,118	853,362	997,531	6,225
Total cost of service	--------	--------	--------	186,745,630	142,501,211	137,374,878	5,117,937	8,396	44,244,419	19,583,807	24,285,759	374,853

Unit costs:
  Production system:
    Production other commodity...... 2, 615, 019÷224, 673, 472= .011639197
    Production other.................. 8, 396÷ 250=33. 5840000

Transportation system:
  Production other commodity........ 5, 097, 768÷749, 506, 798= .006801496
    Transmission demand............... 18, 730, 445÷ 2, 961, 550= 6. 32454120
    Transmission commodity........... 23, 288, 228÷749, 506, 798= .031071403
    Transmission other................. 368, 628÷ 10, 145=36. 3359290

CENTRAL ZONE

ALLOCATION OF COST OF SERVICE—TARIFF TRANSPORTATION RELATED TO ESTIMATED 1963 SALES

Description	Mcf miles demand	MMcf miles commodity	Metered units	Transmission excluding compression cost			
				Total	Demand	Commodity	Other
Transmission sales	125, 855, 092	34, 922, 049	3, 912	$9, 333, 672	$4, 379, 448	$4, 779, 029	$175, 195
Tariff transportation	24, 523, 612	7, 289, 310	139	1, 857, 118	853, 362	997, 531	6, 225
Total transportation	150, 378, 704	42, 211, 359	4, 051	11, 190, 790	5, 232, 810	5, 776, 560	181, 420

Unit costs:
  Demand.................................... 5. 232, 810÷150, 378, 704=. 034797546
  Commodity................................. 5, 776, 560÷ 42, 211, 359=. 136848472
  Other..................................... 181, 420÷ 4, 051=44. 7840039

APPENDIX 6—continued

ALLOCATION OF COST OF SERVICE—SOUTHWEST ZONE

RELATED TO ESTIMATED 1963 SALES

Description	Peak day	Annual volumes	Metering units	Total cost of service	Production costs				Transmission costs			
					Total	Commodity		Other	Total	Demand	Commodity	Other
						Purchased gas	Other commodity					
Total gas available for sale and transfer before receipts	2, 338, 494	579, 984, 870	8, 265	$128, 750, 656	$102. 414, 106	$99, 112, 329	$3, 297, 947	$3, 830	$26, 336, 550	$12, 127, 507	$13, 908, 350	$300, 693
Gas transferred in from New Orleans zone	282, 871	78, 471. 363	--------	18, 716, 618	16, 617, 448	16. 287, 235	330, 213	--------	2, 099, 170	921, 094	1, 178, 076	--------
Total gas available for sale and transfer	2, 621, 365	658, 456, 233	8, 265	147, 467, 274	119, 031, 554	115, 399, 564	3, 628, 160	3, 830	28, 435, 720	13, 048, 601	15, 086, 426	300, 693
Allocation of cost of service:												
Sales from production system	4, 579	454, 180	123	86, 095	86, 095	79, 682	2, 583	3, 830	--------	--------	--------	--------
Sales from transmission system:												
Nonjurisdictional	1, 653, 085	405, 924, 856	7, 082	89, 028, 263	71, 216, 716	68, 980, 079	2, 236, 637	--------	17, 811. 547	8, 243, 107	9, 306, 894	261, 546
Jurisdictional:												
Pipeline	75, 000	19, 710, 000	60	4, 560. 034	3, 731, 927	3, 623, 325	108, 602	--------	828, 107	373, 987	451, 904	2, 216
Town border	123, 996	11, 851, 466	1, 000	3, 170, 940	2. 243, 977	2, 178, 676	65, 301	--------	926. 963	618, 306	271, 726	36, 931
Total sales from transmission system	1, 852, 081	437, 486, 322	8, 142	96. 759, 237	74, 192, 620	74. 782. 080	2, 410. 540	--------	19, 566, 617	9, 235, 400	10. 030, 524	300, 693
Total sales	1, 856, 660	437, 940, 502	8, 265	96, 845. 332	77. 278, 715	74, 861, 762	2, 413, 123	3, 830	19, 566, 617	9, 235, 400	10, 030, 524	300, 693
Transfer to Central zone	764, 705	220, 515, 731	--------	50, 621. 942	41, 752, 839	40, 537, 802	1, 215, 037	--------	8, 869, 103	3, 813, 201	5, 055, 902	--------
Total transmission sales and transfer out	2. 616, 786	658 002. 053	8, 142	147. 381, 179	118, 945, 459	115, 319, 882	3. 625. 577	--------	28, 435, 720	13, 048, 601	15, 086, 426	300, 693
Total costs	2, 621, 365	658, 456, 233	8. 265	147. 467. 274	119. 031, 554	115, 399, 564	3, 628. 160	3, 830	28, 435, 720	13. 048, 601	15, 086, 426	300, 693

Unit costs:
Production system:
Production other commodity ..... 3, 297, 947 ÷ 579, 984, 870 = .005686263

Transmission system:
Production other commodity ..... 3, 625, 577 ÷ 658, 002. 053 = .005509978
Transmission demand .... 13, 048, 601 ÷ 2, 616, 786 = 4. 98649908
Transmission commodity .... 15, 086, 426 ÷ 658, 002, 053 = .022927627
Transmission other .... 300, 693 ÷ 8, 142 = 36. 9310980

ALLOCATION OF COST OF SERVICE—NEW ORLEANS ZONE RELATED TO ESTIMATED 1963 SALES

Description	Peak day	Annual volume	Metering units	Total cost of service	Production costs				Transmission costs			
					Total	Commodity		Other	Total	Demand	Commodity	Other
						Purchased gas	Other commodity					
Sales from production system	1,450	221,374	78	$54,957	$54,957	$52,380	932	$1,645				
Sales from transmission system	725,817	152,275,329	2,170	41,385,298	36,651,356	36,010,571	640,785		4,733,942	2,363,430	2,286,081	84,431
Total sales	727,267	152,496,703	2,248	41,440,255	36,706,313	36,062,951	641,717	1,645	4,733,942	2,363,430	2,286,081	84,431
Transfer to other zones:												
Transfer to Southwest zone	282,871	78,471,363		18,716,618	16,617,445	16,287,235	330,213		2,099,170	921,094	1,178,076	
Transfer to Jackson zone	1,163,847	306,050,417		73,195,045	64,810,607	63,522,726	1,287,881		8,384,438	3,789,759	4,594,679	
Total transfer sales and transfer out	2,172,535	536,797,109	2,170	133,296,961	118,079,411	115,820,532	2,258,879		15,217,550	7,074,283	8,058,836	84,431
Total cost of service	2,173,985	537,018,483	2,248	133,351,918	118,134,368	115,872,912	2,259,811	1,645	15,217,550	7,074,283	8,058,836	84,431

Unit costs (except purchased gas):
Production system:
Production other commodity .... 2,259,811÷537,018,483=.004208069

Transmission system:
Transmission demand .... 7,074,283÷2,172,535=3.25623431
Transmission commodity .... 8,058,836÷536,797,109=.015012815

APPENDIX 6—continued

ALLOCATION OF PURCHASED GAS COSTS COMBINED CENTRAL-JACKSON ZONE

	Annual volumes	Purchased gas cost	Unit cost
Total Central-Jackson zone	224,673,472	$33,314,350	.148278965
Gas transferred in from other zones:			
Southwest zone	220,515,731	40,537,802	
New Orleans zone	306,050,417	63,522,726	
Total gas available	751,239,620	137,374,878	
Allocation of purchased gas costs:			
Production system:			
Direct	208,840	30,967	.148278965
Jurisdictional:			
Pipeline	1,460,000	216,487	.148278965
Town border	63,982	9,487	.148278965
Transmission system:			
Direct	204,990,970	37,501,913	.182944220
Jurisdictional:			
Pipeline	462,002,611	84,520,708	.182944220
Town border	82,513,217	15,095,316	.182944220
Total	751,239,620	137,374,878	

ALLOCATION OF PURCHASED GAS COSTS, SOUTHWEST ZONE

	Annual volumes	Purchased gas cost	Unit cost
Total Southwest zone	579,984,870	$99,112,329	
Less: Intrastate sales:			
Production system	58,975	9,772	
Transmission system	311,153,132	51,558,023	
	311,212,107	51,567,795	(1)
Remaining amounts	268,772,763	47,544,534	.176894911
Gas transferred in from New Orleans zone	78,471,363	16,287,235	
Total gas available	347,244,126	63,831,769	
Allocation of purchased gas costs:			
Production system	395,205	69,910	.176894911
Transmission system:			
Nonjurisdictional	94,771,724	17,422,056	.183831792
Jurisdictional:			
Pipeline	19,710,000	3,623,325	.183831792
Town border	11,851,466	2,178,676	.183831792
Transfer to Central zone	220,515,731	40,537,802	.183831792
Total	347,244,126	63,831,769	

[1] Direct assignment.

ALLOCATION OF PURCHASED GAS COSTS, NEW ORLEANS ZONE

	Annual volumes	Purchased gas cost	Unit cost
Total New Orleans zone	537,018,483	$115,872,912	
Less: Intrastate sales:			
Production system	221,374	52,380	
Transmission system	151,600,919	35,870,593	
Total intrastate sales	151,822,293	35,922,973	(1)
Remaining amounts	385,196,190	79,949,939	.207556411
Allocation of remaining purchased gas costs:			
Other transmission sales	674,410	139,978	.207556411
Transfers to other zones:			
Southwest zone	78,471,363	16,287,235	.207556411
Jackson zone	306,050,417	63,522,726	.207556411
Total sales and transfer	385,196,190	79,949,939	

[1] Direct assignment.

APPENDIX 7

UNITED GAS PIPE LINE CO. DOCKET NO. RP63-1

Rate schedule	Demand	Commodity (cents)	Revenues based on 1963 sales
Central Zone			
PL-C	$1. 15	18. 16	$71, 245, 104
PLE-C		21. 94	
DG-C, DG-T	. 52	20. 74	7, 964, 274
G-C		25. 9	2, 800, 931
			82, 010, 309
Jackson Zone			
PL-J	1. 15	21. 82	44, 529, 092
PLE-J		25. 60	
DG-J	. 52	24. 24	12, 813, 170
G-J		29. 4	3, 152, 455
			60, 494, 717
Field Sale			
PL-MF		16. 1	235, 060
Transportation			
T-1, T-3	. 876		1, 858, 101
Total revenues			144, 598, 187
Costs allocated to total jurisdictional service excluding isolated Northwest Mississippi zone			144, 612, 482

WOODWARD, Commissioner, *concurring* in part and *dissenting* in part:

In this precedent pipeline rate proceeding, the Commission is charged with the responsibility of making a determination which will produce two separate but mutually dependent results:

(1) The finding of just, reasonable and non-discriminatory rates for United Gas Pipe Line Company's (United) jurisdictional customers and,

(2) The retention, by United, of reasonable revenues to cover operating expenses and capital costs of United's jurisdictional business.

The majority, in the decisional process, has disregarded fundamental ratemaking precepts and, for reasons discussed below, I must respectfully dissent.

The decision breaches this Commission's carefully conceived regulations regarding the test year and test year adjustments and runs directly contrary to settled administrative law respecting such regulations. By reason of the importance of these matters to a correct resolution of the issues involved in this proceeding and the significance of the determination of the majority as that relates to the test period, a more exhaustive treatment of this problem is necessary. To place the subject in proper perspective, a review of certain Commission orders and the purpose for which those orders were promulgated is mandatory.

Order No. 257, the most recent, amply circumscribes the subject.[1]

"For various reasons, full implementation and utilization of the procedures contemplated by that order has not been possible. The situation has now changed, however, particularly with respect to pipeline rate cases. The regulations relating to pipeline rate-increase filings have been recently revised (Order No. 254, issued September 20, 1962, amending § 154.63 of Regulations Under the Natural Gas Act, 28 FPC 495, 27 F.R. 9500). The revised section includes, among others, a requirement that the filings shall include more detailed data of such scope and format that they may serve as the company's case-in-chief."

---

[1] Natural Gas Pipeline Companies—Expedition of Rate Proceedings, Docket No. R-224, 18 CFR 2.59, 28 FPC 791, issued November 6, 1962.

"In view of these developments, the conditions have now been created which make it feasible and essential that the policy and procedures set out in Order No. 217 should now be fully and effectively used in pipeline rate proceedings."

We prescribed, *inter alia*, for future use, the meaning to be given to the term test period.[2] That Section requires that the filing shall be: " . . . based upon a test period which shall consist of a base period of 12 consecutive months of most recently available actual experience, adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of the filing, and which will become effective within nine months after the last month of available actual experience utilized in the filing, but in no event shall such test period extend six months beyond the date of filing."

And with respect to rejection the Commission ordered: "Where the data submitted in compliance with Paragraph (b) hereof do not comply with the requirements of the rules and regulations, the rate filing is subject to rejection: *Provided, however,* that if the proposed rate increase is filed at least 45 days before the effective date proposed therefor and such filing does not comply with the requirements of this section, the natural gas company will be notified of the deficiencies, and if such deficiencies are properly cured within 15 days from the date of such notice, the requisite supplementary material will be deemed to have been filed as of the same date as the initial submittal of the proposed rate increase."

There is no dispute that United's Notice of Change of Rate Filing made on June 15, 1962, utilizing a test period of twelve months ending March 31, 1962, adjusted to reflect operating changes and the resulting changes in costs and revenues through November 1962, was consistent with Commission regulations. Our order suspending the operation of that filing issued July 27, 1962, denotes such compliance. In fact, had the filing not been in compliance, it would have been and should have been summarily rejected.

Further, there is no doubt that even though United had based its filing on a period which conforms to the Regulations, any party, including the Staff, could have challenged United's selected period as the appropriate test period for comparing costs and revenues for rate making purposes. *The record contains no such challenge.*[3] Specifically, during the hearing, in response to a direct question posed by the Presiding Examiner as to whether there was any intention or possibility of changing the test period, Staff counsel responded:

> "No, sir, the test period here is the 12 months period ended March 31, 1962, *as adjusted for the following months ended November 30, 1962.*"[4]

Consequently, with the test period established, although the majority now repudiates this certainty, all data which properly may be admitted as evidence and considered in reaching a decision *must relate to that period.* Any other data is irrelevant and immaterial and must be rejected. Detailed scrutiny of the record and the Presiding Examiner's initial decision shows that the Examiner committed error in admitting any data with respect to operations, sales and costs which occurred after November 30, 1962. However, upon further reflection, the Examiner found that such data, "do not meet the requirements of the Regulations,"[5] and excluded from consideration "sales commencing after the close of the test-period."[6] The majority's error here is not only that it would admit the data but that it would consider such evidence in formulating its decision. Great weight must be given to the Examiner's pronouncement that "if rates are to be based on estimates of 1963 sales, United must be permitted to use estimated 1963 costs . . .", an additional area of controversy and a practice expressly forbidden by existing rules.[7]

---

[2] 154.63(e)(2)(i).

[3] Emphasis supplied throughout this statement unless otherwise indicated.

[4] Tr. 14.

[5] Examiner's Decision, page 1224.

At this point I would note that "Staff takes the position that Section 154.63 merely prescribes the necessary evidentiary support to be filed by a pipeline seeking the rate increase. . . ."[8] In such a way did Staff synthesize its case. The majority adopts this inventive rationale. Obviously the Staff's concept is in error and the majority compounds that error by lending integrity to such a misconceived notion for in order No. 254, *supra*, we clearly stated "it is intended that should a filing be suspended, the accompanying data could constitute the applicant's case-in-chief." The following is uncontrovertible: If the rules do not permit United filing sales and costs data for 1963, such data cannot possibly constitute United's case-in-chief; if United may not present such data as its case-in-chief, it is wholly inappropriate for the Staff, or any other party to present such data as rebuttal evidence, since it conflicts with the precise prescription in the regulations of the test period *which must be used.*

Findings based on evidence which is clearly in violation of Commission regulations creates serious substantive problems:

(1) What constitutes the proper sales volume to utilize in designing rate?

(2) What is the proper purchase gas cost to include in the cost-of-service?

(3) What is the proper system operating cost?

Each of these factors is vital to the determination of just and reasonable rates under the Natural Gas Act and our Rules and Regulations.

Concerning sales volumes, United in its original tender forecast its sales as 1,257 million Mcf which it later increased by 35 million Mcf when facilities to transport that increased volume were certificated. This action is consistent with Commission Regulations which provide "adjustments to experience, or estimates where 12 months experience is not available, may include the amounts for facilities for which a permanent or temporary certificate has been granted, provided such facilities will be in service within the test period, but such adjustments or estimates shall not include any amounts for facilities in respect to which a certificate of public convenience and necessity must be obtained but which has not been issued at the date of filing, nor shall adjustments or estimates include any amounts for other facilities associated therewith."

Staff submitted sales for the period from 1957 through and including 1964. It checked the data so obtained with certain data on file in United's certificate application[9] and conveniently concluded that United's estimated sales in 1963 would be 1,355 Mcf as set out in the application. Staff thereupon considers 1,355 million Mcf as the appropriate volume to use in determining United's rates. United, in its rebuttal case, (Exh. 16) asserted that its original estimate in the certificate proceeding was too high and revised the estimate to 1,344 million Mcf, although the company maintained that all the 1963 sales estimates were conjecture and their use violated Section 154.63 (E)(2)(i) of the Regulations. The Staff adopted that figure and utilized same in its brief. The

---

[6] Examiner's Decision, page 1226.

[7] Examiner's Decision, page 1226.

[8] Examiner's Decision, page 1224.

[9] Docket No. CP61-151.

Examiner rejected this computation stating it not only violated Commission Regulations but was too speculative and variable to use.[10] The majority, while not expressly passing upon these points, finds that 1,344 million Mcf of sales is appropriate to use in determining United's rates because this volume "can be handled by—test year facilities."[11] Careful research has failed to reveal any support for this perfunctory approach. All authorities require rates to be determined on the basis of the sales volumes made from the facilities and not the volumes which "could have been handled by the facilities."

With respect to sales adjustment to include the 1963 figures, the majority relies on the *Panhandle* case, 25 FPC 787 and the *El Paso* case, 22 FPC 260, to support its position. Such reliance is erroneous since those cases were adjudicated *before the present regulations became effective* and cannot be controlling in the instant proceeding, since this is the *first* case to be tried pursuant to the regulations. The majority, in effect, concludes that regulations conceived and promulgated by the Commission, although binding on others, are not binding on the Staff or the Commission. They have done nothing more than write the regulations out of the book.

Vitarelli v. *Seaton*[12] holds that the Secretary may not disregard regulations of the Department of Interior when such are properly promulgated, as is the case here. Justice Frankfurter for himself and three other Justices wrote in a concurring opinion, "An executive agency must be vigorously held to the standards by which it professes its actions to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements which bind such agency, the procedures must be scrupulously observed. This judicial rule of administrative law is now firmly established and, if I may add rightly so. He that takes the procedural sword shall perish with that sword. . . ."

Judge George W. Anderson, a highly respected member of the First Federal Circuit Court of Appeals during the 1920's stated this principle forcefully: "Now if there is one thing that is established in the law of administration, I take it that it is that a rule cannot be repealed specifically to affect a case under consideration by the administrative authorities; that is, if there is an existing rule which protects certain rights, it violates every sense of decency, which is the heart of due process, to repeal that protection, just for the purpose of accomplishing the ends of the case which come before the administrative authority."[13]

The *Vitarelli* case, *supra*, is supported by other recent Supreme Court decisions. *Service* v. *Dulles*[14] holds that while the Secretary was not obligated to impose upon himself the vigorous procedural standards he had embodied in the regulations, "he could not, so long as the Regulations remain unchanged, proceed without regard to them."[15] In addition, in *Accardi* v. *Shaughnessy*,[16] the court holds that the Attorney General may not ignore his own validly prescribed regulations, *Erie R. Co.* v. *City of Patterson*[17] finds that affected parties "had the right to expect" that the board conduct its affairs "as its own rules required."

---

[10] Examiner's Decision, page 1224.

[11] Commission Decision, page 1185, 1186.

[12] 359 U.S. 535.

[13] *Colyer* v. *Skeffington*, 265 F. 17, reversed on other grounds sub nom. 277 F. 129.

[14] 354 U.S. 363 (1957).

[15] 354 U.S. 388.

[16] 347 U.S. 260 (1954).

[17] 76 A. 1065 (1910).

Professors Gellhorn and Byse in their recent treatise on Administrative Law[18] summarize cases of this nature by declaring:[19] "The rationale of the decision seems to be that the existing regulations have "the force and effect of law and must therefore be deemed binding on the government as well as on the citizen, or that they embody a de facto recognition of minimum standards of procedural decency and may therefore be roughly equated with due process."

Without question, the Rules and Regulations that we promulgate as binding upon those parties appearing before us, are also binding upon this Commission and its Staff. This truism is immune from an answer to the contrary. Sound interpretation of the Rules and Regulations require the exclusion of the 1963 sales volume data. Substantive effect of such action would be changes in the purchase gas cost, the cost-of-service, the demand and commodity billing units and the resulting revenues. I do not deem it necessary to discuss each point individually. It is sufficient to say that the factors above do not, under our Regulations, and under the authorities listed herein, have the integrity upon which reasonable men may rely in resolving an issue as technically difficult as the setting of just and reasonable rate for a natural gas company.

On this issue, I would affirm the Presiding Examiner who has:

(A) Correctly stated the facts of record.

(B) Correctly set out the principles which prescribe a proper test period and the adjustments thereto.

(C) Correctly interpreted Commission regulations as they apply to the test period.

(D) Properly excluded adjustments which are at variance with the regulations in issue.

Only brief mention need be made of the issue concerning the consolidated tax question. The majority continues to defy the precise intent of Congress in granting the privilege of the consolidated return to an affiliated group of corporations. The law has wisely refrained from imposing a statutory requirement of assigning or distributing consolidated tax liability among members of the affiliated group. Hence a method of allocation adopted for the intersé purpose of the group is solely an internal affair. Each affiliate, including the parent, should accrue its tax liability as if its returns were filed on a separate basis. The reasons given in my dissenting opinion in the *Cities Service* case[20] are equally applicable here and I so intend them to be.

I must dissent to the majority's allocation of United's cost of service. It is a fact of record that United is an exception to the accepted system-wide rolled-in method of allocating costs because United essentially operates two separate systems.

The record also supports the proposition that this condition may be in the process of change. However, costs must be allocated consistent with operations as realized during the test year, not as operations may be at some time in the future as the majority deems appropriate.[21]

I dissent also from the principle of separating out purchase gas costs of the non-jurisdictional sales in the New Orleans and Southwest Zones. The majority finds such sales are made from non-jurisdictional facilities. In spite of this they state:[22] "It appears that a relatively small amount of gas sold under rate schedules on file with the Commission is necessary in addition to the gas from unfiled rate schedules to make the full amount of sales from the facilities designated by the Staff as intrastate. Furthermore, some of the separated sales of intrastate gas in Texas are made from facilities that carry interstate gas." As I understand pipeline operations, facilities from which interstate gas sales are made are interstate facilities. Nonetheless, the majority finds it appropriate to separate out such "non-jurisdictional" gas cost from "jurisdictional" gas cost. Such assignment of costs is not based upon operating facts; in essence it is distinctly contrary to operations.

---

[18] Administrative Law, cases and comments, Walter Gellhorn and Clark Byse, Fourth Edition, The Foundation Press, 1960.

[19] *Supra*, p. 862.

[20] Cities Service Gas Company, Docket No. G-18799, Opinion No. 396 and accompanying Order, issued July 15, 1963, 30 FPC 158.

[21] *Supra*, P. 1195–1197.

[22] *Supra*, P. 1197.

Although the majority separate non-jurisdictional purchase gas from jurisdictional gas cost, it does not follow this through and logically separate out the costs of operating facilities transporting non-jurisdictional gas from jurisdictional gas. Rather it rolls-in all transmission costs. This is an inconsistency which can result only in a distortion of federal regulation and makes orderly state regulation difficult if not impossible. "The mandatory separation of intrastate and interstate costs and revenues for state regulatory purposes is well established."[22] The majority's costs assignment does not permit obtaining either a true cost of interstate or intrastate business.

I concur with statements in the majority opinion which are not inconsistent with the views expressed herein.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON A FILING FOR AN INCREASE IN RATES

(Issued June 17, 1963)

Levy, *Presiding Examiner*: This proceeding involves a rate filing by United on June 15, 1962, to be effective August 1, 1962, seeking an annual increase in the rates and charges to United's jurisdictional customers of approximately $5,600,000. By Commission Order of July 27, 1962, these rates were suspended until January 1, 1963. Producer price reductions by United's suppliers resulting from pending proceedings reduced the substitute rates that actually went into effect on January 1, 1963, to a net increase in annual revenues of approximately $1,641,395.[1] The increased rates are subject to an undertaking to refund amounts not found justified under the Act.

On August 6, 1962, the Commission prescribed procedures designed to expedite the hearing and shorten the period between the suspension of the proposed rates and the issuance of a final Commission decision. Pursuant to these procedures, United served its direct case-in-chief by August 21, 1962, Staff and interveners served their proposed testimony and exhibits by October 1, 1962, and a prehearing conference was held on October 22, 1962, at which the issues were defined in detail, a date set (November 19, 1962) for the filing of United's rebuttal case, and for the commencement of the hearing on November 27, 1962.

Hearings conducted under the Commission's accelerated pipeline rate procedure (See Section 2.59 of the Commission's Rules of Practice and Procedure) commenced on November 27, 1962, and were concluded on January 28, 1963. The record made in this hearing includes 4683 pages of transcript, 51 exhibits and numerous items of incorporation by reference. Eighteen initial briefs[2] were filed pursuant to the Commission's order of February 6, 1963, on or about March 14, 1963, and as many reply briefs on or about April 3, 1963. The order emphasized the Commission's objective—"that final decision herein should be reached as expeditiously as possible," and the necessity of expediting all other phases of the proceedings including briefs, initial decision, and exceptions in order to achieve that objective. Accordingly, this initial decision is concerned with the resolution of the contested issues presented by this record and a determination of the applicable principles. Computation of a precise dollar cost of service is deferred until purchase gas costs and certain tax data are available as hereinafter set forth.

---

[22] *United Gas Pipe Line Company v. Louisiana Public Service Commission.* 130 So. 2d 652.

[1] An approximate increase of $3,642,306 in the Central Zone and a reduction of $2,000,911 in the Jackson Zone.

The major issues presented are:

1. The proper test year sales volumes and the proper level of operating expenses associated with such sales;

2. The Federal income tax allowance component of United's cost of service including issues as to the treatment of the investment tax credit, prepaid gas, liberalized depreciation, guideline depreciation rates, and the consolidated tax rate;

3. Allocation of United's cost of service including the extent to which the present zone by zone method of allocation, and rate differentials between zones, should continue to be used;

4. Rate design including the level of the demand-commodity components of the proposed rates and the daily take-or-pay provision in United's pipeline rate schedules.

The parties are agreed that 6.5% is a fair rate of return in this proceeding (Tr. 1267, 1370–3). The parties are also agreed that United's rates are subject to adjustment to reflect the final determination by the Commission of purchase gas costs to be included in United's cost of service.[3] United and the Staff presented a complete cost of service case, including testimony on cost allocation and rate design. The interveners presented evidence on specific issues of interest to them; Memphis on Federal income tax allowance; Mississippi River and Texas Gas on cost allocation; Laclede on rate design, and UGI on cost allocation and rate design.

Cost of Service

United and Staff presented a complete cost of service study. Testimony on cost of service issues was also presented by Memphis. There are substantial differences in the cost of service proposed, principally in the amount to be included in the rate base for United's Federal income tax expenses, purchase gas cost, prepaid gas, and estimated operating expenses. There is also a difference of opinion as to the proper test period to be used in this proceeding in computing sales volumes, costs, and revenues.

---

[2] Those filing briefs include: Staff, United Gas Pipe Line Company, Texas Eastern Transmission Corporation, Southern Natural Gas Company, Mississippi River Fuel Corporation, Laclede Gas Company, Texas Gas Transmission Corporation, Southern Union Gas Company, Louisville Gas and Electric Company, Natural Gas Pipeline Company of America, Mississippi Valley Gas Company, Western Kentucky Gas Company, Indiana Gas & Water Company, Inc., Industrial Consumers and Louisiana Public Service Commission, Willmut Gas and Oil Company, City of St. Louis, Missouri, Louisville Public Service Commission, Memphis Light Gas and Water Division, and Eastern Interveners (Public Service Electric and Gas Co., Brooklyn Union Gas Co., Philadelphia Gas Works, United Gas Improvement Co., Long Island Lighting Co., and Consolidated Edison of N.Y.).

[3] United is not in disagreement with the principle that any such post-determination by the Commission of conditional gas costs included in United's cost of service be reflected by flow-through, and United's suggested findings include a provision to this effect. [United's initial br., p. 23].

Test Year

United filed this application on June 15, 1962, with a base period of twelve months ending March 31, 1962. The base period was adjusted to reflect changes in revenues and costs effective within eight months or prior to November 30, 1962. Staff contends that the test period should reflect estimates for the calendar year 1963, on the ground that United's actual sales and revenues for the base year should be increased to reflect the larger capacity of its normalized plant. Staff relies on a 1963 sales forecast submitted by United in Docket No. CP61–151, a certificate proceeding filed by United to obtain approval for the construction of its new north-south Louisiana 30″ line. Staff witness Robertson, in addition to utilizing United's forecast of 1963 sales, conducted an independent study of the trend of sales over the period 1957-1964, inclusive. This led him to the conclusion that 1963 sales would reach 1355 billion cubic feet rather than the 1257 billion cubic feet contained in United's original filing. As part of its rebuttal evidence in this proceeding, United submitted a revised estimate (1344 billion cubic feet) of 1963 sales volumes prepared by witness Comer (Exh. 16) based on current customer estimates. Staff also relies on the less than 1% difference (0.84%) between the two United estimates as a confirmation of the validity of utilizing 1963 sales forecasts in its sales volume adjustment for the test period.

During the hearing United revised its sales volumes by 35,000,000 Mcf of increased sales authorized to commence in November 1962, just prior to the close of the prescribed test period, raising estimated sales volumes to 1292 billion cubic feet (Exch. 11–3). It maintains that all the 1963 sales estimates are speculative and their use violates Section 154.63(e)(2)(i) which requires the filing to be:

> . . . based upon a test period which shall consist of a base period of 12 consecutive months of most recently available actual experience, adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of the filing, and which will become effective within nine months after the last month of available actual experience utilized in the filing, but in no event shall such test period extend six months beyond the date of filing.

The Staff takes the position that Section 154.63 merely prescribes the necessary evidentiary support to be filed by a pipeline seeking the rate increase, and that the only issue is whether the sales forecast for 1963 is reasonably accurate. Rates for the future, emphasizes the Staff, are not set for a single year but for an indeterminate period of future duration upon the basis of normalized conditions. Logically, therefore, the Commission could set rates for the future on the basis of future forecasts of investment revenues and expenses.

The game of rate making, if it is to achieve fair and consistent results, must be played according to the rules. Section 154.63 is based on the use of actual experience adjusted for known changes to occur within a stated period (November 30, 1942). As stated by Staff counsel at the prehearing conference, "the test period here is the period ended March 31, 1962, as adjusted for the following months ended November 30, 1962" (Tr. p. 14). The 1963 sales forecasts do not meet the requirements of the Regulations. Moreover, they are speculative and variable. As noted by United, 1962 sales forecast contained in Exhibit 79 of Docket No. CP61-151 exceeded United's actual experience in the calendar year 1962 by 41,405,831 Mcf. Customer estimates for 1963 utilized by Staff in its original presentation have now been abandoned for United's rebuttal customer estimates. Actual 1963 sales, when available, will undoubtedly differ from both forecasts.

In the matter of *Tennessee Gas Transmission Company*, Docket No. G-5259 (1957) the Examiner rejected the intervener's contention that 1954 test year sales and revenues should be adjusted upward to reflect increased volumes of sales which occurred in 1955. He emphasized the serious danger of introducing distortion into the test period relationships of plant, operating costs and revenues inherent in individual adjustments. The Commission noted that a central issue in the case was the sales volumes to be employed in determining Tennessee's cost of service. It stated in pertinent part: (18 FPC 428, 431)

> The interveners took the position that the company's actual sales and transportation volumes and revenues in the test year 1954 do not represent a reasonable and proper measure for rate making. Briefly, they contend that Tennessee's plant in service in the test year 1954 had a transmission capacity which would, by reason of increased volumes of sales, be more fully utilized thereafter than it was in 1954, and that Tennessee would thus be earning increased revenues which should be used to adjust its actual test-year revenues. . . .
>
> It is our judgment that in the practical business of fixing rates, we must proceed insofar as possible on the basis of the known facts of the actual operating experience of the pipeline company. A most salient segment of such experience are the facts respecting the company's sales and the revenues thus produced. These data provide a convenient and logical starting point and basis for a comparison with the company's costs. They afford for all cases a consistent point of departure firmly grounded in the actual results of operations, no matter what uncertainties may otherwise exist, or what adjustments may be indicated. This element of certainty is obviously important in a process as empirical as that of fixing rates, and is something *we are unwilling to discard by reliance on predictions or extrapolations from incomplete data of what future sales might be.* We have of course always permitted adjustments to costs on the basis of future changes which are definite and certain and properly related to operations in the test period. So also, there may be situations which would permit or require adjustments in the sales and revenues shown for the test year in a particular case. However, adjustments of the kind and character the interveners propose, are in principle and degree widely removed from anything we have ever heretofore permitted. Furthermore, as a practical matter, adjustments to sales of such extent and far-reaching effect as those the interveners propose would give rise to many problems and introduce an element of uncertainty and doubt wholly inconsistent with sound, practicable, and effective rate making.

One of the basic objectives of the new procedure for pipeline rate cases is to shorten the gap between the test year and the time decision is reached by the Commission. The applicant's rate filing, prepared in the form of exhibits and prepared testimony, was concededly in "substantial compliance" with the new procedure. (See Commission's Order of Suspension issued July 27, 1962.) If, however, supplemental material may be filed by any party unrelated to the prescribed test year, the resulting uncertainty will defeat the objectives of the expedited procedure and other parties in self-defense will find it necessary to file as rebuttal their own future sales forecasts and cost trends.[4] If rates are to be based on estimates of 1963 sales, United must be permitted to use estimated 1963 costs—an additional area of controversy and a practice expressly rejected by existing rules. There is no suggestion that the 1961-62 test year is stale or unsuitable.

An additional objection to the procedure followed by Staff herein is its use of a net plant balance as of the beginning of its 1963 test period for its rate base as a normalized net plant for future sales. This does not include 1963 plant additions amounting to $13,301,501 as shown in Staff's Exhibit 19–1 and United's Exhibit 13–2 which estimate 1963 net plant at $379,301,945. Future sales and expenses as estimated by Staff, therefore, are not matched with future plant and investment.[5] Accordingly, United's test year with known changes through November 30, 1962, will be used with a sales volume of 1,292,294,788 Mcf. This excludes sales commencing after the close of the test period.

Operating Expense Estimates

Staff and interveners do not dispute United's test period operating expenses exclusive of purchased gas costs. If, however, we utilize 1963 as the test period and sales volumes totalling 1,343,703,213 Mcf, there is a difference of $1,165,644 in United and Staff's cost estimates arising from substantially lower Staff estimates of the increased operating expenses other than purchased gas cost incident to the additional 1963 sales. This arises from the Staff's view that the additional costs incident to the large sales should be measured at a lower incremental unit rate, 0.7 per Mcf, rather than 2¢, the unit rate for the lower test year volumes. Since I have rejected the use of a 1963 test period, it is unnecessary to determine the applicability of system average unit costs to measure the so-called incremental costs applicable to the largest sales volumes predicted by Staff on the basis of the capacity of United's future plant. It should be noted, however, that Staff's predicted incremental rate is not based on actual operating expenses but on a statistical trend line treatment which results in a rate far less than the actual 2¢ unit rate shown by Staff Exhibit 21–1.

Eastern interveners maintain that United's estimate of its 1963 costs is in error by about $478,700 because an erroneous volume increment was used. Further errors in adjusted operating expenses include $349,237 for "Transmission and compression of gas" by Texas Gas (Exh. 1–87, Tr. 1208) and $224,514 (Exh. 2–1, p. 7, Tr. 1257–62) for new facilities.

Purchased Gas Costs

The cost of purchased gas represents 75% of United's cost of service.[6] United's filing on June 15, 1962 reflected the then existing price situation. The Commission's program of rate settlements in pending producer rate proceedings effected a $7,300,000 reduction in United's annual purchase gas costs by Decem-

---

[4] See *El Paso Natural Gas Co.*, Docket No. G–4769, *et al.* where the receipt in evidence of a new El Paso test year cost of service study (calendar 1961) was denied on the ground in part that it would have necessitated the preparation of further evidence by Staff and interveners and further substantially delayed determination.

[5] For investment credit tax purposes, the Staff assumes annual plant additions of $30,000,000 for 1963 and each year thereafter (Staff br. p. 55).

[6]

Cost of gas	$233,569,542
Total cost of service	312,441,695
Percent cost of gas to total cost of service	75%

(United br. p. 25)

ber 1, 1962, and before the substitute rates went into effect on January 1, 1963, there was an additional $1,379,146 of producer price reductions (Exh. 10–1). Accordingly, the substitute rates which went into effect as of January 1, 1963, resulted in a rate increase of $1,641,395 rather than the $5,606,291 proposed in the original filing on June 15, 1962, over previously existing rates in Docket RP61–18 (See tariff sheets, Item J by reference.) United recognizes that additional reductions may result from Commission action in the pending Union rate proceeding now before the Commission for decision,[7] and other producer proceedings, and has agreed to reflect by flow-through any such future reductions in its cost of purchased gas.

In addition to the price paid for the gas, the cost of purchased gas is influenced by the purchase pattern. United's net cost of gas purchased during the test year was 17.71¢ per Mcf (Exh. 3–16, p. 3). Under its adjusted gas purchase pattern covering estimated 1963 sales, this unit cost rises to 18.40¢ (Exh. 13–2, Sch. 4). This results from increased takes from higher-priced Southern Louisiana gas and an additional purchase gas expense of $9,270,000 based on 1963 estimates. Staff takes the position that United has not met its burden of proof to justify the increased operating expenses resulting from the proposed shift in gas purchase pattern from low-price Texas to higher-price Southern Louisiana gas, and that consequently United's claimed purchased gas cost should be reduced $1,814,000 to reflect United's base year purchase pattern in the allocated fields only. As noted by Eastern Interveners (Br. p. 18), the problem is essentially one of judgment. Witness Barnett testified for United that the determination of how gas from each of the many fields to which United is connected should be dispatched is made on the basis of achieving the most efficient use of the pipeline. This includes the exercise of managerial judgment in meeting the daily and annual requirements of United's markets in the light of 900 gas purchase contracts and the delivery limitations of more than 390 fields. Specific factors considered include:

(1) Capacity of gathering systems;

(2) Capacity of transmission lines;

(3) Availability of gas from the reserves under contracts;

(4) United's contractual 'take' obligations with the various producers,

(5) State conservation statutes and proration orders of the Railroad Commission of Texas, the Department of Conservation of Louisiana, and the Oil & Gas Board of Mississippi.

(6) The 'takes' of other purchasers within the field.

(7) Drainage conditions.

(8) Whether the gas is being produced from oil wells as casinghead gas or from stripper or limited capacity wells.

(9) Pipeline load factors. (United's br., p. 24).

I am not persuaded by the Staffs analysis that United's purchase gas pattern reflects a management decision that United ". . . is not interested in the average gas costs which result. . . ." (Staff Reply br. p. 41). The use of higher priced gas in its gas purchase pattern follows from the increasing use of higher priced Southern Louisiana gas in recent years (Tr. 102). The increasing use of these reserves is neither arbitrary nor discriminatory, nor is there any evidence in this record of excessive or imprudent acquisition.

---

[7] If United's purchases from Union at filed prices of over $18,000,000 are reduced to prices found proper in the initial decision, the reduction in United's purchase gas costs would be in excess of $7,000,000 (Exh. 23, Sch. 3).

Purchases From Union Producing Company

United included in its purchase gas costs approximately $18,600,000 paid to Union, a wholly owned gas producing subsidiary of United's parent, for approximately 131,000,000 Mcf of gas at an average cost of 14.2¢ per Mcf (Exhs. 2-15, 2-16). The prices used are based on currently filed rate schedules and contracts between the parties. To support the prices paid for Union gas, United put in a complete cost of service based upon Union's 1961 costs. Staff and interveners moved to dismiss the evidence of Union's costs on the ground that the lawfulness of the rates charged by Union to United was the subject of a pending Union rate proceeding in Docket No. G-13811. There the Commission had conducted a full-fledged independent producer rate hearing involving the actual cost of service of Union, including a determination of the costs incurred in producing gas sold to United. This Examiner granted the Motion to Strike United's proffered testimony and exhibits as to Union's costs (Tr. 1368-1371) on the procedural ground that the Commission has maintained an administrative separation between producer rate proceedings and pipeline rate proceedings and that the Union producer rate proceeding in which hearing had already been completed and an initial decision rendered provided the appropriate vehicle as a matter of sound administrative procedure for a determination of that portion of United's cost of service represented by gas supplied by Union.

United's brief urges that the Examiner erred on two major grounds: (1) that the justification for the prices paid by United to Union must be made in the pipeline rate proceeding under the doctrine of Mississippi River (*Mississippi River Fuel Corporation* v. *F.P.C.* 252 F. 2d 619) and (2) that even if such justification could be made in the Union independent producer rate proceeding, Docket No. G-13811 was tried upon a 1958 test year which is now stale, and which does not include the cost of all gas now purchased from Union.

The basic question here is how much should be included in United's cost of service because of its payments for gas to its producing affiliate, Union. The *Mississippi River Fuel* decision stands for the proposition that increases in the prices United pays to Union cannot be included in United's cost of service unless "some factual economic justification" is shown. Union's costs and the resulting prices paid by United must be justified. However, the *Mississippi River Fuel* decision does not hold that the justification for the prices charged by Union must be made procedurally in United's pipeline rate proceeding. It does stand for the proposition that the contract prices or filed rate schedules of Union cannot be directly translated into United's purchased gas costs in the current pipeline rate proceeding without any consideration of Union's costs. These costs are currently being determined in a full-fledged producer rate hearing involving the actual cost of service of Union, which is much further down the road towards completion than the instant proceeding.[8] The Commission is free to pass on the lawfulness of the rates of both Union and United in separate proceedings where, as here, it has found such a procedure practical, necessary, and appropriate in carrying out the purposes of the Natural Gas Act (See *Federal Power Commission* v. *Tennessee Gas Transmission Co.*, U. S. Supreme Court, dec. Dec. 3, 1962 (31 L. W. 4029) where the Court sustained the interim order procedure.) As noted in the Examiner's ruling at the hearing (Tr. 136,970).

> Ever since the Commission acquired jurisdiction over the rates of independent producers, it has maintained an administrative separation between producer proceedings and pipeline proceedings. . . : I am aware of

---

[8] The initial decision was filed June 26, 1962, and oral argument before the Commission was held April 26, 1963. [See 31 FPC 41.]

> the court's decision in the Mississippi River Fuel case that has been discussed by all of the counsel this morning, but nothing that I see in that decision precludes the Commission from making the economic determination which is there required in a producer rate proceeding rather than in the pipeline rate proceeding, so long as that determination of economic justification is made in a full and fair hearing.

When the Commission renders a final decision in the Union rate proceeding, the subsequently filed legal rates will reflect Union's actual cost of service and the amounts that United can properly include in its cost of service for gas purchased from Union. If Union believes that such rates are too low, it can file for a rate increase under Section 4(e). If it believes that the 1958 test period is stale and unrepresentative, it can move for a redetermination upon the basis of a later and more current test period or the Commission may direct United to do so on its own motion. The Commission's findings in the Union rate hearing will necessarily require a determination of Union's system-wide production and exploration costs for gas sold under filed and unfiled contracts, since the initial decision contains findings covering total unit costs incurred for each Mcf of gas produced.

Accordingly, I conclude that the Commission is not required to determine the "factual justification" for the prices paid Union in the current pipeline proceeding, but may utilize the Union producer rate proceeding now pending before it, on review of the Examiner's initial decision, for this purpose. Realistically, there must be a decision or settlement in the pending Union rate proceeding before there can be a final determination of gas purchase costs in this proceeding. The order will include, therefore, a rate condition making the Commission's decision as to Union's costs applicable here as of January 1, 1963, the effective date of United's filing (See Op. No. 379, *Southern Natural Gas Co.* issued February 18, 1963.) Similar provisions will be included to cover potential adjustments in pending producer settlements which may affect United's purchase gas costs in this proceeding (See *Gulf Oil Co.,* Docket No. G–9520, *et al.*) For these reasons, it would not be useful or productive to attempt a fixed dollar cost of service in this initial decision. The filed prices of Union and other producers as of January 1, 1963, are not the answer. The economic justification and cost basis for Union's rates are presently under examination by the Commission. Moreover, the Commission has recently held that the so-called "filed rate" doctrine does not relieve it of its power and duty to examine the economic justification for the rates charged by a subsidiary. *Northern Natural Gas Company,* Opinion No. 385, April 2, 1963, 29 FPC 689. As noted by United (initial br. p. 4) it is impractical to attempt to track the rapidly changing producer price situation with a multiplicity of rate changes, and the attempt to do so would only serve to delay an expeditious determination of the issues involved in this proceeding. Once the Commission has before it the governing principles which should be applied in the disposition of the issues presented by this record. the actual determination of a firm dollar cost of service, and the rates to be charged, involves only the application of arithmetic to such principles. In the prior United proceedings in Docket Nos. G–9547 and G–10592, the Commission by order dated August 6, 1959, specifically directed the Presiding Examiner to determine the governing principles to be applied (25 FPC 36). Accordingly, this initial decision will be concerned primarily with a resolution of the contested issues presented herein, and a determination of the principles to be used in arriving at a firm dollar cost of service. Various proposed costs of service are utilized for illustrative purposes so as to show the dollar impact of alternative theories of cost allocation and rate design.

Federal Income Taxes

The proper allowance for Federal income tax purposes in United's cost of service requires the disposition of five subsidiary issues relating to the effective tax rate, the investment credit, guideline depreciation rates, prepaid gas, and liberalized depreciation.

Effective Tax Rate

United's cost of service includes Federal income taxes in the amount of $12,099,662 calculated at the statutory 52% rate. Staff proposes that the Federal income tax component be reduced to $6,655,871 based on a consolidated effective tax rate for the tax year of 46.82% plus investment credit deductions. Memphis suggests a further reduction of such allowance to $3,923,208, or under certain alternative theories, to zero.

United Gas Corporation, together with its wholly-owned subsidiaries, United, Union, and Overseas, files a consolidated income tax return, as is its privilege under Section 1501 of the Internal Revenue Code of 1954, in lieu of separate returns for each company. Union had $8,722,362 of gross tax losses between 1957 and 1961 (Exh. 36, rev.) and a net total tax loss during this period of $3,869,326. This tax loss resulted from Union's use of the statutory percentage depletion allowance resulting from the exploration, development, and operation of its oil and gas properties. Union is not a regulated public utility within the meaning of the Federal income tax law (Tr. 490) and its sales of oil and other related products are unregulated and outside the jurisdiction of the Commission.

The effect of the consolidated income tax return during the years in which Union has a tax loss is to reduce the total income tax liability of all the affiliated companies, including United, below the total of what they would pay on a separate return basis. Staff and Memphis take the position that all of the affiliates should be treated as a single entity and the lower effective tax rate resulting from the consolidated return should be applied in computing the amount of Federal income taxes includible in United's cost of service.

United insists that it is entitled to apply the statutory 52% income tax rate unreduced by the utilization in the consolidated return of deductions and losses attributable to the unregulated, non-jurisdictional, and non-utility operations of affiliates. Losses resulting from unregulated, non-jurisdictional oil operations in particular should not be considered for rate-making purposes. Staff believes United is entitled to share equitably in the consolidated tax return savings produced by Union's tax losses on the ground that Union is United's integrated production arm and recovers its exploration and development costs through prices it charges its customers—prices ultimately borne by United's customers. Staff also relies on the doctrine of "taxes actually paid"[9]. United contends that its customers bore none of the expenses of Union's non-utility operations and are not entitled to have their rates reduced by virtue of Union's losses.

As noted by United, (Br. p. 53) the issue here is essentially the same as that now pending before the Commission in the matter of *Cities Service Gas Co.*, Docket No. G–18799, on exception from Examiner Kelly's decision dated April 23, 1962. There the Examiner allowed Cities Service to compute its Federal income tax component at the statutory 52% rate on the ground that the actual taxes paid doctrine, which requires any tax savings to be passed on to the consuming public, applies only to tax savings related to and derived from the regulated companies' jurisdictional gas business. Examiner Kelly's conclusions were concurred in approximately one month later on May 28, 1962, when Examiner Zwerdling in *Tennessee Gas Transmission Co.,* Docket No. G-19983, rejected the consolidated effective tax rate proposed by the Staff[10] which would have resulted in a lower tax rate through the utilization of losses incurred by non-utility and Canadian oil operations. The *Tennessee Gas* case has now been settled but the Cities Service case is pending before the Commission for decision. [See Tennessee Gas, 28 FPC 1100 and Cities Service, 30 FPC 158.]

---

[9] Citing *El Paso Natural Gas Co. v. F.P.C.*, 281 F. 2d 567 (1960) and similar cases.

The reasoning of the Examiner in both the *Cities Service* and *Tennessee Gas* decisions is persuasive and compels rejection of the Staff position that the income tax component should be reduced from 52% to the consolidated effective tax rate of 46.82% without regard to the character and source of the tax losses giving rise to the tax savings. The *El Paso* decision does not deal with the specific issue presented here—whether it is proper to reduce gas rates by utilizing tax losses applicable to unrelated non-utility operations. It does not follow, however, that the 52% statutory rate must be applied. United needs Union's losses to achieve any saving through the consolidated return. Conversely, the loss company needs United's profits to achieve a tax saving for the consolidated group. The necessity of a joint effort suggests the desirability of a division of the tax savings effected.

An effective tax rate of 49.51% produces an equitable division of the tax savings between the profit and loss companies involved in this proceeding. This rate is derived as follows:

First, we determine the total amount of taxable income for all companies in the consolidation having taxable income for the test year. The effect of this is to ignore the "loss" companies since they pay no tax. The total amount of taxable income of the "profit" companies is $122,056,630 for the 1957-61 period as derived from Appendix A-1[A] of the Memphis brief. We use an average of taxable income for five years from 1957 to 1961, in determining the effective tax rate in order to avoid the distortion that might result from the use of a single year.

We then apply the 52% statutory tax rate to the total amount of taxable income to arrive at the total tax liability. The same result would be accomplished if these companies having taxable income had filed separate returns and paid their taxes on the basis of the 52% rate. In the instant case, the application of the 52% rate to $122,056,630 results in an income tax liability of $63,469,447 which, of course, relates to the "profit" companies, or those having taxable income during the test year.

We then deduct the amount of the Federal income tax paid in filing the consolidated return, from the amount of the tax liability determined on the separate return basis. The difference thus derived represents the amount of the tax saving resulting from the filing of the consolidated return. In the case at hand, the amount of $57,386,940, representing the consolidated tax payment for the period 1957-61, is deducted from the amount of $63,469,447 representing the tax determined on a separate return basis for the "profit" companies, to arrive at the amount of $6,082,507 representing the tax saving.

---

[10] Staff's initial brief does not make reference to either *Cities Service* or *Tennessee Gas*. Its reply brief contains the following reference:

> United cites the Examiner's decisions in the *Cities Service* and *Tennessee Gas* cases as authority for its position on the consolidated effective tax rate issue. We point out, however, that there was a contrary Examiner's decision in the *Northern Natural* case which it has been unable to distinguish and that this issue is presently before the Commission for decision. [p. 31.]

Finally, we divide the tax savings. This is accomplished by first multiplying the tax saving of $6,082,507 by 50%, and then dividing the resultant figure of $3,041,253 by the amount of the tax figured on a separate return basis of $63,469,447, thereby arriving at a percentage of 4.7917. The 4.7917% is multiplied by 52% to arrive at another percentage of 2.492. This percentage of 2.492 is then deducted from the 52% statutory rate to arrive at 49.51% as the effective tax rate for application to the taxable income of United.

The dollar effect of an effective tax rate of 49.51% is shown by its application to the net taxable income of United presented in the exhibits of United, Memphis, Interveners, and Staff[B]. The resultant tax liability for United is reduced to $11,520,011, as compared with United's proposed tax liability of $12,099,662, or a reduction of $579,651, increased to $4,022,543, compared with $3,923,208, proposed by Memphis, an increase of $99,335; increased to $5,886,718 as compared with $5,452,481 proposed by Staff, an increase of $434,237.

Investment Credit

The Intent of Congress

The investment credit provision of the Internal Revenue Code (Sections 38, 46–48, 181, 381(c)(23)) became law on October 16, 1962, as part of the Revenue Act of 1962. The Act provides generally for a credit of 7% (3% for public utilities) of the cost of eligible depreciable property acquired and placed in service after December 31, 1961, against the Federal income tax otherwise computed. Use of the credit is compulsory beginning with tax returns covering 1962. The tax basis of qualified depreciable property is reduced under the Act by the amount of credit taken. United is eligible for the full 7% tax credit.

United's income tax allowance makes no provision or adjustment for reductions incident to the investment tax credit. In United's view, the investment credit is not a reduction of taxes but a reduction in the cost of acquiring depreciable assets. It reads the Legislative History of the statute as manifesting a clear intent to stimulate investment and encourage modernization and expansion by reducing the cost of acquiring new equipment rather than by a reduction of tax expense. Flow-through of the credit to United's customers, under this theory, would clearly defeat and frustrate the intent and purpose of the tax statute.

Staff and Memphis start from the premise that the investment credit is a tax reduction, that all tax reductions must be reflected by an appropriate reduction in the cost of service of a regulated pipeline, and that nothing in the Revenue Act of 1962, modifies this basic requirement of the Natural Gas Act. Staff states that "the Natural Gas Act does not afford the Federal Power Commission necessary administrative discretion to include, in the cost-of-service of a regulated pipeline, more than taxes payable" (Br. p. 63).

I do not subscribe wholly to either view. The investment tax credit, contrary to United's position, is more than a reduction in the cost of property. It provides an actual savings in taxes due and payable absent the availability of the credit.[11] The total impact of the credit includes both a reduction in the depreciation base of the assets acquired and an offset against the taxes otherwise due. This is made clear in a section of the Senate Committee Report explaining changes designed to prevent a depreciation deduction in excess of the reduced cost of the property acquired:[12]

---

[11] Perhaps the best characterization is the phrase "tax abatements" used by Secretary Dillon. "As Chief Financial Officer of the Nation, I do not lightly regard tax abatements on the scale proposed here." S. Rep. No. 1881, 87th Cong. 2d Sess. p. 11 (1962).

> Despite the substantial similarity of your committee's and the House versions of the investment credit, there are important differences. The most important of these is the reduction of the amount on which depreciation may be taken, in the case of assets eligible for the investment credit, by the amount of the investment credit allowable. Your committee believes that where a taxpayer purchases a $100 asset, for example, if $7 of this purchase price is to be allowed as a direct reduction in his tax in the form of a credit, this same amount should not be allowed to him again as a depreciation deduction in computing income subject to tax. In such a case the taxpayer's real contribution toward the purchase of the $100 property is limited to $93 and therefore it seemed appropriate to your committee to limit the depreciation recovery to this same $93.

Nor do I agree with the Staff view that the Natural Gas Act precludes the retention of any tax benefits by the taxpayer. A careful review of the investment tax credit amendment and its legislative history indicates that the regulatory treatment of the credit and its rate making effect were left open in the bill as finally enacted. Originally, the Administration's proposal for the credit specifically excluded regulated public utilities including natural gas pipelines. This was explained in a report entitled "General Explanation of Committee Discussion Draft of Revenue Bill of 1961" dated September 29, 1961, prepared for the Committee on Ways and Means by the Staff of the Joint Committee on Internal Revenue Taxation. The report gives the following basis for the exclusion of public utilities:[13]

> Public utilities were omitted from the base for the investment credit on the grounds that they are subject to regulations generally designed to limit the rate of return on investment after payment of tax on the grounds that their growth is largely determined by public requirements. [p. 9].

The bill that emerged from Committee and was reported to the floor of the House, however, H. R. 10650, included regulated utilities at a 4% rather than the full 8% credit. Natural gas pipelines were excluded from the definition of "regulated utilities" so that the full 8% credit was applicable. The House Committee report clearly contemplated the possibility that some of the benefits of the proposed credit would be flowed through to consumers:[14]

> The investment credit in the case of most regulated public utilities is in effect 4 percent rather than 8 percent. The smaller credit is provided in such cases because much of its benefit in these regulated industries is likely to be passed on in lower rates to consumers, thereby negating much of the stimulative effect on investments. Moreover, the size of the investment in regulated public utilities, such as electric companies, local gas companies, telephone companies, etc., will in large part be determined by the growth of other industries, rather than their own.[15]

H.R. 10650 was amended on the floor of the House so that the credit was reduced to 3% in the case of regulated utilities and 7% in the case of natural gas pipelines—the rate applicable to other eligible taxpayers. When H.R.

---

[12] S. Rep. No. 1881, 87th Cong., 2d Sess. p. 12 (1962).

[13] Hearings before the Committee on Ways and Means, House of Representatives, 87th Cong., 1st Sess. 1530, 1537, 1564, 1567-70 (1961) (see United br. p. 78).

[14] H.R. Rep. No. 1447, 87th Cong., 2d Sess. 8 (1962).

[15] Hearings on H.R. 10650 before the Senate Committee on Finance, 87th Cong., 2d Sess. (Part 1) 87 (1962).

10650 was called up for hearing before the Senate Finance Committee, the Administration again urged that regulated utilities in the electric, gas, and communications field be excluded.

Secretary Dillon stated in respect of gas pipelines:

> The Federal Power Commission has informed us that the gas pipelines share the basic characteristics of these regulated utilities and would be treated for rate making purposes in the same manner. For this reason gas pipelines should be grouped with other regulated public utilities and be excluded from qualification for the credit.[16]

Nevertheless, the Senate retained the provisions of the Bill, as it passed the House, relating to the inclusion of regulated utilities, and in particular, natural gas pipeline companies.

During the debates on the Senate floor, opponents and supporters of flow-through in respect of the tax credit struggled to create a legislative history favorable to their point of view. Charles H. Mann, Treasurer of the Columbia Gas System, asked the Senate Finance Committee to include language in its report designed to prevent regulatory agencies from using the credit to reduce rates.

> First, it should not be assumed that the tax reductions resulting from the investment credit must be passed on to the customers of regulated utilities. The provisions purpose could be achieved with respect to utilities if the report of your committee made it clear that the objectives of the legislation would not be met if regulatory commissions insist that their tax reductions be treated as applicable to the year in which plant expenditures are made.
>
> The committee report should make clear that the investment credit is designed to supply capital for modernization and expansion of plant and is not intended to immediately reduce utility rates.[17]

These efforts were unsuccessful and the committee report does not contain any explicit language barring state and Federal regulatory agencies from a flow-through of the credit. The outcome was equally inconclusive for those who sought language requiring flow-through, although United does concede that "various statements were made which seemed to indicate a flow-through result was anticipated in the case of gas pipeline companies."[18] (United br. p. 77)

During these debates the late Senator Kerr, the Bill's able floor manager, defended the inclusion of gas pipelines for the full 7% credit on the ground they must be able to compete with alternative transportation systems, carrying other fuels, eligible for the full credit. In respect of whether the tax benefits would be retained by the pipelines or passed on to their customers, he observed:

> With reference to that section, I say to the Senator from Tennessee that the benefits would go to the consumers, not the gas pipelines. If the Senator from Tennessee were aware of the facts in the case, the rules and regulations of the Federal Power Commission, and the applicable law, he would have known that. The interstate gas pipeline carriers are a

---

[16] Hearings on H.R. 10650 before the Senate Committee on Finance, 87th Cong., 2nd Sess. (Part 1) 87 (1962).

[17] Hearings before the Senate Finance Committee, 87th Cong., 2nd Sess. p. 990–992.

[18] See generally, 108 Cong. Rec. 16682–4, 16716 (daily ed. August 27, 1962); 16795 (daily ed. August 28, 1962); 17387, 17392–3 (daily ed. September 4, 1962); 17632 (daily ed. September 6, 1962).

> regulated utility, and, under the operations of the Federal Power Commission, any saving effected by them reduces their rate base.[19]
>
> * * * * * * *
>
> The 7 percent the Senator is talking about has nothing to do with oil companies. His reference to gas pipelines instead is concerned with interstate gas transporters, who are public utilities, and who are under the regulation of the FPC, which has without exception compelled the interstate gas pipeline carriers to pass on to the consumers any savings that they get by such a situation as a tax credit.
>
> Mr. Proxmire. Will not the gas pipelines get a windfall?
>
> Mr. Kerr. The gas pipelines will not, because any reduction they get they pass on to the consumers under the regulations of the Federal Power Commission. The consumers in Wisconsin will get the windfall.[20]

Senator Proxmire offered an amendment reducing the allowable credit for gas pipelines to 3%. Senator Kerr, in successfully opposing this amendment, stated in pertinent part:

> Actually, I would think that the consumers of Wisconsin were more interested in the 7 percent given to interstate pipelines than in the 7 percent given to any other system of transportation, because interstate carriers of gas are utilities regulated by the Federal Power Commission. There may be State regulatory bodies that failed to require a regulated private utility to pass on the 3 percent credit to the customers or consumers. I do not know of any. I am not saying—there are, but I am saying there may be. But there is not a Member of the Senate who does not know that the Federal Power Commission will require the regulated interstate pipeline companies or transporters to pass on to the consumers the benefit of the 7-percent tax credit available to interstate gas pipelines.[21]

I conclude, therefore, that the Revenue Act of 1962, as amended, does not prescribe the regulatory treatment to be given by the Commission to the investment tax credit. Consequently, the Commission is free to give "such effect to the purposes of the tax statute as is appropriate within the principles of regulatory law expressed within the Natural Gas Act." *Panhandle Eastern Pipe Line Co.* v. *F.P.C.* 316 F. 2d 659 (CADC–1963). Cert. denied 375 U.S. 881 (1963). The appropriate regulatory treatment is, under this view, entirely a matter of the Commission's sound discretion and policy under the Natural Gas Act, to which issue we now turn.

Commission policy was most recently expressed in Opinion No. 379, *Southern Natural Gas Company,* Docket Nos. G–20509 and RP60–15, relating to statutory depletion and intangible well drilling expenses. [29 FPC 323]

> Turning now to the tax benefits for statutory depletion and intangible well drilling expenses, the issue to be decided is whether the savings in taxes accruing to Southern through the use of these special deductions should be retained by Southern or passed on to its ratepayers. In computing its tax allowance for its cost of service, Southern retains these benefits for itself by using book depletion instead of the statutory percentage depletion, and by taking no deduction for intangible drilling costs. Since its test year taxes were in fact reduced by the special deductions, the tax allowance included in the cost of service is higher than the actual taxes paid. Staff, in its cost of service, included statutory depletion and intangible well drilling costs as tax deductions, thereby reducing the tax allowance as computed by Southern by $558,289.

---

[19] 17 Cong. Rec. 16682, 87th Cong., 2nd Sess.

[20] 17 Cong. Rec. 16795, 87th Cong., 2nd Sess.

[21] 18 Cong. Rec. 17397, 87th Cong. 2nd Sess.

> Subsequent to Southern's presentation of its case in the earlier phase of these proceedings, and prior to resumption of hearings in the second phase, the Fifth Circuit Court of Appeals issued its decision in the *El Paso* case, holding that "there is no statutory authority for the Commission to treat actual savings in taxes to which natural gas companies are entitled any differently than savings in any other cost of service." The effect of the court's holding is to require that such savings be passed on to the consuming public. In view of the court's decision, and in recognition of the fact that the Commission has consistently followed this decision in its treatment of the producer tax benefits in cases decided since *El Paso*, Southern does not belabor the issue in this second phase of the proceedings.

The Court of Appeals for the District of Columbia Circuit defined these principles on March 15, 1963, in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, *Supra* as follows:

> Next we consider "the principles of regulatory law expressed in the Natural Gas Act," which impelled the Commission to allow no more of a return on these funds than that necessary to effectuate the tax act. These principles include the requirement that a public utility must operate on the most economical basis consistent with good service and sound finance. Implicit in this requirement is the rule that the rates charged must reflect the company's actual total costs, including its cost of capital. Since the capital represented by the funds generated by accelerated depreciation cost the company nothing, sound principles of rate regulation support the Commission's decisions to permit the company no more of a return on these funds than that necessary to effectuate the congressional policy underlying the tax statute. See *Cities of Lexington, et al.* v. *Federal Power Comm'n*, 295 F. 2d 109 (4th Cir. 1961); *El Paso Natural Gas Co.* v. *Federal Power Comm'n*, 281 F. 2d 567 (5th Cir. 1960).

If the rates charged by United are to reflect its actual tax costs, then any tax abatement by reason of the investment tax credit must be reflected by a reduction in the income tax component of its cost of service and thereby passed through to the ratepayers. Flow-through of the credit will reduce service costs, stimulate new business, encourage investment in more modern plant, and thus facilitate the legislative purpose of stimulating additional plant investment and expansion. The question remains as to the accounting procedure for reflecting the dollar impact of the credit and the quantum of such flow-through.

The Proposed Regulatory Treatment

The proper accounting treatment for investment tax credits is now pending before the Commission for determination in a Proposed Rulemaking proceeding.[22] It was not discussed or briefed by the parties in this proceeding. Consequently, this opinion will be confined to the effect of the investment tax credit in fixing United's rates.

Staff arrives at its proposed investment tax credit by assuming normalized annual gross property additions of $30,000,000 in depreciable plant eligible for the credit for the indefinite future. This estimate of future additions is based upon average net additions over a ten-year period from 1952 to 1961, and results in an investment tax credit to United of $2,100,000.

---

[22] In Order 261, issued January 9, 1963 the Commission prescribed interim accounting procedures to be followed with respect to the investment tax credit until permanent accounting treatment is ordered. Under the interim accounting procedure the amount of the credit will be held in suspense in "Other Deferred Credits" Account No. 253, pending issuance by the Commission of final accounting rules. Final rules have not yet been issued.

Memphis computed a credit of $1,307,728 based upon an assumed annual investment expenditure of approximately $18,681,000 as reflected in 1961 tax return data, and upon the assumption that the investment credit would be limited by 25% of United's tax liability otherwise computed (Tr. 866, 3640). United estimated its investment tax liability for 1962 at $866,000 (Tr. 540). It is unnecessary and undesirable to deal in estimates when actual figures for the tax year as adjusted through November 30, 1962 can be made available prior to Commission determination. Accordingly, United will be directed to file a supplemental schedule showing its actual investment tax credit for 1962, as adjusted.

Applying the principles previously discussed, the quantum of the flow-through should be limited to that portion of the investment tax credit which represents an actual net tax savings to United. The net tax savings over the life of the property subject to the credit per $100 of capital additions is $3.36 rather than $7.00. This is so because the reduction of the tax depreciation base by $7.00, the amount of the credit, as required by the tax statute, costs the company 52% of $7.00, or $3.64, leaving a net tax saving of $3.36 over the life of the addition. Thus only 48% of the investment tax credit represents an actual reduction in tax expense; the remaining 52% reflects the reduction in the depreciation base. Flow-through of 48% rather than 100% of the tax credit also eliminates any element of inequity incident to passing the entire benefit on to the rate-payers while leaving the company adversely affected in that the reduced depreciation base will result in a higher tax liability in future years than would prevail absent the credit and the involuntary reduction of the tax depreciation base incident thereto. This treatment, it is believed, gives "such effect to the purposes of the tax statute as is appropriate within the principles of the regulatory law as expressed in the Natural Gas Act". *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, No. 16479 (March 15, 1963). It is also consistent with the legislative history, which suggests that Congress contemplated that both the pipelines and their customers would benefit jointly from the investment tax credit. One hundred percent flow-through in the year of acquisition would overstate the actual net tax savings to the company while subjecting it to increased taxes in future years arising from the reduction in the tax base of the property acquired.

Guideline Depreciation Rates

Memphis takes the position that United's depreciation schedules are grossly inadequate and result in a substantial understatement of tax deductions and an equivalent overstatement of tax liability. It proposes specific increases in United's tax depreciation rates so as to eliminate any tax liability.[33] The major

---

[33] The differences between United and Memphis are shown graphically in the following table:

	United exhibit No. 2-36	Memphis exhibit No. 23	
		Basis No. 1	Basis No. 2
Additional deductions:			
Depreciation expense	$2, 879, 167	$2, 830, 127	$10, 780, 743
Loss on abandonments	$89, 117	$256, 633	$256, 633
Taxes capitalized	$130, 115	$230, 735	$230, 735
Prepaid gas		$4, 372, 184	$4, 372, 184
Effective tax rate	52%	48. 537%	
Investment tax credit		$1, 307, 728	
Proposed income tax allowance	$12, 099, 662	$3, 923, 208	

increase in depreciation expense, $6,081,096, is based on the use of guideline depreciation rates under Revenue Procedure 62-21,[34] rather than the depreciation rates and depreciation property base used by United in its computation of taxable income. United introduced substantial evidence (Exhs. 14-2, 14-3) to show that its depreciation deduction under its present rates is not below the "reasonable allowance" standard prescribed by the tax statute. United's present depreciation deductions create reserves whose ratio as to each guideline property class except buildings exceeds the prescribed reserve ratio limits specified in the revised procedure. Exhibit 14-2 also shows that this margin of excess increases for each year during the study period (1962-1967). Exhibit 14-3 uses the guideline depreciation rates in computing depreciation reserves for the years 1962 to 1967, and shows an even greater excess of the depreciation reserve ratio over the permissible ratio reserve range. Accordingly, United contends that it may not claim the higher amounts of depreciation which would result from the application of a Rev. Proc. 62-21 rate (Tr. 673). The Staff does not dispute these conclusions.

Memphis claims that the depreciation rates currently used by United are inadequate and unreasonable and that United should use the Rev. Proc. 62-21 rates for cost of service purposes. Memphis' testimony and Exh. No. 23, Schedule 8, show figures for specified classes of assets along with the depreciation lives and rates specified for such classes. They do not show the depreciable properties of United by guideline classes and rates as prescribed in Rev. Proc. 62-21; nor do they show compliance with the reserve ratio test prescribed by the procedure so as to determine whether the depreciation deduction is reasonable or unreasonable. The record does not support, therefore, the conclusion that the depreciation rates in Rev. Proc. 62-21 should be substituted for United current rates in computing the depreciation deduction for the tax component in United's cost of service.

Liberalized Depreciation

An additional deduction in United's tax expense in the amount of $1,820,481 is proposed by Memphis by way of liberalized depreciation deductions under Section 167(b) of the Code (Tr. 867–871). United uses straight line depreciation for tax purposes and has not elected to adopt liberalized depreciation. Memphis alleges that United does not use liberalized depreciation, for reasons of "over-all consolidated tax strategy which would not obtain if United were an independent pipeline company" (Memphis br. p. 37). No evidence is presented by Memphis, however, to support its view that the utilization of straight line depreciation is improper, discriminatory, prejudicial to the interests of rate-payers and consumers, or outside the proper bounds of managerial discretion. Memphis suggests that United's tax allowance be adjusted downward to the level which would result if liberalized depreciation were utilized.

So far this Commission has treated any tax saving incident to accelerated depreciation as a tax deferral and a reserve for future taxes. It is true, as Memphis notes, that the Commission has decided to reexamine the tax treatment of liberalized depreciation in *Alabama-Tennessee Natural Gas Co.*, G–5471, *et al.*, 31 FPC 208. However, in that case accelerated depreciation was taken. Here it was not. The choice under the tax law is the taxpayer's. Absent abuses not shown in this record, I know of no Commission policy to compel the taking of liberalized depreciation over the objections of company management utilizing straight line methods.

---

[34] *Depreciation Guidelines and Rules*, IRS Publication No. 456; *Tables for Applying Revenue Procedure 62-21*, IRS Publication No. 457.

Gas Prepayments

United's 1961 tax return includes a deduction for gas prepayments under take-or-pay contracts in the amount of $6,082,138. For 1962 it estimates a deduction of $8,190,538 (Tr. 2903, Exh. 35) as adjusted for the tax period. Payments in the amount of $5,937,060 have not been included by United in the tax component of its cost of service on the ground that such prepayments represent non-recurring use of period items. The tax year average prepayments are included, however, in United's rate base as working capital (Exh. 1-50).

By December 1, 1962, such prepayments totaled $15,340,800 (Tr. 117, Exh. 10-12). After initial disagreement, the Staff now concurs in the inclusion of such prepayments in the rate base as part of the working capital allowance.

> The evidence in this record establishes that United will not make any further prepayments in the calendar year 1963 because its sales for that year, as forecast in its own rebuttal exhibits, are of sufficient volume to enable it to take 100% of its minimum take or pay contract quantity from every producer whose contract imposes a take or pay obligation (Tr. 3497). Thus, the inclusion of such prepayments in United's rate base pertains to a nonrecurring item. Furthermore, such prepayments are neither tangible items used and useful in providing service like materials and supplies nor cash working capital. We are aware, however, of past Commission precedents including such prepayments in the rate base on the theory that they are necessarily and prudently incurred cash outlays which precede by several years the receipt of the related revenues to be realized when the gas paid for in advance is made up and sold. After careful consideration, and upon balancing all of the foregoing factors, the staff has included United's carryover prepayments in its working capital allowance. [Staff br. pp. 25, 26.]

Memphis argues that these prepayments should be reflected by an additional tax deduction of $4,372,184 in determining the test period cost of service. It argues that the actual tax practice should be applied in the rate making process. The rate making process, however, is based on test year operations as projected for the future. Since these prepayments are not recurring and will be eliminated as sales enable United to take 100% of its minimum take or pay contract quantity, the Memphis procedure would produce major distortions from year to year.

Texas Gas and Eastern Interveners propose that the net of prepayments less tax effect should be included in the rate base. This would not affect United's Federal income tax allowance in its cost of service but would give recognition to the fact that United's working capital needs are reduced *pro tanto* by reductions in its income tax liability. United has taken a tax deduction since 1961 for such prepayments. Consequently, the minimum 52% tax savings should be deducted from the rate base and a return allowed on the remaining 48%. In this way only the net cost of the gas will be included in working capital. This treatment[25] of gas prepayments is deemed fair and reasonable.

---

[25] Its application is illustrated by Eastern Interveners as follows: (Br. p. 28)

Purchased Gas Prepayments (Exh. 13-2, Sch. 3)	$15, 340, 800
Equivalent Income Tax Effect at 52%	7, 977, 216
Related Income Tax Increment in Working Capital 50% (Exh. 13-2, Sch.3) ×1.046488227 (Exh. 13-2, Sch. 5) ×6½% of above	274, 312
Net Reduction in Working Capital Allowance	7, 705, 904
Equivalent Reduction in Return at 6½%	[1] 500, 884

[1] For simplicity, we have not modified the working capital allowance or related return for effect of operating expense adjustments or other income tax adjustments. If United's methods for working capital and income tax computations were followed precisely, the adjusted cost of service summarized hereinafter would be increased by about $3,073.

Cost Allocation and Zoning

We come now to a discussion of the principles governing the separation and allocation of United's costs of service to classes of sales and the method by which costs incident to such sales and services should be allocated and borne by United's customers. United sells gas for resale under rates subject to Federal Power Commission regulation, to distribution Companies at town border rates in Louisiana subject to regulation by the Louisiana Public Service Commission, to distribution companies in Texas regulated by the Texas Railroad Commission, and direct sales to industrial plants not subject to regulation.

These sales are made in the major gas producing areas of the United States located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida, an area extending approximately 800 miles from east to west along the Gulf coast and about 400 miles from north to south.

There are four major methods proposed for the zoning and allocation of United's cost of service among its classes of sales and customers. (1) The four-zone system[26] known as Method 8 supported by Central Zone customers and approved most recently by the Commission in Docket No. G–9547, *et al.* 25 FPC 26; (2) United's five-zone Method 8 which breaks up the present Southwest Zone into a separate Texas and Lafayette Zone; (3) Staff's system-wide roll-in of jurisdictional costs after the segregation and assignment of non-jurisdictional costs to non-jurisdictional sales; and (4) the Gulf Coast method proposed by Texas Gas which modifies Method 8 to the extent of combining the two supply zones, Southwest and New Orleans, into one Gulf Coast Zone.

Ordinarily, the Commission prefers rolling-in system-wide costs of service rather than allocating such costs to particular customers or zones (See *Battle Creek Gas Co.* v. *F.P.C.*, 281 F. 2d 42 (CADC, 1960)). United, however, does not have a system-wide rate applicable to all customers for similar services. For the past 20 years its rates have been fixed by geographic zones with rate differentials between each zone. Under this technique, now known as Method 8, the United system is currently divided into four geographic rate zones called the Southwest, Central, New Orleans, and Jackson Zones; Southwest and New Orleans are gas supply zones, Central and Jackson are gas sales zones.[27] A separate cost of service is computed for each zone and is the basis for the rates charged.

The system of zonal rate differentials first came before the Commission in 1943, when it approved the settlement of a rate proceeding that had been instituted by complaint of the Louisiana Public Service Commission (3 FPC 402) which resulted in a Jackson area rate (25¢ per Mcf) 6¢ higher than the Central area rate (19¢). The Commission explained these rate differentials as follows:

> The over-all reduction of $2,195,287.00 has been allocated to "rate areas" in accordance with the Commission's established policy of endeavor-

---

[26] Summarized by Texas Gas Witness Benson as follows: (TR. 910).

Essentially, the total costs of service for each zone are first classified consistent with established Commission principles. Then the classified costs of the zones having gas supplies in excess of the requirements of such zones are allocated among the classes of sales made within the zone and to the gas transferred out of that zone. The transmission system sales within zones which have a deficiency of gas supply (Central and Jackson) are then allocated their share of the production and transmission system costs transferred from other zones plus their share of the production and transmission system costs incurred within the respective zones.

[27] For Map of Zones see United's initial brief, App. A and 25 FPC 90 (MAP 1).

> ing to obtain uniform rates to the widest extent feasible. In determining areas where uniform rates should prevail, consideration is given to the relative cost of rendering service, the location of gas fields, natural boundaries, and the general characteristics of the region. In other words, our purpose is to encourage the establishment of uniform rates in regions where substantially the same operating and natural conditions prevail, starting with the premise that the widest areas practicable in terms of average costs and physical characteristics of service, should be designated. [3 FPC p. 404.]

A Commission investigation instituted in 1948 into the justness and reasonableness of United's rates and charges under Section 5(a) of the Act resulted, after the consolidation of various rate increase filings under Section 4(e), in a 1954 settlement approved by the Commission (13 FPC 398; 14 FPC 353, 406).

The Commission's decision, adopting the Method 8 allocation of United's costs, was affirmed in *Mississippi River Fuel Corporation* v. *F.P.C.*, 252 F. 2d 619 (CADC 1957) cert. den. 355 US 904. The use of Method 8 as a basis for allocating gas purchase cost was again affirmed by the Commission in its order of January 4, 1961, covering locked-in periods from November 1, 1955 through November 30, 1957, Docket Nos. G-9547, G-10592 (25 FPC 26, 31).

In that proceeding, United proposed substantial alterations to Method 8 which would have had the effect of increasing jurisdictional costs, and shifting zone boundaries. The Commission Staff proposed a so-called Method 1 which featured a system-wide averaging or rolling-in of gas purchase costs and a new system for allocating transmission costs. The examiner approved Method 8 for allocating transmission costs but endorsed a system-wide rolling-in of gas purchase costs as recommended by the Staff on the basis of the integration and flexibility of the United system. He found that because of rapid increases in Louisiana gas prices the continued application of Method 8 would have a severe impact on Jackson Zone customers.

> The situation which would arise, therefore, if Method No. 8 were employed here without modification would be that only the customers in the Jackson Zone would bear practically the full brunt of the higher cost of gas purchases made by United in the area of the Louisiana gulf, and the burden of these higher costs as compared to the gas costs in other areas would not be shared by the other jurisdictional customers. In a system such as United's, which is wholly integrated, highly efficient and extremely flexible, and where the management has the power to place an Mcf of gas any place it chooses to place it on the system, it hardly seems reasonable to conclude that customers in the Jackson Zone should pay disproportionately higher rates for gas which they must buy as compared to consumers in Central Zone and elsewhere on this system. The more equitable procedure to take in this situation would appear to be to modify Method No. 8 by a "roll-in" of gas costs. [25 FPC p. 40.]

The Commission ruled that Method 8 should be adhered to in its entirety on the ground that customers in the Central Zone could not benefit sufficiently from southern Louisiana gas purchases to justify imposing the relatively higher costs incident to rolling-in purchase gas costs throughout the system. The Commission stated in pertinent part:

> The ability to move gas anywhere within the system may, as a remote possibility be true, but a realistic appraisal of United's facilities and operations indicates that it is a highly improbable proposition which should not be a controlling consideration. A study of United's system shows that it is in fact two separate systems with smaller interconnecting

> facilities. One system runs north from southern Louisiana and the other runs northeast and north from southern Texas. United's daily take from Texas sources is considerably greater than the amount of gas necessary to serve all its non-jurisdictional Texas customers. Thus the direction of gas flow on the Texas part of the system must be away from the southwest zone where the Texas customers are located and into the central zone where, under Method 8, gas purchase costs are primarily allocated on the basis of purchases in Texas and northern Louisiana. [p. 31.]

The Commission's reasoning followed the conclusion of the Louisiana Supreme Court in *United Gas Pipe Line Co. v. Louisiana Public Service Commission*, 130 So. 2d 652, 662 (May 29, 1961).

> A study of United's system shows that it is in fact two separate systems with smaller interconnecting facilities. One system runs north from southern Louisiana and the other runs northeast and north from southern Texas. Natural gas cannot be brought into the New Orleans zone from South Texas without terminating service to a major portion of the customers and reversing the gas flow. Neither can the pipeline be moved at will "like a garden hose" to take advantage of lower well head prices. * * * 130 So. 2d at 662 [p. 35.]

This description of United's System was true for the locked-in periods through November 1957. It is not true today. There has been a major operational change in United's transmission system resulting from the construction of a 30-inch 200 mile line from southern Louisiana, where substantial, relatively high cost reserves are located, to interconnect with Central Zone facilities near Monroe, Louisiana (Tr. 197). This line was justified and authorized in the certificate proceeding to meet the declining gas supplies and increasing market demands of Central Zone customers.

> There is a need for the new facilities due to the declining supplies of gas available in the East Texas and North Louisiana area (which area embraces United's Tyler-Shreveport-Monroe operating districts) and the increased requirements of United's customers in the area. The size and nearness of available gas reserves in South Louisiana is a logical area from which to obtain the needed additional gas. In addition, the utilization of these facilities will enable United to make the above sales to the three pipeline customers at the terminal of the new facilities near Monroe, Louisiana. [Docket No. CP61-151, Decision issued October 3, 1962, affirming Order issued December 17, 1962.]

It went into service on December 16, 1961 (Exh. 1-23). United's Chief Engineer testified that 115,684,000 Mcf would flow from Southern Louisiana to Central Zone in 1963. When phase two of construction is completed in time for the 1963-1964 heating season, the capacity of the line will be increased to 420,000 Mcf per day.[28] (Tr. 1633, 1642)

Method 8 separated purchase gas costs in the Central and Jackson Zones to reflect the operational separation of the east-west legs of the system as it existed up to the current construction of the new Bayou Sale—Sterlington interconnection. The operational integration[29] of these lines now justifies the roll-in of purchase gas costs for the Central and Jackson Zones consistent with the principle enunciated by the Commission in the 1943 United rate case "that the widest area practicable in terms of average costs and physical characteristics of service, should be designated."

---

[28] United's application in Docket No. CP63-241, filed February 27, 1963 estimates (Exh. X-1) that peak day imports will rise to 546,000 Mcf, approximately 62% of total gas imports.

[29] Prior to the new North-South Louisiana 30 inch line, United in the past few years has completed the Sterlington line (the West 30 inch, Tr. 1789), the 30 inch Kosciusko line, and the Southeast Louisiana—Mobile project (Tr. 1789-90).

It does not justify, however, the system-wide roll-in of United's gas purchase costs from all sources as urged by Staff (Tr. 4416). The Commission noted that United would probably find it impossible to recover its full costs if all gas costs were rolled-in, and stated

> . . . in fact it appears that rolling-in all gas costs would cause an unreasonable shift of costs to the Southwest and Central Zones, would be contrary to the historical rate design of the system and would place an undue burden on United's non-jurisdictional customers who would not receive any benefit from United's purchases in Southern Louisiana [p. 32.]

Staff's position was rejected by the Commission in its order of January 4, 1961, and should be rejected here (25 FPC 26, 30). While the roll-in of the two gas sales zones, Central and Jackson, is justified because of the substantial benefits Central Zone customers are now receiving and will continue to receive from the new 30-inch line, Southwest Zone customers are not receiving the same benefits. A system-wide roll-in would, as emphasized by the Commission, continue ". . . the problem United would have in forcing Texas customers to pay for Louisiana gas when there is more than enough gas from Texas sources to serve them." (25 FPC 31).

Staff proposes the direct assignment of non-jurisdictional purchase gas costs to United's non-jurisdictional operations in the New Orleans and Southwest Zones. These producers of course are not subject to FPC regulation. Thus the Staff procedure rejects Method 8 at least as it was described by the Commission in its January 4, 1961 decision (25 FPC 26), and is based on the physical separation of jurisdictional interstate and non-jurisdictional intrastate facilities independent of gas sources. After separating these two largely parallel systems, Staff proposes a jurisdictional allocation adjusted to reflect United's historic rate differences. Maintenance of historic Method 8 zone rate differences is inconsistent with the system wide roll-in of jurisdictional gas costs advocated by Staff. It is also improper cost allocation, according to United, since it is contrary to the actual operations of the system and does not follow the flow of gas.

Similarly, United's proposal to add a fifth Lafayette Zone must be rejected as a step in the wrong direction. United's argument for an additional cost zone in this proceeding is similar to its argument for the creation of the similar Southwest Louisiana Zone which was rejected by the Commission in the prior proceeding, principally on the ground that increasing the number of zones would further segregate and allocate specific gas sources and facilities to specific customers contrary to Commission policy. While Southwest Texas customers do not draw substantially on gas transported by the new 30-inch line, they do benefit from the increased system flexibility, and should not be insulated entirely against the trend of increasing gas costs in southern Louisiana which results from the introduction of Louisiana gas into the Southwest Zone. The new line does integrate to a greater degree than formerly the Southwest Zone with South Louisiana gas reserves and permits additional sales in the Southwest Zone either directly or by displacement. The life of Texas reserves will be lengthened. United's witness Poindexter explained its newly acquired ability[30] to make 75,000 Mcf daily sales to Natural Gas Pipeline at Goodrich as follows:

> Q. Would you describe for us the flow of gas which enables you to sell 75,000 Mcf per day at Goodrich to Natural Gas Pipeline Company of America, and explain the extent to which you use directly or indirectly the new North-South Louisiana line in making that sale?
>
> A. As we have already discussed, the 30-inch Agua Dulce-Sterlington line with no delivery at Goodrich to Natural Gas Pipeline would have a capacity of approximately 480 million feet per day into Sterlington by virtue of the construction of the 30-inch South-North Louisiana line and the making available of sufficient capacity to the Central Zone such that the amount of gas brought through the Agua-Dulce-Sterlington line to Sterlington might be decreased to 405 million feet per day, there is made available at Goodrich a capacity of 75 million cubic feet per day for delivery of Natural Gas Pipeline Company (Tr. 1650–51).
>
> Q. . . . If you eliminated the North-South line from service in the future year, would United be able to make the sale of 20 million Mcf a year to the Natural Gas Pipeline Company of America at Goodrich?
>
> A. No. (Tr. 1778).

The Commission rejected United's separate Southwest Louisiana Zone in the prior proceeding thus averaging the cost of Texas and Louisiana gas in the Southwest Zone.

The Commission stated: (25 FPC 30)

> United urges that some shifting of costs to jurisdictional customers is necessary to preserve their non-jurisdictional services at competitive rates acceptable to local regulatory agencies. We are aware of the problems which inevitably arise for companies subject to dual regulation or whose selling price is of necessity limited by local regulation of customer companies. But where, as here, we have and are retaining a fair division of costs between jurisdictional and non-jurisdictional customers as advocated by United itself in Docket No. G–1142, we should not allow United to shift all later cost increases onto its jurisdictional customers in order to permit it to preserve low rates before local regulatory bodies.

No sound reason for further separation is presented here. Natural Gas Pipeline and Southern Union's recommendation that the Commission require a special rate for pipeline and town-border customers purchasing gas from United in Texas should be rejected for similar reasons.

Moreover, creation of a new Lafayette Zone would shift approximately $1,290,000[31] per year of costs on to Central Zone customers which otherwise would be borne by non-jurisdictional customers of United (Tr. 917, Exh. 24–2, Sheet 1). Thus United's five-zone method results in an unfair, additional allocation of gas costs to jurisdictional customers.

Memphis suggests that the Southwest Zone be expanded to include gas sources south of Bayou-Sale Junction. This would give Memphis and other Central Zone customers the benefit of large volumes of low price (11¢ per Mcf) gas flowing from Eugene Island to Bayou-Sale Junction and reduce Central Zone jurisdictional costs about $1,360,000 (Memphis br. p. 56). The gas flows through the New Orleans Zone to the Jackson Zone (Tr. 1839–42). Any further contraction of the New Orleans Zone as proposed would unjustifiably load an additional $2,060,000 to Jackson Zone jurisdictional costs.

---

[30] This benefit justifies placing the gas under United's PL–C rate.

[31] The major share of the $1,600,000 rate increase sought by United in this proceeding.

Jackson Zone customers are entitled to a contraction, not an expansion, of the rate differential between the Jackson and Central Zone on the basis of actual costs differences and trends.

Interveners, Texas Gas, Mississippi River, and UGI, urge the retention of Method 8 without modification basically on the ground that "there is no further reason to deviate from a method of allocation used on the United system for over 20 years" (Mississippi br. p. 14). The change is justified by the major operational changes in United's gas supply and facilities required to meet increased Central Zone demands from South Louisiana rather than South Texas Gas. This is the primary reason for merging Central and Jackson purchase gas costs.

Texas Gas also suggested a three-zone cost allocation procedure which rolls in the two supply zones, Southwest and New Orleans, into a single "Gulf Coast Zone", but leaves the present Central and Jackson Zones unchanged. The effect of this roll-in is to dilute high Southern Louisiana Gas costs with lower South Texas costs and transfer additional jurisdictional costs ranging from $506,000 to $748,000 to non-jurisdictional Texas customers (Tr. 923, see Chart I, II and III of United's initial br.) This places an undue burden on United's non-jurisdictional customers without equivalent benefit from Southern Louisiana Gas. The recovery by United of these additional costs from industrial customers in Southern Texas would, as noted by the Commission, be extremely difficult, if not impossible (25 FPC p. 32, fn. 2).

Stability and historical continuity are major goals in the design of basic rate schedules. Due to rapidly increasing purchase gas costs, and the application of Method 8, price differentials based upon United's allocated costs have fluctuated sharply, the Jackson Zone rates being higher than the Central Zone rates. Exhibit 27-1 shows the history of such rate differentials as follows:

UGPL FILED PIPELINE RATES IN JACKSON AND CENTRAL ZONES, BY DOCKET NUMBER

Docket	Effective date	Central zone		Jackson zone		Differential in 100% load factor rates
		Dem.	Comm.	Dem.	Comm.	
		$/Mcf	¢/Mcf	$/Mcf	¢/Mcf	¢/Mcf
G-1142	(*)	0.75	10.0	1.03	12.0	2.9
G-9547	4/1/56	1.10	10.5	1.56	12.5	3.5
G-10592	11/16/56	1.18	11.5	1.62	13.5	3.5
G-12801	12/1/57	1.19	12.5	1.37	15.0	3.1
G-15360	12/1/58	1.19	13.0	1.37	16.8	4.4
G-18406	10/1/59	1.22	14.1	1.52	18.5	5.4
RP60-2	8/13/60	1.33	14.8	1.61	21.9	8.0
RP61-18	6/15/61	1.43	15.5	1.61	22.8	7.9
RP63-1	1/1/63	1.43	16.94	1.44	23.5	6.6

*These are rates approved by the Commission in that docket as of 8/1/54.

The applicable data relative to United's RP63-1 substitute rates is as follows:

Docket	Effective date	Central zone		Jackson zone		Differential in 100% load factor rates
		Dem.	Comm.	Dem.	Comm.	
		$/Mcf	¢/Mcf	$/Mcf	¢/Mcf	¢/Mcf
Substitute RP63-1	1/1/63	1.43	16.54	1.44	22.27	5.76

If, after rolling in Central and Jackson Zone purchase gas costs, rates were designed for pipeline customers with no price differential,[32] it is estimated by Texas Eastern that Central Zone rates would increase approximately $6,200,000 a year (Texas Eastern br. p. 21). In order to avoid the disruptive effect of any such drastic change in the historical rate differential, Staff proposes a three-cent differential. UGI witness Frazier proposed a rate differential varying between 3.5 and 4.8¢. The lower figure represents a value measurement based upon the estimated cost of transporting gas from Monroe to Kosciusko (Tr. 1002–5); the higher is based upon a uniform import cost to the Central and Jackson Zones. Eastern interveners recommend a differential of 4¢, a rounded figure between the two Frazier proposals. Staff witness Hahn conceded that if the historical differential were computed as a percentage of the price charged rather than a fixed cents per Mcf it would result in a differential greater than 3¢ per Mcf (Tr. 4542). Accordingly, a price differential of 3.5¢ will be adopted which gives weight to both cost and historical considerations.

Texas Eastern indicates that it would be willing in this proceeding to have the presently effective Central Zone rates continued in effect with all decreases in the cost of service, including reductions in purchase gas cost, being first used to decrease the Jackson Zone rates until the price differential is reached, all further decreases being reflected so as to maintain the zone differential.

It is apparent that decreases in United's cost of service will be substantial with equivalent substantial reductions in Jackson Zone rates. The impact[33]

---

[32] Mississippi Valley and Wilmut advocate no differential in rates between the Jackson and Central Zones.

[33] The range of increases in Central Zone and decreases in Jackson rates is indicated in a comparison prepared by Mississippi River, of rates in RP61–18 with rates proposed here by United, Staff and Mississippi River Fuel:

	Estimated 1963 billing determinants	
	Sum of billing demand	Annual volume
Total rate schedule PL–C	12,811,460	314,297,293
Total rate schedule PL–J	6,498,120	167,415,318

	Revenue		
	Docket RP61–18 rates	Proposed rates	Increase or (decrease)
United's Proposal			
Total rate schedule PL–C	[1] $67,036,468	[2] $70,305,160	$3,268,692
Total rate schedule PL–J	[1] 48,632,666	[2] 46,640,684	(1,991,982)
Staff's Proposal			
Total rate schedule PL–C	67,036,468	[3] 70,900,787	3,864,319
Total rate schedule PL–J	48,632,666	[3] 42,687,357	(5,945,309)
Mississippi's Proposal			
Based on United's costs:			
Total rate schedule PL–C	67,036,468	[4] 68,765,103	1,728,635
Total rate schedule PL–J	48,632,666	[5] 46,509,120	(2,123,546)
Based on Staff's costs:			
Total rate schedule PL–C	67,036,468	[6] 67,005,324	(31,144)
Total rate schedule PL–J	48,632,666	[5] 45,373,148	(3,259,518)

[1] PL–C $1.43 and 15.50¢; PL–J $1.61 and 22.80¢.

[2] PL–C $1.43 and 16.54¢; PL–J $1.44 and 22.27¢.

[3] PL–C $1.03 and 18.36¢; PL–J $1.03 and 21.50¢.

[4] PL–C $1.43 and 16.05¢ (appendix C).

[5] PL–J allocated costs (appendix B).

[6] PL–C $1.30 and 16.02¢ (appendix C

of an immediate roll-in of Central and Jackson purchase gas costs, even with the 3.5¢ differential, would be too severe on Central Zone customers to justify its use without some transitional cushion which gives recognition to the historic pattern of revenues and price differentials which have existed between the two zones over the past 20 years.[34] It would be particularly inappropriate in a period of stabilizing and declining prices to effect a sharp and substantial price increase to Central Zone customers which in turn would trigger related price increases to their customers. Accordingly, Texas Eastern's proposal will be adopted as a matter of rate design so as to continue presently effective Central Zone rates and channel all reductions into the Jackson Zone until a 3.5¢ price differential, to be reflected in the commodity component of the rates, has been reached.

Transmission Costs

United advocates an Mcf mile method to give cost effect to the respective load factor and miles of haul, and to separate transmission costs to the transportation customers in the Central Zone (Tr. 2214). It emphasizes that the respective miles of haul between sales for the Staff's separate intrastate and interstate systems are a significant cost factor.

In the prior proceedings the Commission quoted the Examiner with approval as follows: (p. 30)

> In the opinion of the undersigned, the method of allocating transmission costs evolved in Docket No. G–1142, *et al.*, is sounder in principle than that advocated by United in the current proceedings and more logical than the method advocated by the Staff in the current proceedings and, in addition, it has the support of Commission and Court precedent established in United's last rate case.

It should be noted that under Method 8, United is allocated its transmission costs for gas transferred from other areas into the Central and Jackson Zones. The amount of the cost of average haul within the Southwest and New Orleans Zones is rolled into the cost of haul in Central and Jackson Zones to make the total allocated to United for transmission purposes.

United's proposal would allocate a higher percentage of costs to the Central and Jackson Zones ". . . . and by this means to increase unjustly and unreasonably the relative percentage of the total costs to be borne by jurisdictional customers in the northern zones of the system" (25 FPC 96). Accordingly, Method 8 will be continued in allocating transmission costs.

Rate Design

The basic controversy in this proceeding on the issue of rate design involves the general relationship between the total level of rates in the Central rate zone and the Jackson rate zone. Also at issue is the relationship between the demand and commodity charges to be allowed in United's two-part rate schedules, especially in the Central Zone.

United makes sales to pipeline customers under demand-commodity rate schedules PL–C in the Central rate zone and PL–J in the Jackson rate zone.[35] These represent the major jurisdictional sales and revenues. Two-border sales to large volume distributors are made under demand-commodity rate schedules DG–C and DG–T in the Central Zone and DG–J in the Jackson Zone. United proposes to cancel its IND rate schedules for both Central and Jackson Zones and to merge such service into the DG rate schedules.[36] The small volume distributor town-border sales are made at straight rates under rate schedules G–C and G–J.

---

[34] As noted by the Examiner (25 FPC 81) ". . . the two prior rate cases established a historical pattern whereby rates to jurisdictional customers in the Jackson Zone were at a higher level than rates to jurisdictional customers in the Central Zone."

[35] Customers are Texas Eastern, Texas Gas, Mississippi River Fuel, Southern Natural, and Natural Gas Pipeline under PL–C, and Texas Eastern and Southern Natural under PL–J.

F. V. Barnett, for United, presented a complete rate design for United's jurisdictional sales (Tr. 130–63). The only other complete rate design was presented by the Staff witness Hahn (Tr. 840–8). Lee Liberman, on behalf of Laclede, testified to the problem of the relative demand-commodity charge levels in the PL–C rate and the daily minimum take requirement in the PL–C rate (Tr. 942–64). The testimony of Charles Frazier on behalf of UGI, discussed the rate design aspect of the differential between the PL–C and the PL–J rates (Tr. 967–1007). United also offered testimony by L. C. Poindexter, its chief engineer, to rebut Laclede's contention on the limited aspect of the daily take requirement in the PL rate schedules (Tr. 583–92).

The rates filed by United and those recommended by the Staff are as follows:

	United effective in RP63–1		Staff exhibit 40 [37]	
	Demand	Commodity (cents)	Demand	Commodity (cents)
PL–C	$1.43	16.54	$1.03	18.36
PL–J	1.44	22.27	1.03	21.5
DG–C, DG–T	.35	22.7	.46	20.67
DG–J	.365	29.3	.46	23.67
G–C	----------	27.0	----------	25.2
G–J	----------	33.8	----------	28.2

[37] Slightly different rates are presented by Staff in its brief, Appendix C.

Staff and United both propose that the demand charge in the Central Zone be equal (or nearly so) to demand charge in the Jackson Zone for the same class of service. However, there is a substantial difference as to the proposed absolute levels of the demand charges. The rate comparison also shows that United proposes a differential between the two zones of roughly 6¢ in the pipeline schedules and 7¢ in the town border schedules, reflected substantially in the commodity charges. Staff's proposed differential, also reflected in the commodity charges, is about 3¢ for each rate schedule. The Staff rate witness testified that the basic cause of any rate differential between the zones is the difference in cost of purchased gas, and that such differential should be reflected in the commodity charges (Tr. 846, 4612).

Our prior discussion of the historic differential in rates between zones led to the conclusion that the revenue level of Central Zone rates, at United's rates in effect in Docket No. RP63–1, be maintained and that the anticipated reductions in costs be first applied to Jackson Zone rates, as opposed to Central Zone rates, until a 3.5¢ differential, reflected in the commodity charges, has been reached. The circumstances justifying this treatment for the pipeline rates are equally applicable to town-border rates.

This conclusion, however, does not justify the reasonableness of the Central Zone rates as filed by United. United's proposed PL–C demand-charge reflects a 165% tilt or deviation to demand when compared with United's claimed costs, classified according to *Seaboard* and allocated to PL–C sales on the basis of United's proposed method of allocation. Similarly, the deviation in the PL–J rate is 142% to demand. The deviation in town-border rates is about 60% to *commodity* in both zones (See United's Exhibit 1–95.)

---

[36] Wilmut's reply brief objecting to the proposed cancellation was rejected on the ground of late filing (see Commission Order issued June 3, 1963, denying appeal from Secretary's rejection.)

Staff's proposed PL–C and PL–J demand charge of $1.03 reflects a deviation of about 120% to demand, based on Staff's claimed costs, classified according to *Seaboard* and allocated to Central and Jackson Zones on Staff's jurisdictional "roll-in" allocation method. Its proposed 46¢ town-border demand charge shows no significant deviation on this basis. (See Staff's Exhibit No. 40.)

Laclede contends that the tilt or deviation to demand under the PL–C schedule should be restricted to 50%—"a nod to history" and proposes a PL–C rate of 81¢ per Mcf demand and 18.94¢ per Mcf commodity based on United's showing in Exhibit No. 1–95 (Tr. 148) (Tr. 3952). Memphis presented no witness but proposes for rate schedule PL–C the strict *Seaboard* rate of 54¢ demand and 20.39¢ commodity reflected by United's Exhibit No. 1–95. Neither Laclede nor Memphis concede United's claimed costs but use United's Exhibit No. 1 for illustrative purposes.

Under the *Seaboard* method, variable costs are classified 100% to commodity and remaining costs are classified substantially 50% to demand and 50% to commodity. A departure from such a strict classification of costs is permissible in the design of rates, however, when mitigating circumstances justify. *Atlantic Seaboard Corporation*, 11 FPC 43, 52–57 (1952). United's witness Barnett testified that mitigating circumstances may be found in United's long established rate design history for pipeline service in which there has been a traditional tilt to demand, United's competitive situation, and United's take-or-pay-for problem (Tr. 178).

Since 1955 (Docket G–9547) the commodity rate for PL–C customers has been the variable cost rounded upward. The demand charge payment has approximated fixed costs and the commodity charge payment has approximated allocated variable cost. United justifies this departure from the strict application of the *Seaboard* formula on the basis that its PL commodity charge is in competition with field prices being paid directly to producers by its pipeline customers—the higher United's commodity charge, the lower the takes by its major pipeline customers. The volume of gas involved in this competition approximates 165,000,000 Mcf a year, volumes the pipeline customers are entitled to demand but are not obligated to take or pay for if not taken. These volumes represent the range between the 72% minimum bill volume and 100% use of the contract demands, 1,600,000 Mcf in any day or 584,000,000 Mcf in any year, of the five major pipeline customers (Tr. 563–4).

A second area of competition is the industrial market:

> Another and secondary area of competition is that in which United's customers are confronted with a low commodity charge requirement in order to design rates for interruptible sales which they and their customers make and which compete with some other fuel. United's commodity charge historically has been kept close to the variable cost and has helped United's pipeline customers meet such competition. [Tr. 140.]

These factors were given weight by the Commission in *Southern Natural Gas Company*, Opinion No. 379, issued February 18, 1963, and *Natural Gas Pipeline Company of America*, Opinion No. 367, issued November 29, 1962, two pipeline customers of United. In *Southern* the Commission noted that the decision in *Atlantic Seaboard* ". . . . . did not purport to establish a rigid mathematical classification methodology which would be applied, without exception, in all future pipeline cases." It also noted ". . . that the Commission has not slavishly followed *Atlantic Seaboard* but has made advancements in individual cases in the area of rate design in order to achieve a reasonable and just result." (p. 24).

A reasonable and just result in this proceeding requires that recognition be given to United's historic tilt to demand, the closeness of its commodity charge to the variable costs, and competitive factors. The position of Memphis and, to a lesser extent, Laclede that *Atlantic Seaboard* should be followed strictly in the design of the PL rates must be rejected on the basis of the evidence in this case pertaining to United's historic rate operating conditions (*Southern Natural Gas Co.* Op. 379, February 18, 1963). Laclede maintains that the departure from allocated cost is burdening its domestic customers with more than $400,000 in added costs per year. However, as noted by Mississippi River, Laclede's proposal would reduce the demand component Mississippi now collects from its jurisdictional customers by $2,688,689 and would increase the commodity charge by $1,843,133 (Exh. 26, sheet 205). The detriment to United's jurisdictional pipeline customers hardly justifies the limited benefit to Laclede. It is also asserted that the PL–C rate is discriminatory as compared to the DG–C rate. Pipeline service, however, is at a high load factor; whereas town border service is at a low load factor, and covers an entirely different class of service with much smaller volumes.

The Staff pipeline rate proposals are roughly midway between its strict *Seaboard* costs and United's filed PL rates, and would result in an increase in the PL–C commodity charge of less than 2¢ per Mcf over the filed rate. United contends that the Staff does not give sufficient weight to competitive factors and its take-or-pay situation. United, Texas Eastern, and Mississippi rely on the Commission's language in the *Southern* decision, cited *supra*, evidencing its concern for the adverse effect of an increased commodity charge on Southern's industrial sales. The Commission there concluded that:

> The exigencies of this case, and the responsibilities reposed in us by the Natural Gas Act, require that we make every effort to adopt a rate design which will retain a relatively high level of industrial sales in Southern's service area, without imposing a larger than necessary share of demand costs on low load factor distributors, and without unduly burdening the residential and commercial customers served by such distributors. We are of the opinion that staff's Basis No. 4 best accomplishes this result. [Commission Opinion No. 379, p. 39.]

United is justifiably concerned with maintaining its commodity charges at competitive levels. But this record does not support the conclusion that an increase in the PL–C commodity rate in the magnitude proposed by Staff will result in the loss of substantial sales.

Staff's Appendix G [38] shows that with the exception of Texas Eastern, both

---

[38] Competitive pipeline company rates in United's central zone.

Pipeline company	Presently demand per Mcf	Effective rate commodity ¢ per Mcf
United Gas Pipe Line Co. (staff proposal)	1.03	18.26
American Louisiana Pipe Line Co.	3.16	27.0
Natural Gas Pipeline Co. of America	2.40	20.6
Texas Eastern Transmission Corp.	1.60	[1] 15.54
Trunkline Gas Co. (rate schedule P-1)	2.69	26.1
Trunkline Gas Co. (rate schedule G-1)	2.19	27.5
Tennessee Gas Transmission Co.	1.99	21.5
Texas Gas Transmission Corp.	1.49	21.42
Mississippi River Fuel Corp.	2.12	22.63

[1] We do not regard Texas Eastern as a pipeline offering gas effective competition with United for the reason stated at pp. 20–21 of Laclede's brief.

the demand and commodity charges of every other pipeline offering gas in United Central Zone is substantially higher than those proposed by Staff. The substantial new blocks of gas flowing to the Central-Jackson Zones in ever increasing volumes from Southern Louisiana are higher cost gas[39]. Nor does the record indicate that United has lost any pipeline customers during the past three years (Tr. 2037, 2041).

United also emphasizes its $15,340,800 balance for prepayments for gas which it has not taken as of December 31, 1962, and the fact that a low commodity charge will encourage pipelines to take more gas and improve their load factor take from United (Tr. 144). United's pipeline customers already have an average load factor of 85% (Tr. 2075). Moreover, future sales forecasts reflect increasing sales of sufficient volumes to enable United to take 100% of its minimum take-or-pay contract quantities from every producer (Tr. 3497). The record does not establish that a modest increase in the PL–C commodity charge, as proposed by Staff, will result in a significant loss of sales.

Accordingly, I conclude that a substantial deviation from *Seaboard* is justified in determining the appropriate level of the PL demand-charge. The Staff's proposal of $1.03 appears reasonable and, as shown *infra*, will result in a PL–C commodity charge not substantially in excess of the commodity charge reflected in United's filed rate.

The circumstances justifying a deviation to demand in the pipe line rates, however, are not applicable to the DG rates. The substantial tilt to demand in pipeline rates has not been characteristic of town-border rates. In fact, the current effective DG rates are tilted to commodity, and no party appears to urge a deviation to demand in the design of the DG rates. I conclude, therefore, that DG rates should be designed consistent with the *Seaboard* classification of costs. Assuming Staff's unit demand cost, a DG demand charge approximating 45¢ is justified.

United has designed a straight rate under schedules G–C and G–J for small volume town-border service at a level equivalent to 27% load factor use under the DG–C and DG–J rate schedules, respectively. A study of the general load factor characteristics of the G customers shows their average load factor to be about 27%. Staff witness Hahn recommends that the rate level be set at 33⅓% load factor use, noting that these G rates "have traditionally been in the range of 29.5 to 33.8% load factor of the DG rates" (Tr. 845), and that other pipeline companies making similar sales in the same general market area charge a straight volumetric rate equivalent to the average rate in a range of 32 to 67% load factor under their respective general or contract demand rate schedules. Staff witness also points out that setting the G rates on the basis of the G customers' average load factor, as recommended by United, would be an inducement to those customers with a better-than-average load factor to switch to the DG rate to take advantage of a lower average rate, with the result that the average load factor of the remaining G customers would decline, causing further increases in the G rates in subsequent rate determinations. This suggests the desirability of setting the G rates at a level equivalent to a load factor use under the DG rates and somewhat higher than the actual average load factor of the G customers. Staff selection of a 33⅓% load factor is, therefore, approved to maintain stability in the G rate and between G customers.

Appendix C contains Central Zone rates which reflect the foregoing conclusions, based on billing units shown in United's Exhibits 3–5, 3–6, and 11–3, consistent with the 1962 test period as adjusted. These rates will produce Central Zone total jurisdictional sales revenues approximately equal to revenues produced by United's filed rates in this docket. The resulting PL–C commodity charge is 18.16¢ per Mcf, which is 1.62¢ higher than that filed by United and slightly less than that proposed by the Staff. Revisions to the proposed town-border rates may be required to reflect a DG demand-charge equivalent to the *Seaboard* unit demand cost found proper in this proceeding for the Central and Jackson Zones.

---

[39] See Staff Appendix F.

Daily Minimum Take Requirement

United's PL rate schedules include a 72% annual minimum take-or-pay-for provision plus a daily 40% minimum bill provision which requires its customers to take 40% of the maximum daily contract quantities each day or to pay for that minimum quantity of gas. Thus a pipeline customer who did not take his 72% annual minimum because of a failure to take 40% of his maximum daily contract quantity could be billed twice by reason of this single default.

Staff, Laclede, and Southern Natural urge the elimination or revision of the daily minimum take-or-pay requirements of United's tariffs. United's witness Barnett conceded (Tr. 1989–1990) the possibility of double payment, but United argues that this has never occurred and could occur only because of improper operation.

These minimum bill provisions are designed to encourage high load factor purchases and avoid sharp daily swings. There is no justification, however, for imposing penalties which do not bear a reasonable relation to United's exposure to increased costs. Once a purchaser has paid a penalty for a deficiency in its daily minimum bill, there is no sound reason why it should pay a double penalty for the same deficiency in its annual minimum bill. This provision constitutes an undue burden on the purchaser and the consumer with no rational economic justification. Accordingly, the possibility of double payment should be eliminated and United's tariffs provision amended so as to deduct any payment made under the daily deficiency provision from annual deficiencies associated with the same deficient purchase of gas.

Exclusion of Rebuttal Evidence

The order of the Commission prescribing accelerated hearing procedures issued August 6, 1962, provided for the filing of all prepared testimony and proposed exhibits prior to the commencement of the hearing. United's direct case-in-chief was filed and served by August 21, 1962. The Commission Staff and all other parties, including Mississippi River and Southern Union, were directed to serve their testimony and exhibits on or before October 1, 1962. United's rebuttal case was served on all parties on November 19, 1962.

Mississippi River and Southern Union contend that this procedure gave them no opportunity to answer or rebut the rate design testimony of Staff, Laclede and UGI, which proposed a rate design differing substantially from that presented by United and supported by Mississippi River and Southern Union. At various times during the hearing, Mississippi River and Southern Union offered to show by so-called rebuttal evidence the adverse effect of the rate design advocated by Staff, Laclede and UGI, arguing that they had no opportunity in their filing of October 1, 1962, under the Commission's hearing procedure, to answer or rebut the radical rate design departures urged by Staff, Laclede, and UGI. Mississippi's proposed Exhibit 41 and the related testimony of witness Ransom (Tr. 3769) and Southern Union's proposed Exhibits 28–1 and 28–2, and the related testimony of W. Nicol (Tr. 103) were excluded by the Examiner on the ground that their admission would violate paragraph (c) of the Commission's Order of August 6, 1962, and open the door to offers of evidence by other interveners to answer or rebut Mississippi River and Southern Union's proposed rebuttal and the rate design proposals of other interveners, thus changing the hearing from a proceeding on United's rate filing to a hearing on the rates of each of the interveners and the effect of various rate design proposals on their rates. It was also pointed out that permitting individual rebuttal and surrebuttal by each of the interveners would be inconsistent with the objectives of the Commission's accelerated pipeline rate procedure—namely, to shorten the period between the suspension of a proposed pipeline rate increase and the issuance of a Commission opinion allowing or disallowing the proposed increase (Order No. 257, dated November 6, 1962).

Mississippi River and Southern Union contend they have been denied due process and their right to submit rebuttal evidence under Section 7(c) of the Administrative Procedure Act, citing *Interstate Commerce Commission* v. *Louisville and N.R. Co.* 227 U.S. 88 (1913) and *N.L.R.B.* v. *Fairchild Engine and Airplane Co.* 145 F. 2d 214 (1944).

All of United's customers were on notice long prior to the hearing that United's existing rate design was under challenge and would be in issue in this proceeding. The issue was specifically reserved by Laclede in the prior docket No. RP61-18. Moreover, the Commission's order issued July 27, 1962, providing for this hearing stated that United had not fully supported its proposed increased rates and charges in several respects, including ". . . . the level of the demand-commodity components of the proposed rates and charges."

Mississippi River and Southern Union were on notice by August 6, 1962, the date of the Commission's order prescribing hearing procedures, that United's rate design was an issue in this proceeding, that all their proposed testimony and exhibits must be served by October 1, 1962, and that only the pipeline applicant would have the right thereafter to file rebuttal testimony. The evidence Mississippi River and Southern Union sought to introduce at the hearing could have, and should have, been served on or before October 1, 1962. No satisfactory explanation has been presented for their failure to do so or to comply with the Commission's order. In fact, all of the data contained in Mississippi River's excluded evidence already appears in the record with the exception of an estimate of compressor station fuel expenses, and the evidence offered by Southern Union merely repeats and duplicates evidence already in the record in support of United's existing rate design. If admitted, the proffered testimony would not change any of the findings made herein. Accordingly, they are not prejudiced by its exclusion.

The cases cited by Mississippi River and Southern Union in support of their position are inapplicable to the facts presented here. This proceeding relates to United's rates and the Commission's order provides for the presentation of rebuttal testimony by United. Section 7(c) of the Administrative Procedure Act does not authorize any intervener to a rate proceeding to turn the hearing on an applicant's proposed rate increase into a hearing on the rate structure and rate design of all of the many parties who may have intervened. The plan drawn by the Commission in its order prescribing hearing procedure is fair and reasonable and afforded all the interveners, including Mississippi River and Southern Union, full opportunity to support their positions with appropriate evidence and testimony. The procedures prescribed herein reflect a concerted effort on the part of the Commission to improve the conduct of rate proceedings and eliminate undue delay. These efforts should be encouraged (See A Report of the Committee on Rulemaking to the Administrative Conference of the United States, October 2, 1962.)

Pending Motions

Memphis and Staff object to certain[40] of the transcript corrections proposed by United on March 8, 1963, on the ground that they consist of proposed revisions and changes in the testimony of United's witness, E. L. Dunn, rather than errors in the reporting of what the witness actually testified. These objections are sustained for the reasons urged by Staff and Memphis.

There are also pending motions filed subsequent to the close of the hearing by Memphis, Southern Natural Gas Company, Natural Gas Pipeline Company of America, and Staff, for the admission in evidence of written responses to requests for information made during the hearing. The record was kept open to afford all parties an opportunity to file such motions (Tr. 4495–4496).

Memphis offers the following Exhibits in evidence. Appendix A consists of a letter from United dated November 23, 1962, with an attached two-page schedule entitled "Depreciation of Miscellaneous Physical Properties"; Appendix B is a letter from Mr. Thomas Fletcher, United's attorney, dated January 18, 1963; Appendix C consists of a letter dated January 18, 1963 from Mr. Thomas Fletcher, United's attorney, with attached schedule entitled "Gas Plant, Accumulated Provisions For Depreciation And Amortization, And Net Plant March 1962 Through November 1962". United objects to the admissibility of Appendix A on the ground that Memphis had ample opportunity to offer such data during the cross-examination of United's witness, that it is outside the scope of the procedural rule, and is otherwise improper, immaterial, irrelevant, and inadmissible. United also objects to the admissibility of Appendix C for similar reasons. These objections are not persuasive. The proposed exhibits will be received in evidence and designated Exhibit No. 47 (Appendix A); Exhibit No. 48 (Appendix B); and Exhibit No. 49 (Appendix C).

Southern Natural Gas offers in evidence a letter dated January 18, 1963, from United's attorney to Mr. Hugh J. Morgan, Jr. This letter will be received in evidence as Exhibit No. 50. Natural Gas Pipeline offers in evidence a letter dated January 18, 1963, from United's attorney to Mr. Charles C. McDugald. The proposed exhibit will be received in evidence as Exhibit No. 51.

Staff moved for the admission in evidence as Exhibit No. 46 of written information furnished by United in answer to questions asked of United's witness Brooks during his cross-examination by Staff. The material supplied is summarized in United's transmittal letter to Staff dated January 18, 1963. However, Staff's motion states:

> In submitting this material, as a staff exhibit, Staff Counsel neither sponsors this testimony nor concedes that such answers are properly responsive to the questions asked during cross-examination. Accordingly, the relevancy and materiality of these answers as well as any evidentiary inferences to be drawn from the company's failure to responsively answer certain inquiries will be dealt with on brief.

United objects to admission on the ground that Staff is offering this material without any responsibility, sponsorship, or showing of materiality. These objections are well taken and Staff's motion to admit Exhibit No. 46 in evidence is denied.

Summary

The undersigned has found and concluded that:

(1) United Gas Pipe Line Company is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale

---

[40] See Objections to Proposed Transcript Corrections filed March 21, 1963.

which are the subject of this order are sales of gas in interstate commerce, and are subject to the jurisdiction of the Commission.

(2) The proposed increased rates and charges filed by United in this proceeding have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act, and should be disallowed.

(3) The proper test period to be used in this proceeding is the 12 months period ending March 31, 1962, as adjusted for known changes through November 30, 1962, with related sales volumes of 1,292,294,788 Mcf, operating expenses, other than purchased gas, $19,455,133, depreciation $16,305,254, and taxes other than income $6,086,074.

(4) The amount to be included in United's rate base as net working capital for gas prepayments should be reduced by the tax saving arising from the use of such prepayments as a tax deduction.

(5) The proper tax rate to be utilized with respect to the Federal income tax allowance in this proceeding is 49.51%.

(6) United's income tax allowance for cost of service should be reduced by 48% of the investment tax credit actually taken by United for the test year as adjusted.

(7) The depreciation rates used by United in this proceeding, including its use of straight line rather than liberalized depreciation, are proper, do not violate the Natural Gas Act or any existing Commission policy, and do not constitute an abuse of managerial judgment.

(8) The zone by zone method of allocation, (Method 8), approved by the Commission in Docket Nos. G–9547 and G–10592, modified to reflect a "roll-in" of Central and Jackson Zone purchased gas costs, is found to be proper for this docket; however, a departure from such allocation in the design of rates for jurisdictional service is required.

(9) Rates for jurisdictional sales in the Central and Jackson Zones will recover the combined costs allocated to those sales. The level of Central Zone revenues at presently effective rates (substitute rates filed in Docket No. RP63–1) will be maintained, with all decreases in United's jurisdictional Central and Jackson Zone costs, including reductions in purchased gas costs, being first used to decrease Jackson Zone commodity rates until a 3.5¢ per Mcf zone differential is reached. Thereafter, all further decreases in such costs will be reflected *pro rata* so as to maintain the 3.5¢ differential between the Central and Jackson Zones.

(10) The demand charge for pipeline sales in the Central and Jackson Zones (rate schedules PL–C and PL–J) will be $1.03. Large volume town-border service (rate schedules DG–C, DG–T, and DG–J) will have a demand charge equal to the *Seaboard* average unit demand cost hereafter determined for the Central and Jackson Zones. The straight rates for small volume town-border service in the Central and Jackson Zones (rate schedules G–C and G–J) will be equal to the average charge at approximately 33⅓% load factor use under rate schedules DG–C and DG–J, respectively.

(11) The minimum daily bill provisions in United's governing tariffs should be revised to eliminate the possibility of a double penalty for the same default.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission:

(A) Within 45 days from the date of issuance of the Commission's Order herein. United shall file substitute tariff sheets satisfactory to the Commission, containing rates determined in accordance with the principles set forth in this decision and herein found to be just and reasonable;

(B) United shall be required to make appropriate reductions in its rates to reflect the reduction in its cost of service, retroactive to January 1, 1963, together with interest thereon at the rate of 7% per annum from the date of payment to the date of refund, pursuant to the determinations made herein, including appropriate adjustments in its purchased gas costs, working capital, and Federal income tax allowances;

(C) United shall reflect any reductions in the rates paid to its suppliers, including Union, by filing reduced rates of its own, provided however, that (a) the determination of the jurisdictional portion of producer reductions shall be made and shall flow to United's customers in accordance with the zoning, allocation and rate design principles set forth herein; (b) United shall not be obligated to make a rate reduction filing until the amount of producer reductions including Union, aggregates at least one-tenth of a cent per Mcf for United's jurisdictional rates, and United shall not be obligated to make a distribution of such refunds unless the jurisdictional amount to be distributed aggregates at least $400,000;

(D) Within 15 days after making refunds, United shall report to the Commission in writing and under oath the amount of the refunds made and the relevant calculations with respect thereto, together with releases from its jurisdictional customers.

WILLIAM C. LEVY,
Presiding Examiner.

APPENDIX A

UNITED GAS PIPE LINE COMPANY, RP63-1

SOURCE: APPENDIX A-1 (MEMPHIS BRIEF)

	Taxable income in consolidation	Federal income tax liability	Effective tax rates (percent)	Taxable income of "profit companies" only
1957				
United Gas Corp	$2,743,517	$1,311,344		$2,743,517
United Gas Pipe Line Co	25,615,779	12,249,603	47.821	25,615,779
Union Producing Co	(2,269,975)			
	26,089,321	13,560,947		28,359,296
1958				
United Gas Corp	3,528,821	2,188,676		3,528,821
United Gas Pipe Line Co	22,573,974	13,999,755	62.017	22,573,974
Union Producing Co	4,852,736			4,852,736
	30,955,531	16,188,431		30,955,531
1959				
United Gas Corp	2,939,594	1,400,049		2,939,594
United Gas Pipe Line Co	20,943,401	9,973,220	47.620	20,943,401
Union Producing Co	(1,958,398)			
	21,924,598	11,373,269		23,882,995
1960				
United Gas Corp	2,700,979	1,101,362		2,700,979
United Gas Pipe Line Co	17,569,439	7,164,020	40.775	17,569,439
Union Producing Co	(4,333,704)			
	15,936,714	8,265,382		20,270,418
1961				
United Gas Corp	(2,888,741)			
United Gas Pipe Line Co	18,588.390	7,998,911	43.032	18,588,390
Union Producing Co	(160,285)			
United Overseas	(24,354)			
	15,515,010	7,998,911		18,588,390
1957-61, Inclusive				
United Gas Corp	9,024,170	6,001,431		11,912,911
United Gas Pipe Line Co	105,290,983	51,385,509	48.803	105,290,983
Union Producing Co	(3,869,626			4,852,736
United Overseas	(24,354)			
	110,421,173	57,386,940		122,056,630
				122,056,630 52%
Tax at 52% on profit companies				63,469,447
Consolidated tax liability				57,386,940
Tax savings				6,082,507

6,082,507×50%÷63,469,447=4.7917%
52%×4.7917=2.492%
52%÷2.492=49.51%

REVISED APPENDIX "B"

UNITED GAS PIPE LINE CO., DOCKET NO. RP63-1

TABULATION SHOWING EXAMINER'S PROPOSED EFFECTIVE TAX RATE 12 MONTHS ENDED MAR. 31, 1962

	United	Memphis basis No. 1	Staff (as adjusted), see main brief
Cost of service	$319, 743, 150		$321, 617, 302
Return at 6.5%	25, 139, 879	$25, 405, 614	25, 108, 240
Federal income tax as reflected in exhibits	12, 099, 662	3, 923, 208	5, 452, 481
Net taxable income	23, 279, 158	10, 777, 159	16, 142, 633
Computation of Federal income tax to reflect effective tax rate in accordance with initial decision:			
49.51% of net taxable income	11, 525, 511	5, 335, 771	7, 992, 218
Surtax Exemption	(5, 500)	(5, 500)	(5, 500)
Investment Tax Credit		(1, 307, 728)	(2, 100, 000)
Proposed Federal income tax allowance	11, 520, 011	4, 022, 543	5, 886, 718
Dollar effect on tax allowance of an effective tax rate of 49.51% as compared with United's 52%, Memphis' 48.537%, and Staff's 46.82%	(579, 651)	99, 335	434, 237

APPENDIX C

UNITED GAS PIPE LINE CO., DOCKET NO. RP63-1

EXAMINER'S PROPOSED CENTRAL ZONE RATES

Rate schedule	Filed rates	Examiner's proposed rates	Revenues at filed rates	Revenues at proposed rates	Excess—proposed over filed rates
PL-C:					
Demand	$1.43	$1.03	$70, 703, 163	$70, 771, 600	$68, 437
Commodity	16.54¢	18.16¢			
PLE-C	21.27¢	21.55¢			
DG-C, DG-T:					
Demand	$0.35	$0.45	7, 883, 888	7, 903, 511	19, 623
Commodity	22.7¢	21.72¢			
G-C	27.0¢	26.2¢	2, 854, 153	2, 769, 585	(84, 568)
			81, 441, 204	81, 444, 696	3, 492

Rate schedule	Increase or (decrease) to individual customers	
	Customer	Increase (decrease)
PL-C	Texas Eastern	$267, 255
	Mississippi River Fuel	(6, 803)
	Natural Gas Pipeline	(40, 698)
	Southern Natural	(51, 022)
	Texas Gas	(100, 295)
	Total	68, 437
DG-C, DG-T	United Gas Corp	19, 475
	Southern Union	13, 441
	Arkansas Louisiana	477
	Tyler	(13, 770)
		19, 623

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

ILLINOIS POWER COMPANY, DOCKET NO. CP64–181

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 15, 1964)

On February 13, 1964, Illinois Power Company (Applicant) filed in Docket No. CP64–181 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in the Village of Keithsburg and environs in Mercer County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution pipeline system in the Village of Keithsburg and its environs with a 2.1-mile lateral of 2-inch pipe to connect with a 1.26-mile lateral of 4-inch line extending from the main line of Michigan Wisconsin; the 4-inch line to be constructed by Michigan Wisconsin.

Applicant states that the estimated cost of the proposed facilities is approximately $164,600, which is to be financed from its own funds.

Applicant estimates the volumes of natural gas necessary to meet maximum daily and annual requirements for the first three years of operation as follows:

	First year	Second year	Third year
Daily (Mcf)	298	392	446
Annual (Mcf)	30,476	38,724	45,270

On February 26, 1964, Michigan Wisconsin filed its answer to the subject application consenting to the granting of the application and stating that it can construct the 6,650 feet of 4-inch lateral requested by Applicant at an estimated cost to Michigan Wisconsin of $28,600.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 14, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicant, Illinois Power Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Michigan Wisconsin be directed to establish physical connection of its natural gas

transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its daily and annual requirements as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin within one year from the date of issuance of this order.

(5) The requirement that Michigan Wisconsin serve Applicant, as proposed, will not place any undue burden upon Michigan Wisconsin nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its maximum daily and annual requirements of natural gas as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Michigan Wisconsin within one year from the date of issuance of this order.

(C) Michigan Wisconsin shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP64-189

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 15, 1964)

On February 26, 1964, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP64-189 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 600 feet of 3½-inch O.D. pipeline, together with a gas metering station, in Fallon County, Montana, all as more fully set forth in the application aforesaid.

The proposed facilities are for the purpose of receiving and transporting residue gas to be purchased from the plant of Continental Oil Company located in Fallon County, Montana, into Applicant's interstate pipeline system.

The estimated cost of the proposed facilities is $4,250, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 14, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its Opinion and order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co. to construct and operate the subject facilities for the purpose stated, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-169

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 15, 1964)

On January 29, 1964, as supplemented on February 24, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP64-169 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon .891 mile of its Yates branch line (of 12¾-inch pipe) in Coweta County, Georgia, and its entire 1.181 mile Arkwright tap line (of 10¾-inch pipe) in Bibb County, Georgia, and meter station buildings and metering and regulating facilities located at terminal points on the respective lines, all as more fully set forth in the application.

On January 31, 1964, Applicant's contract with Georgia Power Company for the purchase and sale of natural gas through the above described facilities was terminated. Applicant has been advised by Georgia Power Company that it has no intention to resume the purchase of gas at either of its power plants and no gas has been purchased from Applicant for use in said plants since November 22, 1962.

The facilities to be abandoned were utilized in the sale of gas to this single customer at these particular locations and will not be required for any other service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 14, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, as supplemented, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment of the facilities by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

The Commission orders:

Permission for and approval of the abandonment by Applicant, Southern Natural Gas Company, of the facilities hereinbefore described be and the same are hereby granted.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
DOCKET NO. CP61-328

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 15, 1964)

On March 25, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application to amend further the Commission's order issued May 17, 1962, in Docket No. CP61-328, as amended, by extending for eighteen months the period of time within which to complete and place in actual operation the facilities hereinbefore authorized, all as more fully set forth in the application to amend on file with the Commission and open to public inspection.

The order of May 17, 1962, as amended, authorized Applicant to construct and operate, among other facilities, 1.5 miles of 16-inch line from Block 131, Platform A, to Block 131, Platform B, together with a meter and regulator station at Platform B, Vermilion Area; and 8.5 miles of 8-inch line from Block 23 to Block 48, together with a meter and regulator station at Block 48, South Marsh Island Area, both offshore Louisiana. Said order provided that the authorized construction should be completed and placed in actual operation within two years from the date of the order's issuance; therefore, the time limitation will expire on May 17, 1964.

Applicant states that the Vermilion Block 131 development is still continuing in the vicinity of Platform B. Further, until this development is materially advanced or completed, Applicant cannot determine when connection to Platform B and construction of the meter station will be required. Similar conditions are said to prevail for Block 48.

Applicant states that, upon the advice of its producers, the requested extension of time will be adequate to enable the above determinations to be made and the construction to be completed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 17, 1962, in Docket No. CP61-328, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 17, 1962, in Docket No. CP61-328, as amended, be and the same is hereby further amended by extending to November 17, 1965, the period of time within which to construct and place in actual operation the facilities heretofore authorized in this proceeding, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-108

FINDINGS AND ORDER AMENDING ORDER ISSUED JANUARY 27, 1964

(Issued May 18, 1964)

On March 18, 1964, Cities Service Gas Company (Applicant) filed an application to amend the Commission's order issued January 27, 1964, in Docket No. CP64-108[1] by authorizing the construction and operation in the Barber County producing area, Kansas, of seven (7) field booster stations consisting of small field compressor units totaling approximately 2,300 horsepower in lieu of the 2,000 horsepower of compression heretofore authorized in this proceeding to be installed at the Alva Compressor Station, Woods County, Oklahoma, all as more fully set forth in the application to amend.

The order of January 27, 1964, authorized Applicant to construct and operate, among other things, 2000 horsepower of compression at the existing Alva Station to enable Applicant to lower the intake pressure of its Barber County Field pipeline at said Station, in order to take gas ratably between the approximately 27 different fields which make up said producing area. Applicant states that up-to-date studies indicate that the Barber Area can be operated with greater flexibility, with better control of over-all production, giving consideration to the variation in pressures existent between the fields within the Area, and for a longer period of time without the need for additional compression, by the installation of the herein proposed 7 field booster stations rather than by the installation of the larger single unit at the Alva Station. The proposed booster stations will be composed of 230 horsepower basic units.*

---

[1] 31 FPC 194-A.

The application indicates that, although the subject proposal will add approximately 300 more horsepower to Applicant's system than was originally certificated, the estimated installed cost of the booster stations will be approximately $76,000 less than the estimated cost of the 2000 horsepower first proposed for the Alva Station.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 14, 1964 (29 F. R. 5100). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 27, 1964, in Docket No. CP64-108 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 27, 1964, in Docket No. CP64-108 be and the same is hereby amended by authorizing the construction and operation in the Barber County producing area, Kansas, of seven (7) field booster stations consisting of small field compressor units totaling approximately 2,300 horsepower in lieu of the 2,000 horsepower of compression heretofore authorized in this proceeding to be installed at the Alva Compression Station, Woods County, Oklahoma, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

DUKE POWER COMPANY, A NEW JERSEY CORPORATION, DOCKET NO. E-7156

ORDER AUTHORIZING DISPOSITION OF FACILITIES

(Issued May 18, 1964)

Duke Power Company, a New Jersey corporation (Duke-New Jersey), filed an application on March 9, 1964, for authorization, pursuant to Section 203 of the Federal Power Act, to merge into Duke Power Company of North Carolina (Duke-North Carolina) with Duke-North Carolina the survivor. Duke-New Jersey is qualified to do business as a foreign corporation in the States of North Carolina and South Carolina. Duke-North Carolina is also authorized to do business in those States. The principal place of business of Duke-New Jersey and Duke-North Carolina, respectively, is at Charlotte, North Carolina. According to the application, Duke-North Carolina has been formed solely for the purpose of providing a means whereby the corporate domicile of Duke could be transferred from New Jersey to North Carolina in accordance with a resolution of Duke-New Jersey's Board of Directors adopted at its regular meeting on October 28, 1963. At its meeting of January 27, 1964, the Board of Directors of Duke-New Jersey authorized the execution of Articles of Merger and Joint Agreement, providing for the merger of the two corporations under the charter of Duke Power Company of North Carolina subject to the ratification and confirmation by the stockholders of Duke-North Carolina and Duke-New Jersey and subject to obtaining the requisite approval of regulatory authorities. On March 4, 1964 the stockholders of Duke-North Carolina and Duke-New Jersey voted to authorize the execution of the Articles of Merger and Joint Agreement. The merger will be carried out in accordance with the terms of the Articles of Merger and Joint Agreement, dated March 4, 1964, between Duke-New Jersey and Duke-North Carolina, which was filed as an exhibit to the application.

---

* Five of the proposed compressor stations will contain one 230 horsepower unit each. Of the remaining two stations one will contain three 230 horsepower units and the other two 230 horsepower units.

On the effective date of the proposed merger, Duke-New Jersey will cease to exist as a corporate entity and Duke-North Carolina upon obtaining regulatory approval will succeed to all licenses, franchises, permits, corporate assets, and tangible and intangible property of Duke-New Jersey and will also assume all debts, liabilities, and obligations of Duke-New Jersey. In addition, each share of Common Stock of Duke-New Jersey outstanding on the effective date of the proposed merger will be converted into a share of Common Stock of Duke-North Carolina and each share of Preferred Stock of Duke-New Jersey outstanding on such effective date will be converted into a share of Preferred Stock of Duke-North Carolina, except that shareholders of Duke-New Jersey dissenting to the proposed merger will be entitled to be paid for their shares in cash. No other consideration will be given in connection with the proposed merger, except that for the redemption of three outstanding qualifying shares of Duke-North Carolina at $100 per share.

Duke-New Jersey is engaged in the generation, purchase, transmission, distribution and sale of electric energy in a territory embracing all or part of 37 counties in North Carolina and 15 counties in South Carolina. It is also the holder of a license from this Commission covering certain hydro-electric facilities designated as Project No. 2232. Other businesses in which Duke-New Jersey is engaged are the operation of local transportation systems in Greensboro and Durham, North Carolina, and in Spartanburg and Anderson, South Carolina, and the operation of water supply systems in Rutherfordton and Spindale, North Carolina, and in Anderson, South Carolina.

On the effective date of the proposed merger, Duke-North Carolina will succeed to the business of Duke-New Jersey and to the ownership and operation of the latter's facilities. In a separate order, issued concurrently herewith, *Duke Power Company and Duke Power Company of North Carolina*, Project No. 2232, the transfer of the license for certain of these facilities from Duke-New Jersey to Duke-North Carolina is approved.

The Applicant states that the change of its corporate domicile from the State of New Jersey to the State of North Carolina should result in improved relations with customers and the public generally. According to the application, substantially all of Duke-New Jersey's property and operations have been located in the States of North Carolina and South Carolina since its organization in 1917 and its principal office is located in the City of Charlotte, North Carolina. The Applicant states further that all of its customers, both corporate and individual, are residents of the States of North Carolina and South Carolina and approximately 60% of its individual stockholders are residents of these two States. Applicant also states that a slight over-all decrease in taxes will be realized by virtue of changing the state of corporate domicile from New Jersey to North Carolina.

As mentioned hereinabove, all assets and liabilities of Duke-New Jersey will be acquired and assumed by Duke-North Carolina on the effective date of the merger. On this date, the same amounts for assets will be recorded on the books of Duke-North Carolina as are recorded on the books of Duke-New Jersey as of the same date.

Written notice of the application has been given to the North Carolina Utilities Commission and the South Carolina Public Service Commission and to the Governor of each of those States. Notice was also published in the Federal Register on March 26, 1964 (29 F.R. 3788), stating that any person desiring to be heard or to make any protest with reference to said application should on or before April 8, 1964, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Duke-New Jersey, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission order issued August 1, 1962, *Duke Power Company*, Docket No. E-7041 (29 FPC 255).

(2) Duke-North Carolina, a North Carolina corporation, will, on the effective date of the proposed merger, as described above, own and operate the facilities of Duke-New Jersey. Duke-North Carolina will be, therefore, a public utility within the meaning of that term as used in Section 201 of the Federal Power Act.

(3) By the proposed transactions as described above, Duke-New Jersey will dispose of the whole of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed disposition of facilities, as recited above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons stated above.

The Commission orders:

(A) The proposed disposition by Duke-New Jersey of the whole of its facilities subject to the jurisdiction of the Commission, as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Duke-New Jersey and Duke-North Carolina shall record the proposed transactions and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized and approved are consumated within 60 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

DUKE POWER COMPANY AND DUKE POWER COMPANY OF NORTH CAROLINA, PROJECT NO. 2232

ORDER APPROVING TRANSFER OF LICENSE

(Issued May 18, 1964)

Joint application was filed on April 8, 1964, pursuant to Section 8 of the Federal Power Act (Act), by Duke Power Company, a New Jersey corporation (Duke Power Company) and Duke Power Company of North Carolina, a North Carolina corporation, for Commission approval of the transfer of the license for Project No. 2232 from the former to the latter. The project is located within the States of North Carolina and South Carolina.

The joint applicants request that the transfer of the license be made effective as of the effective date of the proposed merger of Duke Power Company into Duke Power Company of North Carolina.

In a separate order issued concurrently herewith, Duke Power Company and Duke Power Company of North Carolina, Docket No. E-7156, the disposition by Duke Power Company of the whole of its facilities to Duke Power Company of North Carolina is approved.

The Commission finds:

(1) The proposed transferee is a corporation organized under the laws of the State of North Carolina, is authorized to do business in the States of North Carolina and South Carolina, and as evidence of its compliance with all applicable state laws, will submit: a copy of the order of the Public Service Commission of the State of South Carolina and of the Utilities Commission of the State of North Carolina, respectively, approving the merger transaction by which the transfer will be accomplished; also proof of transfer to it by merger of the project properties and of all of the rights held by Duke Power Company under state law for the location of the licensed project involved on the beds and banks of streams and all water rights in connection therewith; and all rights to engage in the business of developing, transmitting and distributing power, and all rights to conduct businesses which may be necessary for carrying out the purposes of the license for Project No. 2232.

(2) Approval of transfer, upon the conditions set forth herein, of the license for Project No. 2232 to the proposed transferee will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the license for Project No. 2232 from Duke Power Company to Duke Power Company of North Carolina is hereby approved, effective as of the effective date of the proposed merger referred to above, subject to section 9.3 of the Commission's regulations under the Federal Power Act, and subject to the further condition that the net invesment in the project shall not be increased on account of the transfer; provided that the transferee shall be subject to all of the provisions of the Act to the same extent as though it were the original licensee for the project.

(B) The transferee shall report to the Commission the effective date of the merger referred to above within ten days of such date.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CITY OF SEATTLE, WASHINGTON, PROJECT NO. 553

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued May 19, 1964)

On March 25, 1963, the City of Seattle, Washington, licensee for Project No. 553, filed for Commission approval certain revised project Exhibit K tracings. By letter of September 10, 1963, the licensee requested the staff to make certain changes on Exhibit L (FPC No. 553-200) on file with the Commission. The project is situated on the Skagit River in Whatcom County, Washington, and affects lands of the United States within the Mount Baker National Forest.

The revisions to the Exhibit K tracings show the revised project boundary as occupied by the constructed project works. The changes made by the staff on the Exhibit L shows the removal of the project boundary line which should not have been shown on that exhibit and depicts the Happy-Creek-Ross Lake Diversion Tunnel as constructed.

Commission approval of the revised exhibits will result in an adjusted increase in the lands of the United States occupied by the project of 14.93 acres and an increase in the annual charges for such occupancy in the amount of $38.84.

The entire project is now complete except for possible raising of Ross dam to the ultimate height originally contemplated which would extend the pool in British Columbia. There have been several license amendments and Commission orders approving changes in the project works. For convenience, we are herein setting forth a new Article 2 describing the project as it now exists, together with the project exhibits relating thereto.

The Commission finds:

(1) Revised Exhibit K (FPC Nos. 553-196 through -199, and -201) and revised Exhibit L (FPC No. 553-200) conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) Exhibit K (FPC Nos. 553-79, -80, -81 and -174) and Exhibit L (FPC No. 553-195), now part of the license and which has been superseded, should be eliminated from the license for the project.

(3) The increased amount of annual charges for recompensing the United States for the occupancy of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 553, and the exhibits described in finding (2) above are hereby eliminated from the license for the project.

(B) Article 2 of the license as revised is hereby further revised to read as follows:

Article 2. The project covered by and subject to this license is located in and along Skagit River and on lands of the United States in Mt. Baker National Forest and consists of:

A. All lands constituting the project area and enclosed by the project boundary, and/or interests in such lands necessary or useful for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary

being more fully shown and described by certain exhibits which accompanied the applications for license and amendments thereof and which are designated and described as follows:

Exhibit	*FPC No.*	*Showing*
J (t)	553–30	General location of transmission line from Diablo Plant to Seattle
J–2	553–37	General Project Map

1. Diablo Development

Exhibit	*FPC No.*	*Showing*
K	553–196	"Diablo Reservoir and Diablo-Ross Transmission Line"
	553–197	"Map of Diablo Project General Arrangement and Project Boundary—Sheet A"
	553–198	"Map of Diablo Project General Arrangement and Project Boundary Sheet B"

2. Ross Development

Exhibit	*FPC No.*	*Showing*
K	553–38	"Topography of Ruby Reservoir"
	553–39	Do.
	553–40	Do.
	553–41	Do.
	553–42	Do.
	553–43	Do.
	553–44	Do.
	553–45	Do.
	553–46	Do.
	553–47	Do.
	553–48	Do.
	553–49	Do.
	553–50	Do.
	553–137	"Transmission System Right-of-Way—Ross Powerhouse to Bothell Substation"
	553–138	Do.
	553–139	Do.
	553–140	Do.
	553–141	Do.
	553–142	Do.
	553–143	Do.
	553–144	Do.
	553–145	Do.
	553–146	Do.
	553–147	Do.
	553–148	Do.
	553–149	Do.
	553–150	Do.
	553–151	Do.
	553–152	Do.
	553–153	Do.
	553–154	Do.
	553–155	Do.
	553–156	Do.
	553–157	Do.
	553–158	Do.
	553–159	Do.
	553–160	Do.
	553–161	Do.
	553–162	Do.
	553–163	Do.
	553–164	Do.
	553–165	Do.
	553–166	Do.
	553–167	Do.
	553–168	Do.
	553–169	Do.
	553–170	Do.
	553–171	Do.
	553–172	Do.
	553–173	Do.

2. Ross Development—Continued

Exhibit	*FPC No.*	*Showing*
K	553-199	"Map of Ross Project General Arrangement and Project Boundary"
	553-201	Do.

3. Gorge Development

Exhibit	*FPC No.*	*Showing*
K	553-113	"Vicinity Map of Gorge Powerhouse and Switching Station"
	553-180	"Map of Gorge Project Boundaries and Areas"
	553-181	Do.
	553-182	Do.
	553-183	Do.
	553-184	Do.
	553-185	Do.
	553-186	Do.
	553-187	Do.

B. All water rights, the use and possession of which are necessary in the operation of the project or appurtenant thereto, such as are described in Exhibit D of the applications for license and amendment thereof.

C. All project works consisting principally of:

1. Diablo Development—A concrete arch dam in Section 5, T. 37 N., R. 13 E., W.M., 389 feet high; a spillway section at each end of the dam surmounted by tainter gates; a reservoir created by said dam extending about 4 miles upstream to Ross Dam and having a capacity of 90,000 acre-feet, of which 60,000 acre-feet is usable; an intake structure; a concrete lined tunnel about 2,200 feet long directly connected to two steel penstocks, extending from the dam to the powerhouse; a differential type surge tank at the lower end of the tunnel; a powerhouse containing two generator units each having a capacity of 60,000 kilowatts connected to two turbines each rated at 115,000 horsepower with modified runners operating under a net effective head of 318 feet; a transmission line extending from the powerhouse to the Gorge plant; a transmission line known as the Diablo transmission line with carrier current telephone system installed thereon extending from the Gorge plant to Bothell "Y"; and other appurtenant facilities; the location and character of the project works being more fully shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit	*FPC No.*	*Showing*
L	553-16	"Log of Diamond Drillings, Diablo Dam Site"
	553-17	Do.
	553-18	Do.
	553-29	"Map showing general design of tower structure for transmission line from Diablo Plant to Seattle"
	553-82	"Diablo Dam and Intake, General Plan"
	553-83	"Diablo Dam, Elevation and Sections"
	553-84	"Plans and Sections of Intake, Tunnel and Powerhouse"
	553-85	"Apparatus Layout, Main Floor of Powerhouse"
	553-86	Do.
	553-87	"Powerhouse Sections"
	553-88	"Section through Generator"
		"Plan and Elevation of Switchyard"
	553-90	"Plan and Section of Tailrace"
	553-132 553-89	"Diablo Dam—Concrete Plug for Temporary Tunnel at Elevation 885.0"
	553-133	"Diablo Dam—Spillway Paving—North Bank"
	553-134	"Diablo Dam—Spillway Paving—South Bank"
M		Sheets 6 to 10, inclusive, of a printed document entitled "The Skagit Power Development", approved by the Commission on June 9, 1942.
M(t)		Typed sheet "Proposed Skagit—Seattle Transmission Line", approved by the Commission on March 15, 1930.

Statement in five sheets entitled "General Description and Specifications of Mechanical, Electrical, and Transmission Equipment" together with attached prototype performance curve, received August 8, 1958, superseding part of page 9 of Exhibit M, now a part of the license.

2. Ross Development—A concrete arch dam in Section 35, T. 38 N., R. 13 E., W.M., known as Ross Dam, constructed to elevation 1,615 feet at the roadway crest, with fixed spillway crests at elevation 1,582 feet; a reservoir created by said dam having a gross capacity of 1,200,000 acre-feet at elevation 1,582 feet; control gates in the spillway sections of the Ross Dam to raise the water level in the reservoir to elevation 1,600 feet with a gross capacity of 1,400,000 acre-feet; two power tunnels around the left abutment of the dam extending downstream from the intake works to a power plant; a powerhouse with installation of four units each consisting of a 125,000 horsepower turbine connected to a 90,000 kilowatt (0.9 P.F.) generator; a 230 kv double circuit transmission line extending from Ross power plant to the Bothell Wye switching station; a transmission line extending from the dam to Diablo plant; and other appurtenant facilities; the location and character of the project works being more fully shown and described by the exhibits hereinbefore cited and other exhibits which are designed and described as follows:

Exhibit	*FPC No.*	*Showing*
L	553–51	"General Location Map of Ruby Dam and Test Pits at Roland Bar"
	553–52	"Sand and Gravel Test Pits at Roland Bar"
	553–53	"Hydrograph of Skagit River at Ruby Dam Site, 1919 to 1932, inclusive"
	553–54	"Hydrograph of Skagit River at Ruby Dam Site, 1933–1936, inclusive"
	553–55	"Location of Diamond Drill Holes and Electrical Soundings at Ruby Dam Site"
	553–56	"Profile and Log of Diamond Drill Holes at Ruby Dam Site"
	553–57	Do.
	553–58	"General Vicinity Map of Ruby Dam and Diablo Lake"
	553–62	"Soundings in Skagit River from Ruby Dam Site to Buster Brown Flats"
	553–67	"Miscellaneous details for Ruby Dam"
	553–69	"Sections at Contraction Joints, Ruby Dam"
	553–70	"Plan of Ross Dam to Elev. 1380 as constructed"
	553–71	"River Diversion & By-pass Tunnel for Ross Dam as Constructed"
	553–72	"General Layout of By-Pass Inlet Structure Ross Dam as Constructed"
	553–73	"Foundation Grout & Drainage Holes, Cont'r. Jt's. & Keys—Ross Dam as Constructed"
	553–74	"Elevation and Details of Ross Dam as Constructed"
	553–75	"Plan and Profile of Inspection Gallery, Typical Grout Piping at Joints, & Typical Top Keys—Ross Dam, as Constructed"
	553–76	"Sections at Construction Joints Ross Dam as Constructed"
	553–77	"Concrete Wing Walls Right & Left Abutments as Constructed"
	553–78	"Location & Details of Timber Crib Dam & Abutments as Constructed"
	553–99	"Ross Dam—2nd Step, Plan to Elev. 1550 and Key Details"
	553–100	"Ross Dam—2nd Step, from Exist. Concrete to Elev. 1550"
	553–101	"Ross Dam—2nd Step, Sections at Contraction Joints & Miscellaneous Details"
	553–102	"Ross Dam—2nd Step, Power Tunnels & Intake Structures, Plan and Elevation"
	553–108	"Ross Dam, Upstream Elevation Showing 1st, 2nd and 3rd Step Construction—to Elevation 1615"
	553–109	"Ross Dam—3rd Step, Plan to Elev. 1615 and Key Details"

Exhibit	*FPC No.*	*Showing*
L	553–110	"Ross Dam—3rd Step Sections at Contraction Joints & Miscellaneous Details"
	553–112	"Ross Dam—3rd Step, Two 72 inch Hollow Jet By-Pass Valves Titled 5°—General Layout Scheme B"
	553–126	"Ross Reservoir Floating Debris Control Boom Locations and Details"
	553–127	"Ross Dam—3rd Step—Intake Tunnels & Powerhouse—Plan & Profiles"
	553–129	"Preliminary Transverse Sections Thru Plant"
	553–130	"Preliminary Longitudinal Section Thru Units"
	553–131	"Preliminary Plan of Generator Floor"
	553–200	"Happy Creek—Ross Lake Diversion Tunnel"
M		Sheets 6 to 10, inclusive, of a printed document entitled "The Skagit Power Development", approved by the Commission on June 9, 1942.
		Statement in three sheets entitled, "General Descriptions and Specifications of Mechanical, Electrical, and Transmission Equipment"—signed by Hoffman 12/22/49.
		Statement in one sheet entitled, "General Description and Specifications of Mechanical, Electrical, and Transmission Equipment"—signed by Raver 8/30/54.
		Statement in two sheets entitled, "General Descriptions and Specifications of Mechanical, Electrical and Transmission Equipment"—Signed by Hoffman 12/22/49.

3. Gorge High Dam Development—A concrete arch and gravity section dam to elevation 880 feet above sea level at roadway crest with a gravity spillway section equipped with two gates with crests at elevation 875 feet in closed position; a reservoir created by the dam having a storage capacity of about 8,000 acre-feet at normal surface elevation 875 feet and extending to the tailrace of Diablo powerhouse; a new intake structure with some modification of the existing power tunnel; a tunnel about 2 miles long connecting the intake with three penstocks and a penstock tunnel in the vicinity of the powerhouse; a surge tank; a powerhouse containing four turbines, three units each rated at 38,500 horsepower and one unit rated at 92,500 horsepower, all units with modified runners for operation under a gross head of 380 feet; a switching station: and other appurtenant facilities; the location and character of the project works being more fully shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit	*FPC No.*	*Showing*
L	553–117	"General Arrangement Plan of Generator Floor"
	553–118	"General Arrangement Longitudinal Section Through Units"
	553–121	"General Layout of Powerhouse Extension 92,500 Horsepower Unit"
	553–122	"General Arrangement 92,500 Horsepower Unit"
	553–123	"Switching Station Plan"
	553–124	"Switching Station Elevations"
	553–189	"General Layout, Plan & Profile"
	553–191	"Plan, Elevation, and Sections"
	553–192	"Galleries, Shafts, Foundation Grouting, and Drainage"
	553–193	"Spillway 47′ x 50.32′ Fixed Wheel Gates and Hoists"
	553–194	"Alignment and Typical Details for Intake Tunnel"
M		Statement in thirteen sheets entitled, "General Descriptions and Specifications of Mechanical, Electrical, and Transmission Equipment" signed by Hoffman 7/23/48.
		Statement in eight typewritten sheets entitled, "General Description and Specifications of Mechanical, Electrical, and Transmission Equipment" as revised November 25, 1955, and received in the Commission December 5, 1955.

D. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located within the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that inclusion of such property as a part of the project works is approved or acquiesced in by the Commission; also, all other rights, easements, or interests, the ownership, use, occupancy or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

(C) Article 24 of the license is hereby revised to read as follows:

Article 24. The Licensee shall pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administration of Part 1 of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purposes is 832,000 horsepower.

(b) Effective January 1, 1964 for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, other than those used for transmission lines only, $1,830.89, and

(c) Effective January 1, 1952, for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission lines only, $320.40.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. RP64-34

ORDER PERMITTING REVISED TARIFF SHEETS TO BECOME EFFECTIVE AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued May 19, 1964)

South Georgia Natural Gas Company (South Georgia) on April 13, 1964, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1.[1] The proposed changes in rates and charges would make effective as of January 1, 1964, a reduction in South Georgia's jurisdictional rates in the amount of approximately $187,500 based upon sales for the calendar year 1962, adjusted.[2] In addition, South Georgia proposes to change the availability of Rate Schedules G-1 and I-1, and proposes to make further rate reductions and to pass on to its customers the refunds and rate reductions of its sole gas supplier, Southern Natural Gas Company (Southern), as summarized in part below.[3]

---

[1] Second Revised Sheet No. 4, Tenth Revised Sheet No. 5, Ninth Revised Sheet No. 6, Sixth Revised Sheet No. 9, Fifth Revised Sheet No. 11, and Fourth Revised Sheet No. 12B.

[2] South Georgia proposes to refund, without interest, the difference between the amounts collected for deliveries since January 1, 1964, and the amounts that would be collectible under the rates herein made effective.

South Georgia's rate reduction proposal has resulted from conferences commencing in January 1964, with representatives of its customers, the Georgia Public Service Commission, and the Commission staff. The conferences were initiated by letter of the Executive Director on June 24, 1963, as a sequence of the staff's review of reports filed by South Georgia.

The proposal is summarized in part, as follows:

(1) Effective as of January 1, 1964, South Georgia's jurisdictional rates shall be reduced to the levels set forth in Appendix A hereto; and effective as of April 1, 1964, South Georgia will file further rate reductions to reflect the reductions set forth in Appendix A hereto.

(2) South Georgia's proposed reduced rates to become effective as of January 1, 1964, reflect a reduction in its jurisdictional cost of service by the amount of approximately $187,564 annually, based upon its operations during the calendar year 1962, as adjusted. The adjustments include changes in sales projected by South Georgia based upon the proposed changes in availability of the G–1 and I–1 rate schedules (summarized in paragraph (3) herein).

(3) The availability of firm deliveries under the G–1 schedule will be increased from 3000 to 3500 Mcf per day and the currently imposed minimum volumetric limitation on service under the I–1 schedule will be eliminated. As a result of these two changes, South Georgia estimates that its total cost of purchased gas will be increased by the net amount of $20,881 annually.

(4) The proposed rates to become effective as of January 1, 1964, give effect to the recent reduction in the Federal corporate income tax rate from 52 to 50 percent. South Georgia proposes to further reduce its rates on January 1, 1965 by $11,749 annually, to reflect the further reduction in the tax rate to 48 percent, as follows:[4]

Rate schedule	*Reduction/Mcf*
G–1	0.30
G–2 (demand charge)	4.00
AC–1	0.13

(5) South Georgia proposes to make an additional refund to its jurisdictional customers in the amount of $20,000 on a volumetric basis as a flowthrough of a portion of refunds received from its supplier, Southern, applicable to the period June 1, 1960, through August 31, 1961, pursuant to Opinion No. 379, *Southern Natural Gas Company*, 29 FPC 323, Docket Nos. G-20509, RP60–15.

(6) In the event that the reduction in rates proposed by Southern, in Docket No. RP64–31, becomes effective as of April 1, 1964, South Georgia will file a reduction in its rates as set forth in Appendix A hereto to become effective as of April 1, 1964. The reduction in South Georgia's jurisdictional cost of service to reflect Southern's proposed rate reduction as of April 1, 1964, is $16,647.

(7) In the event that South Georgia shall hereafter receive any refunds from Southern applicable to the rate periods commencing on and after April

---

[3] South Georgia states that, with the annual effect of additional provisions of its proposal, the total adjustment in its revenues and costs is $223,959, as of April 1, 1964.

[4] In addition to these reductions reflecting the 48 percent tax rate in its cost of service, South Georgia will also pass through the similar reduction by its supplier, Southern, on January 1, 1965, as a future rate reduction referred to in paragraph (7) herein.

16, 1958, South Georgia shall promptly pass on to its jurisdictional customers the portions of such refunds reflected by their respective purchases of gas. In the event that Southern's rates to South Georgia are reduced in Docket No. RP64–31 in addition to the proposed April 1, 1964 reduction mentioned above, South Georgia will make equivalent reductions in its jurisdictional rates (computed on the basis of 73.43 percent of any reduction in demand costs and 40.89 percent of any reduction in commodity costs utilizing adjusted purchases reflected in Appendix B hereto).

(8) South Georgia's proposal also provides that it is expressly conditioned upon the Commission's acceptance of all the terms and conditions of its proposal; that it is submitted without prejudice and without agreement as to principles and methods; that it shall terminate on the effective date of a change in rates based upon either a filing by South Georgia or a Commission order resulting from any future investigation of its rates. South Georgia requests that the Commission waive compliance with the requirements of the Commission's rules and regulations, particularly Part 154 thereof, to the extent necessary to permit the proposed changes to become effective as provided in the proposal.

South Georgia on April 13, 1964, served copies of the proposal and the related cost-of-service studies upon its customers and interested State commissions. Notice of the filing was published in the Federal Register on April 22, 1964, stating that comments upon the proposal might be filed on or before May 5, 1964. The Gas Section, Georgia Municipal Association, representing substantially all the customers, by letter dated April 28, 1964, strongly urged acceptance of South Georgia's proposal. No other comments or objections have been filed.

The Commission finds:

(1) Good cause exists for waiving the 30-day notice and other requirements of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed revised tariff sheets, the rate reductions therein contained and South Georgia's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day notice requirement and other provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets described herein are accepted for filing to become effective as of January 1, 1964, subject to the terms and conditions of this order.

(B) South Georgia shall comply with each of the provisions of its agreement and rate-reduction proposal, including the provisions relating to future refunds and rate reductions. Within twenty days of making refunds in accordance with its agreement, South Georgia shall report to the Commission, in writing and under oath, the amounts of such refunds so paid, together with a computation showing the manner in which each refund was determined, and shall serve a copy of such report upon each customer receiving a refund, and upon interested State commissions.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without

prejudice to any claims or contentions which may be made by the Commission, South Georgia Natural Gas Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against South Georgia Natural Gas Company or any other persons or parties affected by this order.

APPENDIX A

South Georgia Natural Gas Company, Docket No. RP64–34

PRESENT RATES AND PROPOSED RATES

Rate schedule	Present rates	Proposed Rates*	
		Jan. 1, 1964	Apr. 1, 1964
G–1	55.78¢	54.0¢	53.60¢
G–2:			
Demand charge	$3.60	$3.08	$3.02
Commodity charge	31.5¢	31.5¢	31.5¢
I–1	34.0¢	32.5¢	32.5¢
I–2	34.0¢	33.0¢	33.0¢
AC–1	43.63¢	41.63¢	41.43¢

*The proposed rates are to be further reduced on Jan. 1, 1965 to reflect a reduction from 50 percent to 48 percent in the Federal corporate income tax rate with respect to both South Georgia and its supplier, Southern Natural Gas Co.

APPENDIX B

South Georgia Natural Gas Company, Docket No. RP64–34

COST OF SERVICE AND ALLOCATION YEAR (1962) ADJUSTED

Particular	Total	Demand	Commodity
Cost of service:			
Gas purchased	$4,413,133	$810,880	$3,602,253
Operation and maintenance expenses	443,894	222,568	221,326
Depreciation	288,508	144,254	144,254
Taxes other than income	81,986	40,993	40,993
State income taxes	12,281	6,141	6,140
Federal income taxes	144,313	72,156	72,157
Return at 6%	512,048	256,024	256,024
Total cost of service	5,896,163	1,553,016	4,343,147
Allocation of cost of service:			
Jurisdictional percentage		73.43%	40.89%
Jurisdictional cost of service	2,916,293	1,140,380	1,775,913
Jurisdictional revenue (at present rates)	3,103,857		
Excess	187,564		
Rate reduction filed	187,546		

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SUNRAY DX OIL COMPANY, DOCKET NO. G-13422, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACTUAL AMENDMENTS, TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued May 20, 1964)

On March 6, 1964, Sunray DX Oil Company (Sunray) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in these proceedings. Subsequently, the Philadelphia Gas Works Division of the United Gas Improvement Company (PGW), an intervener in certain of these proceedings, filed its opposition to the offer of settlement. On March 10, 1964, Sunray amended its offer, and on April 9, 1964, PGW withdrew its opposition to the offer. The offer, as amended, relates to thirteen sales of natural gas to Texas Eastern Transmission Corporation (TETCO) in Texas Railroad Commission Districts Nos. 1 and 2, and in North Louisiana.

Under the terms of the amended offer, Sunray proposes to delete the favored nation and price redetermination provisions from the subject rate schedules, and to amend the periodic escalation provisions therein so as to provide for no increase in rate under the FPC Gas Rate Schedules for the sales made by it in Texas until February 5, 1968.[2] It will delete all escalation provisions from its rate schedules for the sales made in Louisiana. Sunray will refund the difference between the revenues charged and collected and those which would have been received under the proposed settlement rates, with applicable interest in Docket No. RI64-172.

In support of its offer, Sunray cites the deletion of the favored nation provisions from its gas sales contracts, amendment of its periodic price escalation clauses, refunds, moratorium periods, and other provisions not specifically noted herein, as being in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

Since the proposed settlement rates are acceptable under the provisions of the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended, the public interest will best be served by accepting Sunray's proposed amended offer of settlement, as conditioned herein. Our action herein shall not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, or other similar proceedings, involving each of Sunray's rates and rate schedules.

The Commission finds:

The proposed settlement of the proceedings herein, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Sunray on March 6, 1964, as amended on March 10, 1964, and herein conditioned, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered.

---

[1] The additional dockets involved herein are set forth in the Appendix hereto.

[2] Sunray has filed executed contract amendments effectuating this part of its proposal.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sunray on March 6, 1964, as amended on March 10, 1964, is hereby approved in accordance with the provisions of this order.

(B) Sunray shall file, within 45 days from the date of issuance of this order, notices of change in its FPC Gas Rate Schedules set forth in the appendix hereto, reflecting the settlement rates shown therein and executed contractual amendments to its FPC Gas Rate Schedule Nos. 122, 126 and 127, which Sunray shall execute with its purchaser in conformity with Sunray's offer of settlement, as amended, in all respects, in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act; the contract amendments filed by Sunray to its Rate Schedule Nos. 8, 10, 27, 29, 31, 32, 33, 121, 125 and 168 are hereby accepted and made effective as of the date of issuance of this order.

(C) Sunray shall refund in Docket No. RI64–172 to TETCO to the date of the issuance of this order the difference between the rates collected subject to refund under each of the rate schedules herein and the related settlement rates and shall report to the Commission in writing, within 45 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination.

(D) Upon notification by the Secretary of the Commission that Sunray has complied with the terms and conditions of this order, the settlement rates set forth in the appendix hereto shall be effective as of the date of issuance of this order, and the proceedings in Docket Nos. G–13422, G–15419, G–15420, G–16649, G–19776, RI61–104, RI62–30 and RI62–55 shall be deemed terminated insofar as such proceedings pertain to sales made by Sunray under the rate schedules involved therein, and the proceedings in Docket Nos. RI63–91 and RI64–172 shall be terminated insofar as they pertain to sales made under Sunray's Rate Schedule Nos. 122, 126 and 127.

(E) Upon notification by the Secretary of the Commission in accordance with Paragraph (D) above, Docket Nos. G–15419 and G–15420 shall be severed from the consolidated area rate proceeding in Docket No. AR64–2 without further order of the Commission.

(F) The acceptance by the Commission of Sunray's amended offer of settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending, or hereafter instituted by or against Sunray, including area rate or other similar proceedings.

APPENDIX

Rate schedule and supplement No.	Docket No.	Effective date	Approved rate [1]	Suspended rate [1]	Settlement rate [1]
Texas sales (at 14.65 psia)					
8–11	G–15419	7–14–58	10.92096	13.8733	14.1
10–11	G–15420	7–14–58	10.92096	13.8733	14.1
27–14	G–15419	7–14–58	10.92096	13.8733	14.1
29–11	G–15419	7–14–58	10.92096	13.8733	14.1
31–12	G–15420	7–14–58	10.92096	13.8733	14.1
32–11	G–15420	7–14–58	10.92096	13.8733	14.1
33–18	G–15420	7–14–58	[2] 10.92096	[2] 13.8733	[2] 14.1
125–5	None	2– 5–63	12.1344	None	14.1
121–8	None	2– 5–64	12.3366	None	14.1
168–7	None	2– 5–64	12.2	None	14.1

See footnotes at end of table.

APPENDIX—continued

North Louisiana sales (at 15.025 psia)

122-4 [3]	G-13422	4- 1-58	14.6405	14.8456	16.7756
122-7	G-16649	4- 1-59		15.9257	
122-10	G-19776	4- 1-60		16.0058	
122-11	RI61-104	4- 1-61		16.2110	
122-12	RI62-30	4- 1-62		16,4161	
122-13	RI63-91	4- 1-63		16.6212	
122-14	RI64-172	4- 1-64		16.8263	
126-2 [4]	G-13422	4- 1-58	14.6405	14.8456	16.7756
126-4	G-16649	4- 1-59		15.9257	
126-7	G-19776	4- 1-60		16.0058	
126-8	RI61-104	4- 1-61		16.2110	
126-9	RI62-55	4- 1-62		16.4161	
126-10	RI63-91	4- 1-63		16.6212	
126-11	RI64-172	4- 1-64		16.8263	
127-3 [5]	G-13422	4- 1-58	14.6405	14.8456	16.7756
127-5	G-16649	4- 1-59		15.9257	
127-8	G-19776	4- 1-60		16.0058	
127-9	RI61-104	4- 1-61		16,2110	
127-10	RI62-55	4- 1-62		16.4161	
127-11	RI63-91	4- 1-63		16.6212	
127-12	RI64-172	4- 1-64		16.8263	

[1] Inclusive of applicable tax reimbursement.

[2] A portion of the gas delivered hereunder is subject to a 0.5¢ charge paid by buyer to seller for additional services.

[3] Basic contract dated Aug. 22, 1955, with a 20 year primary term.

[4] Basic contract dated Aug. 15, 1955, with a 20 year primary term.

[5] Basic contract dated Apr. 12, 1956, with a 20 year primary term.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, RESPONDENT, DOCKET NO. RP63-4

ORDER DENYING APPLICATION FOR REHEARING AND FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

(Issued May 22, 1964)

On April 24, 1964, Carolina Pipeline Company (Carolina) filed an application for rehearing[1] of the Commission's Opinion No. 423 and accompanying order issued March 30, 1964, in this proceeding. Carolina requests that we set aside Opinion No. 423 and accompanying order and require Southern Natural Gas Company (Southern) to provide Carolina service under Southern's Rate Schedule CD-3, rather than under Southern's Rate Schedules CDL-3 and AOL-3. Alternatively, Carolina requests that we permit it to adduce additional evidence to support this request.

We find no merit to either of these requests and shall deny Carolina's application. Basically, the matters argued by Carolina to support setting aside Opinion No. 423 and permitting Carolina to receive CD-3 service are disposed of by that opinion.

As to the request for leave to adduce additional evidence, by order issued April 3, 1964, we denied an earlier motion filed by Carolina on March 3, 1964, requesting that we reopen this proceeding to permit Carolina to introduce evidence relating to incidents of alleged discrimination by Southern which Carolina says took place in February, 1964. Some of those same alleged incidents of discrimination are again cited to support Carolina's instant request for leave to adduce additional evidence. What we said in our April 3, 1964 order, is still applicable to these and the other matters cited by Carolina—namely, any matters not disposed of in Opinion No. 423 which Carolina believes are a basis for a further complaint against Southern should be the subject of a new complaint rather than a vehicle for reopening and extending a case in which a final decision has been issued after a full hearing and on a complete record. See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3, 1956).

---

[1] An application for rehearing tendered for filing by the Natural Gas Authorities of York, Lancaster, and Chester Counties, South Carolina, on April 30, 1964, was rejected by the Commission's Secretary because it was not filed within the statutory time limit of 30 days as provided by Section 19(a) of the Natural Gas Act.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in Carolina's application for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 423 and accompanying order, or which, having now been considered warrant any change in, modification of, or rehearing of such Opinion and order.

(2) Carolina's request for leave to adduce additional evidence should be denied.

The Commission orders:

The application for rehearing and for leave to adduce additional evidence, filed by Carolina Pipeline Company on April 24, 1964, in the above-entitled proceeding, is hereby denied.

Commissioner Ross *dissenting* for the reasons set forth in his dissenting statement to Opinion No. 423 issued March 30, 1964, 31 FPC 705 at 710.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–116; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–122

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1964)

El Paso Natural Gas Company (El Paso) filed in Docket No. CP64–116 an application on November 22, 1963, and a supplement thereto on February 27, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of a new point of interconnection and a dual 8⅝-inch O. D. standard orifice type meter station with appurtenant facilities in the NW/4 of Section 19, Block 77, PSL Survey, Winkler County, Texas, and (2) the transportation and exchange of up to 50,000 Mcf of natural gas daily with Northern Natural Gas Company (Northern), all as more fully set forth in the application and supplement on file with the Commission.

Northern, filed in Docket No. CP64–122, an application on November 29, 1963, and a supplement thereto on March 2, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new point of interconnection and a 10-inch valve setting on its existing 16-inch pipeline located in Winkler County, Texas, and the transportation and exchange of natural gas with El

Paso of up to 50,000 Mcf of natural gas daily, all as more fully set forth in the application and supplement on file with the Commission.

El Paso and Northern by letter agreement filed February 21, 1964, (dated February 18, 1964) amended their original letter agreement filed October 24, 1963, (dated October 7, 1963), so as to provide for a transportation charge of two-tenths of one cent (0.2¢) per Mcf to be paid by El Paso on all quantities of gas delivered to Northern for transportation under the original letter agreement filed October 24, 1963.

The Commission on April 10, 1964, issued temporary certificates to El Paso and Northern authorizing the construction and operation of facilities, and the rendering of the service proposed in their respective applications as supplemented, and accepted for filing Northern's Rate Schedule T-2 filed March 2, 1964, effective April 10, 1964.[1]

The applications of El Paso and Northern indicate that El Paso due to operating conditions on its system takes large quantities of casinghead gas from the Permian Basin area during the first part of each month and for the remainder of the month due to the exhaustion of Texas Oil Producing Days and period of peak demand must rely heavily on dry gas purchases to meet its system requirements. To improve the supply situation of El Paso, West Texas Gathering Company, Northern and El Paso have entered into the proposed arrangement whereby West Texas will deliver to Northern at an existing delivery point up to 50,000 Mcf daily for the account of El Paso, and Northern will deliver said quantity to El Paso at a point where the pipelines of Northern and El Paso cross in Winkler, Texas. Presently utilized facilities of West Texas are incapable of handling the volumes required by El Paso.

The total estimated cost of the facilities required by El Paso and Northern is $21,540, to be paid for by El Paso, of which $6800 will be for facilities of Northern. The cost of the facilities will be defrayed from El Paso's current working funds, supplemented, if necessary, by short-term bank loans.

After due notice no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, as supplemented, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(3) The proposed exchange and delivery of natural gas between Northern and El Paso, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as

---

[1] Letter agreement with El Paso dated October 7, 1963, as amended by letter dated February 18, 1964, as a special operating agreement.

more fully described in the applications and exhibits as supplemented in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas, construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Northern and El Paso are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Northern's and El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Northern and El Paso in these proceedings, authorizing the exchange and delivery of natural gas, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the applications, as supplemented, and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon Northern's and El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 6 months from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64–208

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1964)

On March 19, 1964, Lone Star Gas Company (Applicant) filed in Docket No. CP64–208 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 13.0 miles of 6-inch pipeline together, with metering facilities, to be located in Harmon and Jackson Counties, Oklahoma all as more fully described in the application on file in this proceeding.

Applicant proposes to use the proposed facilities for the purpose of transporting natural gas from its interstate pipeline system to the Republic Gypsum

Company Plant where an estimated annual volume of 498,000 Mcf of gas will be sold on an interruptable basis.

The estimated total cost of the proposed facilities is $181,520 which will be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12-months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PENNSYLVANIA GAS COMPANY, DOCKET NO. CP64-199

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1964)

On March 9, 1964, as amended March 13, 1964, Pennsylvania Gas Company (Applicant) filed in Docket No. CP64-199 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 9.3 miles of 12-inch pipeline extending from Sugar Grove Township in Warren County, Pennsylvania, to the City of Jamestown in Chautauqua County, New York, all as more fully described in the application.

The estimated cost of the proposed facilities is $380,500 to be financed through Applicant's parent company, National Fuel Gas Company, as a part of Applicant's 1964 construction program costing $2,863,000.

Applicant states that the purpose of the proposed facilities is to provide sufficient capacity to meet the needs of the normal increase in gas demands in the Jamestown area.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Pennsylvania Gas Company, a Pennsylvania corporation having its principal place of business in the Borough of Warren, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-370 (3 FPC 868).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the installation and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Pennsylvania Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12-months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-205

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1964)

On March 16, 1964, Transcontinental Gas Pipe Line Corporation (Applicant), filed in Docket No. CP64-205 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the twelve-month period commencing on the date of issuance of such authorization and the operation of minor lateral and field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The total cost of the proposed facilities will not exceed a maximum of $2,000,000, and no single project will exceed a cost of $500,000, which costs are to be financed by cash on hand or by short term bank loans.

The purpose of this "budget-type" application is to enable Applicant to establish additional connections in fields from which Applicant is already authorized to receive gas where it is not possible to construct facilities under the exemption provided by Section 2.55(d) of the Commission's Rules, to provide necessary booster compressor facilities in such fields, and to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed hereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct during the 12-month period commencing on the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-215

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1964)

On March 25, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-215 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.6-mile of 4-inch pipeline together with orifice meter station and appurtenant facilities, to be located in Hancock County, Mississippi, all as more fully described in the application.

The purpose of the proposed facilities is to enable Applicant to sell and deliver natural gas to the Mississippi Test Facility of the National Aeronautics and Space Administration for use by said facility.

The estimated cost of the proposed facilities is $39,668 and during the third year of operation Applicant will sell and deliver approximately 754,932 Mcf of natural gas to the Mississippi Test Facility. The cost will be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Appli-

cant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company to construct and operate facilities for the transportation and delivery of natural gas in interstate commerce as hereinafter described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, within 12-months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-113

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 26, 1964)

On November 18, 1963, as supplemented on April 17, 1964, Natural Gas Pipeline Company of America (Applicant) filed an application in Docket No. CP64-113, pursuant to Section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing construction and operation of additional facilities at its Herscher and Cooks Mills storage areas to increase the total maximum day withdrawal capacity thereof by 75,000 Mcf to a total of 950,000 Mcf and to provide an increase of the maximum peak-hour withdrawal capacity from 43,750 Mcf to 47,500 Mcf, all as more fully set forth in the application.

The additional facilities proposed are:

Cooks Mills

Five (5) injection-withdrawal wells in the Cypress formation.

7100 linear feet of 12-inch field pipeline.

2200 linear feet of 8-inch field pipeline.

Two (2) 850 H.P. gas compressors.

Additional cushion gas, measuring and dehydration equipment and other miscellaneous facilities necessary or convenient to the operation of the above described and existing facilities.

Herscher

Six (6) injection-withdrawal Galesville reservoir wells.

8400 linear feet of 30-inch field pipeline.

660 linear feet of 12-inch field pipeline.

3300 linear feet of 10-inch field pipeline.

One (1) 7500 H.P. turbine compressor unit.

Additional cushion gas, measuring and dehydration equipment, and other miscellaneous facilities necessary or convenient to the operation of the above-described and existing facilities.

The total estimated cost of the proposed facilities, including the cushion gas, measuring and dehydration equipment and other miscellaneous facilities, is stated to be $4,221,400.

On April 17, 1964, Applicant filed a statement with the Secretary stating it would accept a certificate limiting the maximum volume inventory in each field and storage reservoir as follows:

Field	Reservoir	Volume (Mcf @ 14.65 psia)
Herscher	Galesville	45,000,000
Herscher	Mt. Simon	45,000,000
Cooks Mills	Cypress and Rosiclare	5,000,000

Applicant intends to allocate all the additional peak-day capacity to its customers in accordance with the procedure of allocation set forth in its FPC Gas Tariff now on file.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, as amended, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its opinion and order of May 10, 1946, in Docket Nos. G–651 and G–664 (5 FPC 111).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate is further conditioned to limit the maximum volume inventory in each storage reservoir in the respective fields as follows:

Field	Reservoir	Volume (Mcf @ 14.65 psia)
Herscher	Galesville	45,000,000
Herscher	Mt. Simon	45,000,000
Cooks Mills	Cypress and Rosiclare	5,000,000

(D) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64–165

ORDER DENYING INTERVENTION

(Issued May 26, 1964)

On January 24, 1964, Tennessee Gas Transmission Company (Tennessee) filed with this Commission an application for a certificate of public convenience and necessity in Docket No. CP64–165 seeking authorization to construct and operate facilities in order to increase its capacity to deliver up to an additional 62,060 Mcf/d (at 14.73 psia) to its existing contract demand, general service and storage service customers. All of the proposed facilities would be located along Tennessee's existing main transmission lines which extend in a northeasterly direction from sources of supply in Texas and Louisiana to New York and New England.

On March 16, 1964, El Paso Natural Gas Company (El Paso) and on March 23, 1964, Transwestern Pipeline Company (Transwestern)[1] filed petitions to intervene in the above-named docket. Petitioners allege that the instant application and the proceedings in Transwestern Pipeline Company, *et al.*, Docket No. CP63–204, *et al.*, in which El Paso, Transwestern and Gulf Pacific Pipeline Company (Gulf Pacific)[2] are each seeking to serve the southern California market, are interconnected and interdependent, and that, therefore,

---

[1] Jointly referred to as "Petitioners."

[2] Gulf Pacific is a wholly owned subsidiary of Tennessee.

Petitioners should be granted leave to intervene in the instant docket. Petitioners allege by way of their claim to standing that there is a direct connection between the two proceedings concerning three separate aspects: (1) rates, (2) financing, (3) reserves. They further allege as the substantive grounds they wish to discuss in the hearing that there is a "conflict of regulatory principle" between the instant application and prior Commission decisions.

We do not believe that either of the petitioners have standing to intervene in the instant proceeding on Tennessee's expansion application. Their only possible interest is as competitors or potential competitors of Tennessee's subsidiary Gulf Pacific. Petitioners and Tennessee itself do not presently serve any of the same customers nor do Petitioners allege that they contemplate expanding into the area in which Tennessee now serves. The sole basis for a claim of interest thus is that grant or denial of the present application will in some measurable degree affect Petitioners through the indirect effect of such a grant upon Gulf Pacific with which Petitioners are in competition for additional service to Southern California.

It is suggested in the petitions that the instant application and that of Gulf Pacific in the consolidated Transwestern proceeding are interrelated because of the effect the grant or denial of the Gulf Pacific application might have on Tennessee's qualifications here. But any such effect is of no concern to Petitioners. In our consideration of the present Tennessee application we will not, of course, assume that the Gulf Pacific application will either be granted or denied. Tennessee will have to support its application without regard to any additional financial resources or gas reserves which might be available to it if the Gulf Pacific application be denied, and upon the assumption that any losses which may accrue to it from denial of its subsidiary's application cannot subsequently be made up by way of increase in Tennessee's rates to its interstate wholesale customers.

The question for resolution here then is: Can a grant of the instant application be expected to have any measurable effect upon Gulf Pacific's ability to compete with Petitioners. It is suggested that in some unspecified manner it may affect Gulf Pacific's rates. We do not see how this is possible, for the two pipelines are both separate corporate entities and seperate physical pipeline systems. An expansion by Tennessee which, despite indications to the contrary, proves to be uneconomic could conceivably adversely affect Tennessee's rate structure. However, any loss resulting from an uneconomic expansion of the Tennessee system could not affect the rates for any Gulf Pacific system we might decide to certificate. These rates (to the extent they are subject to our jurisdiction) will be fixed solely with reference to the cost of service and approved rate base of the Gulf Pacific Company.

Equally unpersuasive is the claim that action on the instant Tennessee application could affect the financing of Gulf Pacific. The latter company's prospective financial structure, in the event it secures a certificate, has already been established and is totally independent of our action on the present application. Nor can it be seriously argued that Tennessee's commitments to the expansion program here in issue would materially affect Gulf Pacific's competitive position vis a vis Petitioners should we be inclined to condition any certificate we might issue to Gulf Pacific upon modification of its capital structure in a manner calling for additional financing by its parent. But the short answer to Petitioners' contention is that in the event of such an untimely eventuality their position would be *enhanced* not impaired, and they would not be aggrieved or adversely affected by the grant to Tennessee.

Finally, it is clear that the Tennessee expansion and the Gulf Pacific application have no physical relationship with one another. The gas reserves committed to the Gulf Pacific project, and upon which it must rely in its competition with Petitioners, are not available to Tennessee and are in no way part of the reserve picture upon which Tennessee is relying to support the present application. If Tennessee's reserves are inadequate it must either secure new ones or forego its instant expansion. Even assuming that Tennessee will have to secure new reserves and could and would do so by sequestering to itself some of Gulf Pacific's reserves now committed to the Gulf Pacific project, this will not harm Petitioners in their competition with Gulf Pacific.

In short the grant or denial of Tennessee's certificate application cannot adversely affect Petitioners in their competition with Gulf Pacific—their only claim to injury.

While this is sufficient to dispose of the applications for intervention, it may be appropriate to note that neither of the substantive issues Petitioners wish to interpose if intervention is granted, involves relevant legal or factual questions which, in the absence of Petitioners' intervention, would go unresolved. We are not concerned here with how Tennessee chooses to meet the subject of consolidated taxes since the rates it (and its subsidiary Gulf Pacific) propose to charge are not here in issue. In a rate case we shall, of course, apply whatever regulatory principles may be applicable in the circumstances regardless of Tennessee's desires on the subject.

The question of whether an incremental reserve showing is sufficient to support the incremental requirements is a matter for our consideration in the certificate proceedings, though Petitioners err in asserting that such a showing has never been found to be sufficient.[3] But it is peculiarly a matter within regulatory discretion which would hardly form the basis for any successful review proceeding, even if Petitioners had the requisite standing under Section 19 of the Act to seek review, as they do not. Nor is it a matter in which Petitioners have any special competence or knowledge which might justify us in exercising such discretion as we might possess to admit as parties persons without any cognizable interest in the proceeding.

The Commission orders:

The intervention in the above-entitled proceeding sought by El Paso Natural Gas Company and Transwestern Pipeline Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–107

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 26, 1964)

On November 8, 1963, as amended on February 28, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64–107 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to increase contract demand service to existing customers by 100,491 Mcf per day (14.73 psia) commencing with the 1964–65 and 1965–66 winter heating seasons, all as more fully set forth in the application, as amended.

---

[3] In *Tennessee Gas Transmission Company*, Docket No. CP63–247, 29 FPC 1000, and *Texas Gas Transmission Corp.*, Docket No. CP63–214, 29 FPC 1084, the reserve showings were presented on an incremental basis.

Applicant proposes to construct and operate, over a two year period, the following facilities:

(1) Approximately 34.59 miles of 30-inch loop pipeline in Louisiana, Mississippi, Tennessee and Kentucky;

(2) Approximately 19.04 miles of 26-inch loop pipeline in Louisiana;

(3) One 30-inch Tennessee River Crossing in Kentucky;

(4) 2,100 compressor horsepower in the Bastrop, Louisiana, Compressor Station by turbo-charging three existing 2,000 horsepower compressor units to 2,700 horsepower each;

(5) One 8,000 horsepower compressor unit in the Columbia, Louisiana, Compressor Station;

(6) One 4,800 horsepower compressor unit in the Pineville, Louisiana, Compressor Station;

(7) One 8,000 horsepower compressor unit in the Kenton, Tennessee, Compressor Station, and,

(8) Two 550 horsepower compressor units in the Leesville, Indiana, Compressor Station for additional development of the Leesville Storage Field.

In addition, Applicant proposes to activate two new storage facilities, the Graham Lake Storage Field, Muhlenberg County, Kentucky, and the Hanson Storage Field, Hopkins County, Kentucky. Accordingly, Applicant requests authority to:

(a) Operate the Graham Lake Field as a gas storage field and in connection therewith, to construct and operate one 1,000 horsepower compressor station, one meter and control station, and approximately 400 feet of 10-inch pipeline which will connect the existing facilities of Applicant with that field, and

(b) Operate the Hanson Field as a gas storage field and in connection therewith, to construct and operate one meter and control station, approximately 8 miles of 20-inch pipeline which will connect the existing facilities of applicant with that field, and one 330 horsepower compressor station.

Further, Applicant seeks permission and approval to abandon and remove 400 feet of 4-inch pipeline and one purchase meter station presently located in the Graham Lake Field and one purchase meter station presently located in the Hanson Field. Said facilities are not adequate for storage operations.

Applicant proposes to deliver an additional 54,213 Mcf of contract demand to existing customers commencing with the 1964–65 winter heating season, and an additional 46,278 Mcf to existing customers commencing with the 1965–66 winter heating season. Of the total increased deliveries some 60,000 Mcf will be obtained through initial development of the Hanson and Graham Lake Storage Fields and through further development of the existing Leesville Storage Field.

The total cost of Applicant's project is estimated to be $17,792,500, which cost will be financed by the issuance of long-term debt securities.

On May 1, 1964, Mississippi Valley Gas Company filed herein a petition to intervene. The burden of such filing is that petitioner does not request formal hearing in this proceeding and does not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that petitioner desires to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as the shortened hearing procedure is being used herein, no further action on the intervention petition appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 21, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) The proposed facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by applicant in this proceeding are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned in this proceeding, as hereinbefore described, are subject to the jurisdiction of the Commission, and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) The maximum inventories of and withdrawals from the Leesville, Graham Lake and Hanson Storage Fields should be limited as hereinafter ordered.

(9) Applicant should file, for both the existing and the new storage projects hereinafter authorized, semi-annual reports similar to those presently required for its other authorized natural gas storage operations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as amended, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and all sales and delivery of natural gas authorized in paragraph (A) above shall have commenced, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 24 months from the date on this order issues.

(D) The inventory of the Leesville Storage Field shall be limited to a total of 3,700,000 Mcf and withdrawals therefrom shall not exceed 40,000 Mcf per day, without further Commission authorization.

(E) The inventory of the Graham Lake Storage Field shall be limited to a total of 4,200,000 Mcf, and withdrawals therefrom shall not exceed 15,000 Mcf per day, without further Commission authorization.

(F) The inventory of the Hanson Storage Field shall be limited to a total of 11,850,000 Mcf, and withdrawals therefrom shall not exceed 30,000 Mcf per day, without further Commission authorization.

(G) Applicant shall file, for both the existing and the new storage projects authorized herein, semi-annual reports similar to those presently required for its other authorized natural gas storage operations.

(H) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as amended, in this proceeding, be and the same are hereby granted.

(I) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

OPINION NO. 429

WESTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-329; U.S. NATURAL GAS CORPORATION, DOCKET NO. CI63-1460

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 26, 1964)*

Syllabus

1. Sufficient need for gas shown since, (1) price is favorable; (2) gas can be utilized to meet peak-day demands without significant investment in facilities; and (3) opening of Washakie Basin provides possible area of significant new gas supplies proximate to markets. P. 1299.
2. Absence of complete market and supply showing is not fatal to instant applications in light of minor volumes involved. P. 1299.
3. Western's certificate conditioned to provide that Colorado Interstate have unlimited make-up over the contract term on all volumes of gas paid for but not taken. P. 1299.
4. Where economics of project either will not or cannot have an effect on rates to be charged consumer, and no deprivation of service will be occasioned

---

* Initial decision appears on P. 1303.

by failure thereof, matter of financial feasibility ceases to be of decisional significance. PP. 1299, 1300.

5. Since it deals here with an economically borderline project, Commission conditions certificate precluding Western from applying for any rate increase [over and above contract price] based on inadequate return, P. 1300.
6. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

J. Evans Attwell for Western Transmission Corporation and U. S. Natural Gas Corporation.

Justin R. Wolf and *Charles A. Case, Jr.* for California Oil Company, Western Division.

Thomas G. Johnson for Shell Oil Company.

Martin L. Friedman, Michael J. Shea, Frank P. Saponaro, Jr., Robert C. McHugh, and *James L. White* for Colorado Interstate Gas Company.

Charles E. McGee, James D. McKinney, Jr., and *Angus A. Davidson* for Sinclair Oil & Gas Company.

William E. Hynan, Jr. and *John J. Mullally* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BLACK, *Commissioner:*

This proceeding involves two interrelated applications for certificates of public convenience and necessity pursuant to subsections 7(c) and (e) of the Natural Gas Act. It is before the Commission on exceptions to an initial decision issued February 6, 1964. U. S. Natural Gas Corporation, applicant in Docket No. CI63–1460, seeks authorization as an independent producer to sell gas to be produced from leases covering approximately 30,000 net acres in the Washakie Basin of Carbon County, Wyoming, to Western Transmission Corporation at an initial price of 15 cents per Mcf.[1] Western, applicant in Docket No. CP63–329, proposes in turn to construct facilities to deliver and sell the gas at an initial price of 20 cents per Mcf to Colorado Interstate Gas Company (CIG) at a point of delivery on CIG's main line in Sweetwater County, Wyoming. The only opposition to certification has come from staff, primarily on the ground that CIG has no established need for the gas to be supplied by Western. Staff counsel also raised questions as to the economic feasibility of Western's proposed project, contending that it is "too speculative" to warrant our approval.

The applications herein considered were consolidated originally with the producer applications in Transwestern Pipeline Company, *et al.*, Docket No. G–20464, *et al.* However, a motion by applicants for severance and early disposition was granted and hearings before the Presiding Examiner were concluded on October 22, 1963. At the hearing applicants presented evidence through witnesses and exhibits as to the negotiations underlying the subject contracts, the terms and conditions of the contracts, the estimated reserves and availability of gas from the leases dedicated under U. S. Natural's contract with Western, the financial condition of Western, both as presently organized and as it may reasonably be expected to develop on the basis of various sales volumes, and the design and estimated cost of the proposed facilities together with the estimated cost and delivery capacity of smaller sized facilities.

---

[1] All prices are at 14.65 psia.

Some evidence also was adduced regarding the prospects for the development of additional reserves throughout the Washakie Basin. CIG, which has the status of an intervener,[2] presented a witness who testified as to the advantages expected to be derived from the Western gas and its need therefor to replace existing reserves currently being depleted and to meet the normal growth of CIG's markets. Staff, through two witnesses, offered evidence to show that the proven gas reserves available under the U.S. Natural-Western contract were less than as estimated in applicant's study and that the Western project, on the basis of a traditional cost of service study, does not have a reasonable expectation of economic feasibility.

The factual background is reflected in the examiner's decision and need not be extensively restated here. In brief, U.S. Natural controls by leasehold approximately 30,000 net acres in the Washakie Basin in south-central Wyoming. The total production at present is from two wells spaced 410 feet apart, actually a twin well. Although CIG during preliminary negotiations indicated a willingness to purchase the gas at a delivered price of 20 cents per Mcf, U.S. Natural was financially unable to construct the facilities to connect the gas to CIG's line. It was to resolve this difficulty that Western was formed.[3] The proposed facilities of Western would consist of a 26-mile 12¾ inch O.D. pipeline connecting to a purchase meter station and tap on CIG's existing line and, at the other end, approximately 500 feet of 4½ inch O.D. gathering line to the wells on the acreage leased by U.S. Natural. Related measuring and dehydration facilities also would be constructed. Western's pipeline system would have a maximum design capacity of 77,500 Mcf per day and would be constructed at an estimated cost of $845,000. As the applications are presented, the 30,000 acres of U.S. Natural is the only acreage now dedicated to the Western project. Following certification, and providing additional gas reserves can be found, Western proposes to construct whatever purchase laterals and additional gathering facilities as may prove necessary to connect gas supplies in the remaining 1,320,000 acres in the Washakie Basin.

Western's contract with CIG is an "open-end" agreement in that it requires CIG to take-and/or-pay for the greater of 4,000 Mcf per day or 1,000 Mcf per day for each 8,000,000 Mcf of reserves covered by purchase contracts between Western and its suppliers. The precise take-and-pay and take-or-pay obligation of CIG is discussed more fully herein. No dispute has arisen regarding either the 20-cent per Mcf initial price to be charged CIG by Western or to the 15-cent per Mcf initial rate to be paid U.S. Natural. With Western's concurrence, the examiner included a condition which would in effect prohibit Western from applying for any rate increase, beyond the periodic escalation of one cent per Mcf each five years presently provided in the contract, based on inadequate return or other financial need. This condition will be retained as an essential element in the granting of a certificate to Western. Otherwise, price is not an issue in the proceeding.

As brought out in the initial decision, the primary issues are (1) whether CIG has a need and market for the gas intended to be supplied, and (2) whether Western's proposed project must be rejected as economically infeasible. The examiner has recommended that certificates be issued, ruling against staff's arguments opposing the applications. These issues are renewed in staff's exceptions, which are the only exceptions filed; applicants and CIG have submitted replies.

---

[2] In addition to the parties indicated, intervention was granted to California Oil Co., Western Div.; Sinclair Oil & Gas Co., Shell Oil Co. and Continental Oil Co. With the exception of Continental, all such interveners were represented in the hearing; however, they did not participate actively in the proceeding.

[3] Western was formed as a Delaware corporation on November 16, 1962. A public offering of stock in the amount of $1,162,537 awaits Commission certification and S.E.C. approval.

On consideration of the record we are of the opinion that the examiner was correct in his determination that certificates should be issued to U.S. Natural and Western. We differ, however, with his dismissal of the objections relative to the worsening of CIG's take-or-pay problem as a result of these certifications, at least to the extent that such problem may be aggravated by the possible forefeiture of prepayments required for gas not taken under the terms of the CIG-Western contract. A condition will therefore be included to insure that CIG will not be foreclosed from taking make-up volumes at any time during the term of the contract. Also, we believe a general caveat is appropriate regarding our action in issuing a certificate to Western.

CIG's Need—Taking figures from CIG's expansion application in Docket No. CP63-344, Phase I, staff maintains that CIG's markets are not able to utilize the pipeline's present minimum supply obligations; that by the end of 1964 CIG will have an accumulated deficiency of 116,109,000 Mcf in its minimum take obligations, including 41,136,000 Mcf added in the present year and which, to a great extent, will have to be paid for but not taken; that CIG has been forced to make short term sales over the past few years, totaling approximately 159,000,000 Mcf, to relieve its oversupply problems and minimize payments for gas not taken, including certain recent sales at 5.5 and 6 cents per Mcf less than the price it will be paying for Western's gas; and that, because of its accumulated deficiency in takes, CIG will not need Western's gas, on an annual basis, for about eleven years. Staff also contends that if CIG pays for but does not take Western's gas in the period until its system can be brought into balance it will be obligated to make prepayments totaling at least $3,000,000 based on the 20-cent initial price. For these reasons staff contends that CIG has not shown a sufficient need for this gas supply to justify the attachment of Western's reserves.

Applicants and CIG maintain that the gas here sought to be obtained would be used to replace reserves which are being depleted at the rate of 300 million Mcf annually and to meet normal growth requirements in the markets presently served by CIG. They point out that the volumes of gas here involved, which, in CIG's considered estimation, will approximate only 1,425,000 Mcf in the first year (4,000 Mcf average day and 6,000 Mcf peak day)[4] are minimal, constituting little more than 0.4 percent of CIG's annual requirements and less than one-quarter of its normal yearly growth requirement. Among the claimed advantages are contract provisions whereby CIG can call upon Western for up to 30,000 Mcf per day for a maximum of 30 days during each of the next two winter heating seasons to meet peak needs at the 20-cent per Mcf price. This gas could be utilized in lieu of "best efforts" gas offered by El Paso at 25.5 cents per Mcf which is delivered to CIG 116 miles further from market than the Western gas. In addition the Western gas can be used to replace gas presently purchased from El Paso at 27 cents per Mcf. Applicants further note that the CIG-Western contract limits escalations to one cent each five years for a 20-year term, thereby avoiding unforeseen price increases, and that the only expenditure necessary by CIG is $17,930 for the construction of a purchase meter station to enable the receipt of the gas into its system. They also point out that the Commission's certification will provide a market for gas presently shut-in in the Washakie Basin through lack of intermediate transportation facilities. Insofar as its recent short term sales are concerned, CIG points out that all such sales have been made from its southern division in Texas and Oklahoma and that it has had no surplus on its Rocky Mountain system, west of Denver; it contends that it is to its advantage to purchase minor additional supplies in Wyoming rather than to add compression facilities to move more southern gas westward to meet peak requirements. As to its take-or-pay problem CIG states that the quantity of gas here involved is too small to have any significant effect.

---

[4] Western's estimates of a daily minimum of 6,412 Mcf and a maximum of 9,618 are somewhat higher, thereby tending to show a better economic feasibility.

We agree with the examiner that the advantages cited by CIG including the favorable price, absence of any significant investment by CIG in new facilities to receive the gas and its ability to utilize the gas to meet peak-day demands, as well as the opening of the Washakie Basin as a possible area of significant new gas supplies proximate to CIG's markets, are adequate to establish a sufficient need for the gas by CIG. Although the existing imbalance in CIG's systemwide operations is a matter of concern, we do not believe that the absence of a complete market and supply showing is fatal to the applications in the circumstances presented particularly in light of the relatively minor volumes involved. Accordingly, we shall issue the certificate in this case, but without prejudice to a more complete evaluation of CIG's needs upon applications for the certification of sales involving substantial additional gas reserves.

Article 4.4 of the gas purchase agreement between CIG and Western[5] provides, in part, that all volumes paid for by CIG but not then taken may subsequently be taken by the purchaser without additional cost as any time during the term of the contract. This provision appears to accord CIG a life of the contract make-up provision on underages. In fact CIG's witness, who is manager of their Industrial Engineering Department and Assistant Secretary of the company, testified to this effect, citing it as one of the outstanding features of the contract. The staff's brief, however, indicates that a different interpretation may be applicable in that, as (and if) Western's reserves develop in excess of 80,000 MMcf, CIG will be under a "take *and* pay" obligation, without opportunity for the deferment of make-up volumes to succeeding years. Staff's interpretation of the contract provision was not excepted to in the reply brief of the applicants. The ability of CIG to take make-up volumes throughout the term of the contract, without regard to the amount of reserves determined under Article 4.1, is of prime importance in our decision to allow CIG's attachment of Western's reserves under the limited requirements study offered in this proceeding. Any limitation in this right would, we believe, constitute grounds for denial of the certificate requested by Western. Accordingly, the certificate granted to Western will be conditioned to provide for unlimited make-up by CIG on all volumes paid for but not taken over the contract term.

Economic Feasibility of Western's Project—In evaluating applications for certificates pursuant to Section 7 of the Natural Gas Act, the economic feasibility of the proposed project has traditionally been a factor; primarily because of the effect which the costs of construction, maintenance and operation of the proposed facilities will have on the rates to be charged the consumer. Conversely, where the economics of the project either will not or cannot have an effect on the rates to be charged the consumer, and no deprivation of service to the consumer will be occasioned by failure of the project, the matter of financial feasibility ceases to be of decisional significance. It is the welfare of the consumer which is our special concern and it is to his protection that our attention is primarily directed.[6] It must also be recognized that irrespective of what we may decide as to the reasonable prospects of a proposed project for the purpose of the findings required for a certificate of convenience and necessity, the fact of our issuance of a certificate is in no way a guarantee of the eventual financial success thereof as a business venture.[7] However, we cannot be blind to the weight which investors have assigned to the fact that the technical, geological and economic factors contributing to the financial success of the proposed project have been tested and favorably passed upon by a responsible federal agency. The validity of applicant's assumptions relative to these factors with respect to this project have been contested by our staff. Thus, it appears appropriate to point out that here we are dealing with a project of a borderline nature and which, from a business standpoint, is heavily dependent on the successful outcome of U.S. Natural's exploration for additional reserves and their development as a further source of supply to Western. In order to minimize the risk to the consumer Western has agreed to the inclusion of a condition in its certificate which will prevent it from seeking an increased rate of return should the return herein provided prove inadequate. This condition is embodied in the Presiding Examiner's order and was given great if not controlling weight in his decision recommending the application's approval.[8] It is similarly persuasive to us for, as Western points out, the consumers are thereby adequately protected should any of these factors fail to develop as Western anticipates. We shall therefore, adopt this condition as our own and dispense with much of the usual concern regarding the financial feasibility of the project.

---

[5] As modified by Amendment No. 2 dated August 19, 1963.

A summary of the various claims and counterclaims will serve to illustrate the area of disagreement between staff and the applicants. Staff contends that a certificate should not be issued for the reason that, as computed on a cost-of-service basis, Western will experience a net revenue deficiency in each of the first three years of its operations. Much of this line of argument is based upon a study indicating that the gas reserves underlying the leases dedicated by U.S. Natural are substantially lower than as claimed by applicants and which, under the 1:8000 ratio in the minimum purchase obligation, will determine to a large extent the initial financial success or failure of the Western venture. Staff also contends that a 12¾ inch pipeline extending to within 500 feet of U.S. Natural's wells in order to receive 4,000 Mcf to, at maximum, 8,200 Mcf[9] on an average day and utilizing between 6 and 9 percent of line capacity is completely overdesigned. Applicants on their part concede that at the 4,000 Mcf per day minimum contract quantity Western will have a net operating loss of approximately $20,000 in each of the first three years but contend that they will have a "positive cash flow" adequate to sustain operations while the exploration for additional reserves goes on.

---

[6] *Commonwealth Natural Gas Corp., et al.*, Opinion No. 193, 9 FPC 70, 85; *Atlantic Refining Co. v. P.S.C., (CATCO)*, 360 U.S. 378, 388, 79 S.Ct. 1246, 1253.

[7] *Cf., Transcontinental Gas Pipe Line Corp.*, Opinion No. 371, 28 FPC 979, 982–983.

[8] The record shows that the condition was proposed by applicants in a supplement to Western's application and was included in the certificate at their suggestion.

[9] The estimate of 8,200 Mcf per day is based on applicants' estimate of total, proven reserves. Staff believes that actual deliveries will be closer to the 4,000 Mcf per day figure. These volumes are at a pressure base of 14.73 psia.

They further contend that the break-even point will be reached with deliveries of 5,150 Mcf per day, and based on their own estimated deliveries of 8,200 Mcf per day, that they will earn a return of 3.34 percent by the third year.

The condition applied by the examiner provides that Western's rate for its sales to CIG "shall not at any time exceed the sum of 5 cents per Mcf plus any rate lawfully in effect for the sale of gas to Western Transmission Corporation by U.S. Natural Gas Corporation." This condition is patterned after a similar condition in the certificate issued in Opinion No. 397[10] to Medina Gathering Corporation which, though operating in a completely different geographical area, performs a function analogous in all material respects to that proposed by Western. In that case Medina was limited to a 7-cent per Mcf spread between its purchase and selling prices. In accepting a lesser standard of economic feasibility than would otherwise have been required, we stated, "As long as it is guaranteed that Medina will not, in turn, shift these risks to the consumer by filing increased rates based upon a claimed inadequate rate of return, we think it is appropriate that our scrutiny of the economic feasibility of this project be closer to the kind of examination we would give a producer's proposed sale and related construction of jurisdictional facilities." The "risk" to Medina was that the production would be inadequate to support the transmission system proposed, the same risk which Western is willing to assume in this case.

As previously made clear, consideration of economic feasibility is required in the usual case because of the effect on the rates which will be charged to the consumer. With the inclusion of the condition in the certificate, however, any risk of uneconomical operation or inability of Western to earn a reasonable return on its investment or to attract capital will lie wholly with Western and its stockholders and will not be able to be shifted to the consumer. Western's price will at all times be no more than 5 cents per Mcf over the cost of gas purchased from U.S. Natural. If the amount thereby represented is sufficient to produce an adequate rate of return, Western will survive and prosper and the consumer will receive the benefit of whatever gas is delivered at a seemingly favorable price. If, on the other hand, the return should prove inadequate, Western will have no opportunity to seek increased rates, beyond the rates presently provided in the contract with CIG. In such circumstance the possible deprivation to the consumer of the relatively minor volumes of gas herein involved will be of only limited significance. This is the chance Western has indicated it is willing to accept, a change made necessary by its inability to prove complete financial feasibility at this time. As so conditioned, it is our opinion that the certificate may be issued.

The Commission finds:

(1) U.S. Natural Gas Corporation, an independent producer of natural gas, is now, or upon initiation of the sales proposed in its application will be, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, or will be, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Upon initiation of its proposed service and sale, the Western Transmission Corporation will be a "natural-gas company" within the meaning of the Natural Gas Act; will be subject to the jurisdiction of the Commission; and will be a pipeline company for the purposes of the Commission's Regulations under the Natural Gas Act.

---

[10] *Medina Gathering Corp., et al.*, Docket No. CP62-194, *et al.* 30 FPC 227, issued July 16, 1963.

(3) The sales of natural gas proposed by U.S. Natural and Western, as hereinabove referred to and as more fully described in their applications, are subject to the jurisdiction of the Commission and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Subject to the requirements of our order herein and the conditions attached to the certificates herein issued, U.S. Natural and Western are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The sales proposed by U.S. Natural and Western, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity upon the conditions hereinafter set forth, and certificates should be issued to each as hereinafter ordered.

(6) The conditions attached to the certificates hereinafter issued are required by the public convenience and necessity.

(7) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to U.S. Natural and Western, upon the conditions hereinafter set forth, for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above and in the applications and amendments thereto.

(B) The certificate issued to U.S. Natural Gas Corporation, the producer applicant, is hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 15 cents per Mcf at 14.65 psia, from the date of the issuance of this order and until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificate herein issued to U.S. Natural is conditioned upon its being accepted in writing by the applicant within 30 days of the issuance of this order.

(D) The certificates issued herein are conditioned upon the acceptance by the applicants of amendments to their contract eliminating the discrepancies between the quantity take clauses in such contract and those in the Western Transmission Corporation-Colorado Interstate Gas Company contract and conforming such clauses in the former contract to those contained in the latter contract.

(E) The certificate issued to Western is conditioned to provide that Colorado Interstate Gas Company shall be free to take make-up volumes of gas previously paid for but not taken without further cost at any time over the life of the contract.

(F) The certificate issued to Western Transmission Corporation is further conditioned to require that its rate for sales to Colorado Interstate Gas Corporation shall not at any time exceed the sum of 5 cents per Mcf plus any rate lawfully in effect for the sale of gas to Western Transmission Corporation by U.S. Natural Gas Corporation.

(G) The general terms and conditions set forth in Section 157.20 of the Commission's Regulations Under the Natural Gas Act shall attach to the certificate issued herein to Western Transmission Corporation, and the facilities hereby authorized shall be constructed and placed in actual operation, as provided by subparagraph (b) of Section 157.20 of the Commission's Regulations, within four months from the date on which the Commission's order issues.

(H) Western Transmission Corporation shall within 90 days after the first two years of operation file detailed data setting forth its costs upon the basis of actual experience.

(I) Western Transmission Corporation shall file a tariff in accordance with Sections 154.31–41 of the Commission's Regulations Under the Natural Gas Act which shall show as the rate in effect the full compensation to be received by Western Transmission Corporation per Mcf of gas sold as provided for by the contract with Colorado Interstate Gas Company and the conditions herein imposed.

(J) The certificates issued herein are not transferrable and shall be effective only so long as each of the said applicants continues the acts and operations as herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(K) The grant of certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose or prejudice any further proceedings or objections relating to the operation of any price or related provisions in the gas contracts here involved.

(L) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(M) The examiner's decision, to the extent not inconsistent herewith, is adopted as part of this Opinion and Order.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 6, 1964)

KANE, *Presiding Examiner:* This consolidated proceeding involves applications seeking authorization and approval from the Federal Power Commission, pursuant to Sections 7(c) and 7(e) of the Natural Gas Act, of an integrated transaction involving the sale and transportation of natural gas in interstate commerce by and among the producer, U. S. Natural Gas Corporation (U. S. Natural), Western Transmission Corporation (Western), a proposed intermediate pipeline and Colorado Interstate Gas Company (CIG), the main pipeline. The certificate applications of U. S. Natural and Western were filed with the Commission on May 30, 1963. Various supplements were filed thereafter to reflect amendments and changes allegedly resulting from conferences with the Commission Staff.

By Secretary's Notice dated July 30, 1963, the applications herein were consolidated for hearing with the producer applications in Transwestern Pipeline Company, *et al.*, Docket No. G–20464, *et al.* By Order and Notice of the Secretary issued September 9, 1963, the Commission granted the application of U. S. Natural and Western for severance from the consolidated hearing, previously ordered, and directed that the matters involved in and the issues presented by the instant applications be heard together at a hearing to begin on October 8, 1963. By orders issued October 7 and 15, 1963, the Commission granted the petitions to intervene of CIG, California Oil Company, Western Division (California), Sinclair Oil & Gas Company (Sinclair), Shell Oil Company (Shell) and Continental Oil Company (Continental). The hearing, commenced on October 8, was concluded on October 22 at which time the applicants moved that the Commission waive and omit the intermediate decision procedure pursuant to Section 1.30(c)(3) of the Commission's Rules of Practice and Procedure. By order issued November 7, 1963, the Commission denied the said motion. Briefing was completed and the case fully submitted on December 4, 1963.

At the opening of the hearing, Staff counsel moved to dismiss the applications basing such motion on the failure of CIG to make a full disclosure of its market and supply requirements and its need for the additional reserves sought to be obtained from approval of the instant applications. Decision on the motion to dismiss was reserved to be disposed of in the initial decision.

U.S. Natural is a comparatively small independent producer having approximately 2,000 stockholders. Its stock is traded on the American Exchange. Approximately 30 percent of the outstanding stock, constituting the biggest block, is owned by close relatives of one family (Frankel), the remaining 70 percent is scattered among the approximately 2,000 other stockholders. It controls approximately 30,000 acres of oil and gas leases in the Washakie Basin, Carbon County, Wyoming. In connection with the sale of the gas, proposed herein, U.S. Natural determined that its financial situation was such as to preclude its construction of the 26 miles of pipeline and related gathering and measuring facilities required to connect the gas to CIG's main line in Sweetwater County, Wyoming, a condition of the proposed sale. To resolve the difficulty, Western was formed as a Delaware corporation on November 16, 1962, to perform the necessary transportation function. Harding Frankel, brother of the President of U.S. Natural and owner of approximately 5-6 percent of the stock of that company, resigned as a Director of that corporation in November of 1962 to organize the new company. At the time of the hearing he apparently owned all the then issued stock of Western. A public offering of the unissued stock of Western awaits Federal Power Commission authorization for the proposed project and approval from the Securities Exchange Commission. In connection with the proposed issuance of the public stock in the form of a rights subscription in favor of U.S. Natural's stockholders, the Frankel family, allegedly at Staff's request, has agreed to limit its exercise of its subscription rights to less than 10 percent of Western's stock. Furthermore, U.S. Natural will not buy or subscribe to any of Western's stock.

The producer, U.S. Natural, under a gas purchase contract dated February 1, 1963, proposes to sell gas to Western from approximately 30,000 net acres in the Washakie Basin area, Carbon County, Wyoming, at 15 cents per Mcf at 14.65 psia for transportation and delivery by Western to CIG at its existing main line in Sweetwater County, Wyoming, at a price of 20 cents per Mcf plus the right by Western to file for fixed periodic escalations of one cent per Mcf every five years. In order to transport and deliver the gas purchased from U.S. Natural, Western proposes to construct and operate natural gas system facilities consisting of a 12¾ inch O.D. main pipeline and related gathering, dehydration and measuring facilities. The proposed main pipeline would extend approximately 26 miles northward from the Cow Creek Field in Carbon County, Wyoming, connecting to CIG's existing interstate pipeline in Sweetwater County, Wyoming. The pipeline system would have a designed maximum capacity of 77,500 Mcf per day and would be constructed at an estimated total cost of $845,000. Financing of the project is to be obtained solely from the sale of common stock.

Western proposes to deliver to CIG the greater of 4,000 Mcf per day or 1,000 Mcf per day for each 8,000 Mcf of reserves covered by contracts between Western and certain producers and contained within an area comprising 1,350,000 acres in the Washakie Basin in parts of Sweetwater and Carbon Counties, Wyoming, and Moffatt and Routt Counties, Colorado. Western, during the next two years, also proposes to construct certain well or field lines and field compressors at an estimated cost of $225,000 to connect with additional supplies of natural gas within this area.

U. S. Natural Gas Corporation in this proceeding seeks Commission authorization to sell to Western, gas produced from leases covering approximately 30,000 net acres of partially developed reserves in the Washakie Basin, Carbon County, Wyoming, at an initial price of 15 cents per Mcf. The acreage dedicated by U. S. Natural is contained within the 1,350,000 acre area from which Western proposes to purchase and deliver gas to CIG.

The only opposition or objection to the granting of the certificates in these proceedings emanated from the Staff. The main issues raised by the Staff and deemed involved in these proceedings may be summarized as follows:

Whether the estimated reserves and availability of the gas are sufficient to fulfill the contracts.

Whether Western's proposed project can meet the economic feasibility test.

Whether CIG has established the immediate need and market for the gas to be supplied.

Staff, in opposing the granting of the certificates sought in the instant proceeding, based its principal objections, as stated in the conclusion of its brief, on the grounds that: "since CIG has not shown a sufficient need to justify the attachment of Western's reserves and due to the speculative nature of the over-designed project Staff recommends denial of certification."

It is the applicants', as well as CIG's position, that a complete market and supply showing is not necessary or called for in this proceeding; that the favorable price; favorable location of the source of supply; the need to replenish diminishing reserves; and the many short term and long term operating advantages to CIG and to its customers resulting from attaching the volumes of gas here involved fully justify certification of the project without the type of showing called for by the Staff; and that CIG has a present and immediate need for the gas and is relying upon using it to enable it to meet its peak day requirements during the next three years heating seasons.

The interveners, California, Sinclair, Shell and Continental neither opposed nor supported approval of the applications sought herein. Their only concern was that no decision or finding in this case be made to apply to or prejudice their pending applications to sell gas to CIG from the Wind River Basin, which applications have already been consolidated for hearing in another proceeding.

The evidence establishes the fact, and it is not questioned by Staff counsel, that U. S. Natural and Western are qualified applicants within the meaning of Section 7(e) of the Act and are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the

Act and the requirements, rules, and regulations of the Commission thereunder. A prime facie showing, at least, has been made as to the adequacy of the reserves for the purpose of the sale herein proposed as well as the ability of Western to finance its proposed project. Questions have been raised in connection with the engineering feasibility of the project, especially in connection with its overdesign.

It certainly cannot be said that the applications in the instant proceeding on their face or on presentation of evidence signal the existence of a situation that probably would not be in the public interest and that therefore a permanent certificate should not be issued. (The criterion indicated in the *CATCO* decision.)

In view of the Staff's position to the effect that the most important aspect which permeates the requirement for the satisfaction of the present or future public convenience and necessity is whether the proposed sales volumes are needed by the consuming public, in this instance the customers of CIG, this aspect of the case must now be resolved.

The evidence adduced in support of the applications indicates that the gas sought to be obtained by CIG as a result of these proceedings would be used as an additional source to replace existing reserves and to meet the normal growth of CIG's markets. CIG's reserves are being depleted at the rate of approximately 300,000,000 Mcf annually. This means that over the 20-year life of the Western contract, CIG must add six trillion cubic feet of gas in order to replace, in part, those existing reserves at the contemplated rate of depletion. CIG's witness, Diefenbach, also testified that it was estimated that the Western gas at 4,000 Mcf per day would constitute only 22 percent of the normal annual increase in CIG's market for a single year.

While it was admitted that CIG had not experienced any difficulty in meeting its average daily requirements from presently attached sources, and that it could meet such requirements for a number of years in the foreseeable future, yet it was required to prepare itself to meet its growth every year.

It seems reasonable to conclude that CIG should continue to add to its reserves to the extent, certainly, of approximating the amount of reserves used up in the same period. Otherwise, the company will be moving toward liquidation and will be permitting the wasting away of its ability to serve its customers. See *Middle States Petroleum Corporation*, 21 FPC 493, 495. Furthermore, it is fair to assume that CIG can anticipate a certain amount of normal growth on its system due to population increase and new service, especially in view of the fact that its main transmission system in the Rocky Mountain area is growing at the average rate of about 6.7 million Mcf per year, requiring connection of 1.1 trillion cubic feet of new reserves.

The Staff, however, admitting that it was not suggesting "that a balanced system be required to present the complete market and supply showing each time it seeks authorization to attach an incremental supply" yet in the instant proceedings, insists that there was no other recourse which would afford the basis for a realistic determination of CIG's need.

The Staff cites no precedent to support its position that a complete market and supply showing will be required when a major pipeline company seeks to attach relatively minor additional supplies to its system on terms and conditions deemed to be favorable to its customers. The Commission not only has not established such a rigid and unvarying rule but apparently has held to the contrary. In *Medina Gathering Corporation, et al.*, Docket No. CP62-194, *et al.*, Initial Decision, May 3, 1963, p. 248 adopted, with modifications not material herein, by Commission Opinion 397, July 16, 1963, 30 FPC

227, 236, the interveners also opposed the granting of a certificate on the ground that Tennessee, the pipeline, had not demonstrated at "length and with particularity that it needs this reputed supply." The Examiner specifically rejected any such requirement as a basis for granting a certificate. No exception to this portion of his decision was filed and it is deemed adopted by the Commission in its Opinion No. 397. It must be kept in mind that CIG, as the pipeline in the *Medina case, supra,* is not proposing any increase in capacity for the acceptance of the Western gas but merely the installation of a metering system at a very nominal cost. CIG in presenting a definitive showing as to its need for the Western gas on a peak day basis and its ability to absorb the relatively minor volumes on an annual basis has, it appears, complied with the criteria established in the *Medina* case, *supra.* The Staff unsuccessfully attempts to distinguish the *Medina* case but no significant distinction can be bottomed on the differences suggested.

The Staff also attempts, however, to support its position by reference to two recent orders of the Commission. The order of September 9, 1963, granted severance of the instant two dockets from the consolidated hearing in G-20464, *et al.*, despite the opposition of Staff based, among other things, on the ground that "the attachment of any additional reserves by CIG is so clearly tied in with the proposed sales in Phase Two and the possible oversupply problem that the matters must be heard upon a consolidated record." The said order stated "In view of the fact that any requirement of CIG for additional reserves can be determined in a separate formal hearing on the applications in Docket Nos. CP63-329 and CI63-1460, severance should be granted." Certainly the plain language of this order referring to the instant proceedings cannot be deemed to support the Staff's position. The order of the Commission of October 24, 1963, issued in G-20464, *et al.*, after the instant dockets were severed and after the hearing herein had been concluded cannot be considered as revoking or affecting the tenor or scope of the Commission's previous order.

CIG proposes to utilize the so-called emergency Western gas up to 30,000 Mcf per day during each winter heating season until 1966, in lieu of "best efforts" gas offered by El Paso at 25.5 cents per Mcf. The El Paso gas is delivered to CIG at Green River, Wyoming, which is 116 miles farther from the market sought to be supplied by the Western gas. The emergency gas from Western, furthermore, would supplement the volume of gas available from El Paso and would reinforce CIG's over-all capability of meeting peak day requirements of its Rocky Mountain customers utilizing its present peak day transmission system capacity. The Western gas is pipeline quality gas and would be delivered directly into Colorado Interstate's Wyoming line at pipeline pressure at a cost of 20 cents per Mcf. This price compares favorably with that of other suppliers. Other advantages claimed by CIG for the Western gas include the avoidance of unforeseen price increases for twenty years. Except for the agreed maximum increase of one cent for each five years, plus tax reimbursements, Western does not have the right to file for any rate increase above such limits. In contrast, the El Paso gas which CIG receives is not protected by contract from rate increase possibilities. Furthermore, the Western gas is well located with reference to CIG's Wyoming line. Initial production will occur only 26 miles from CIG's Wyoming line where CIG can connect the gas merely by constructing a meter station at an estimated cost of $17,930. The attachment of such gas would thus permit greater utilization of existing facilities which in turn would reduce the cost of moving each Mcf of gas through the Wyoming line to market. In addition, Western gas would enable CIG to absorb new gas into its over-all system and to move that gas to market without the need for construction of new pipeline or compressor station facilities.

While it was admitted by CIG's witness that the 6,000 Mcf/d of gas from Western could be replaced by a like amount of gas from other points on CIG's system, it was determined, from an operating and design standpoint that it would be to CIG's customers' benefit to take the gas from Western. This conclusion apparently is shared by others most directly affected by the proposal and in a position to judge where there interests lie, namely, CIG's customers. To date no CIG customer has either intervened in the proceeding to voice any objection to the proposal or has filed any protest thereto. When considered against the backdrop of the relatively minor magnitude of the project and the criteria adopted in ***Medina***, it would appear that CIG's need data is sufficient to support a finding that there is a need for this gas by CIG at least for the period and to the extent of the amount involved in the contract.

The Staff, in connection with the question of CIG's need for the gas involved in these proceedings and the necessity for complete market and supply showing to justify the need for the gas sought therein, vigorously maintained that CIG is confronted with a serious over supply situation and take-or-pay problem which militates against approval of the instant applications. Taking figures from CIG's estimates submitted in another proceeding, the Staff concludes that CIG will be unable to absorb approximately 41,136,000 Mcf of its minimum supply obligations which to a great extent, the Staff maintains, will probably have to be paid for though not taken.

Because of the many ramifications of take-or-pay for obligations, periods of make-up, etc., and the absence of any probative testimony, establishing either the extent of any such take-or-pay for situation or explaining and exploring the possibilities and possible effect of the amounts involved in the instant applications, it must be concluded that the record in these proceedings affords no basis for the denial of the project or any part thereof based upon CIG's alleged unfavorable take-or-pay position.

It was brought out by Staff, however, that there are material differences in the take-or-pay provisions in the contracts between Western and U.S. Natural on the one hand and Western and CIG on the other resulting in Western's having a greater take-or-pay obligation from U.S. Natural than CIG had with respect to Western. The applicants have stated in their reply brief that they have no objection to a condition in any certificate issued which would correct the discrepancy and which would conform the quantity clause in their contract to that contained in the Western-CIG contract. Accordingly, such condition will be included in and made a part of the certificate to be granted herein.

The reserve studies introduced by the applicants and the Staff to determine reserve estimates were apparently in basic agreement with respect to the values of the various factors used in calculating gas reserves by the volumetric method. The only material difference relates to the proven gas reservoir volume (that is, the net effective gas sand thickness and the extent of the proven acreage to which it should be assigned). The sand thickness factor varied from the 30 feet estimated by the Staff witness in the Deep Creek formation to 61.7 feet estimated by applicants' witness. Staff admits that the difference is based principally upon a matter of professional judgment, particularly in this case where the information available was deemed not to be sufficiently reliable and was somewhat limited. Certainly, the very nature of the calculation and estimation involved as well as the subject matter thereof defies not only the use of exact computations but even any agreement among equally qualified experts. Accordingly, the Examiner in this case does not propose to determine the relative capabilities of the expert witnesses in this proceeding and rejects the applicants' conclusion that in this case the applicants' witness' professional judgment must prevail because of his alleged greater experience and greater knowledge of the particular area involved. There was little to choose from between the two presentations. However, since cross-examination of the applicants' witness revealed nothing to impugn the figures which were adopted as the basis for his conclusions and since Staff's witness' estimation of the average net pay gas sand thickness was based on a somewhat arbitrary judgment factor, the applicants' determination of the net reservoir volume available, based as it was upon generally accepted factors, will be generally accepted for the purposes of this proceeding.

The reserve study presented by Western indicates the following estimated gas reserves in the Cow Creek Field underlying leases dedicated by U.S. Natural: Proved, developed open to production 51,300,000 Mcf; proved undeveloped 15,500,000 Mcf; proved total 66,800,000 Mcf; probable 22,500,000 Mcf; grand total 89,300,000 Mcf. (The volumes of gas are expressed at a pressure base of 14.73 psia). Based upon the proved developed reserves of 51,300,000 Mcf, applicant's witness estimated that the minimum daily contract volume of 6,412½ Mcf could be supplied until the end of 1982 without further drilling; and on the basis of the estimated proved developed reserves the maximum contractual daily requirement of 9618.75 Mcf (150 percent of the minimum as per contract) could be produced until 1980. While these estimates are undoubtedly colored by unduly optimistic forecasts, there seems to be no reason to doubt that the minimum daily quantities required can be produced as indicated. In addition, applicants' evidence supports the conclusion that Western can supply CIG with the 30,000 Mcf of emergency gas daily for 30 consecutive days during the next three winter heating seasons in accordance with its contractual obligations. Even under the Staff's deliverability study and reserve estimates it appears that the peak day volumes of 30,000 Mcf could be delivered.

While no question was raised during the hearing with respect to the engineering adequacy of Western's proposed facilities or the reasonableness of their estimated cost, the Staff correctly pointed out that there could be no question but that the proposed 12-inch pipeline to be constructed at an estimated cost of $845,000 is over-designed for the transportation of the volumes contemplated under Western's contract with CIG. The estimated capacity of the 26-mile 12-inch main line is 77,500 Mcf per day; the 6,412 Mcf maximum average daily volume which Western contemplates delivering amounts at best to a capacity factor of less than 9 percent and if the minimum quantity of 4,000 Mcf is taken the capacity factor would be reduced to less than 6 percent. The waste of capacity and the additional cost attendant thereupon is evident. However, Western has an obligation to supply CIG with up to 30,000 Mcf of gas per day for periods not to exceed thirty consecutive days each during the next three winter heating seasons and applicants have introduced evidence to the effect that a 10-inch pipeline would be necessary to carry that quantity of gas. The difference in cost between a 10-inch line and a 12-inch line is estimated to be $133,000. The applicants seek to justify the additional expenditure on the ground that the area is potentially a prolific gas producer and that a smaller pipeline facility would prove to be uneconomical and that from the standpoint of economic feasibility the larger pipeline is recommended. This justification appears to be based upon pure speculation, since there is little or no testimony in this record from which it could reasonably be concluded at this time that an increase in reserves of the magnitude required could be obtained. As stated by Staff the extent of any additional reserves in commercial quantities that might be discovered in the area and whether Western will be able to contract for them are dependent upon an indeterminable combination of conjectural expectations and are, therefore, purely speculative.

However, as will hereinafter appear, since any increased costs of service resulting from the proposed pipeline's low operating capacity will not be passed on in the form of an increase in the cost of the gas to the ultimate consumer, no reason appears at this time to question either the applicants' judgment or its high and optimistic expectations.

The Staff also opposes certification of the Western project on the further ground that it is "too speculative and cannot show a probable feasibility." It is quite clear, the Staff concludes, "that the project is not economically feasible."

It must be borne in mind that consideration of economic feasibility as a necessary concomitant of public convenience and necessity is required because of its material effect upon the rates which will eventually be charged to the consumer. This conclusion is inherent in the decision in the case of *Medina Gathering Corporation, et al.*, Commission Opinion No. 397, July 16, 1963, wherein the Commission said, at p. 234 "As long as it is guaranteed that Medina will not, in turn, shift these risks to the consumer by filing increased rates which are based upon a claimed inadequate return, we think it is appropriate that our scrutiny of economic feasibility of this project be closer to the kind of examination we would give a producer's proposed sale and related construction of jurisdictional facilities."

In accordance with the proviso contained in the *Medina* case, *supra*, it is not this Examiner's intention either to pass over the question of feasibility in this case or to accept the applicants' dismissal of the question from consideration as being moot. However, following the path indicated by the *Medina* decision, it follows in the instant case that the feasibility of Western's project should not be judged by the same standards that would apply, for example, to the proposed expansion of a major long line transmission system. While it certainly appears to be speculative as far as the consumer is concerned for he will have adequate price protection.

In order to insure that protection, Western has indicated its willingness to accept a condition, similar to the one imposed in *Medina*, to provide CIG and its customers with ironclad protection against the filing for any increased rates based upon a claimed inadequate rate of return. The risk, if any, in final analysis, thus devolves upon Western and its stockholders.

It would be very difficult, indeed, under these circumstances, to be seriously concerned lest the rate of return to Western be inadequate to attract capital or cause present investors any financial pain. *Cf. Northern Natural Gas Company, et al.*, 25 FPC 1246, 1274, Examiner's decision adopted by Commission, 25 FPC 1234.

This is a risk which Western and its stockholders are willing to undertake. Since there is no risk to the consumer, and he will apparently receive benefits including a lower cost for the gas delivered to CIG, the determination of the question of economic feasibility should follow the lines of *Medina*.

It may be true that because of the open-end arrangement between Western and CIG, and the uncertainty of the amount of gas to be made available to

CIG, under such arrangement, no definite conclusion can be reached with respect to feasibility upon the basis of the showing made, because in essence the determination of such feasibility depends in large measure upon the quantity of the annual sales made.

The same uncertainty, however, appeared in the *Medina* case where the question of feasibility of the proposed system was dependent in large measure upon the results of subsequent drilling. The concern of the Commission, however, rightfully was directed toward the protection of the consumer against having to pay higher rates in the event that the fields were not as productive as anticipated.

The applicants' testimony concedes, and the financial exhibits establish, that based upon the minimum contract quantity of 4,000 Mcf per day Western will have a net operating loss during each of the first three years of operation notwithstanding a positive cash flow in such years, and that the break even point would be reached with annual deliveries of 5,150 Mcf per day. The financial exhibit, based on the concededly optimistic expectation of total developed and undeveloped proven reserves of 66,800,000 Mcf, after further drilling, and delivery of 8,200 Mcf per day, indicates that Western will earn a net return of 3.34 percent in the third year, or 2.12 percent if the investment credit is used to reduce income tax liability. Based upon the latter completely optimistic expectations, it cannot be said that the project is irrevocably economically infeasible. In this connection, it is interesting to note that calculations of net return based on a 6-inch pipeline indicates that based on deliveries of 4,000 Mcf per day, Western would earn 1.28 percent in the third year of operations and 7.14 percent based on deliveries of 8,200 Mcf per day. These estimated rates of return lose their significance when considered in light of the risk factors referred to above.

Western's rates are limited by contract to 20 cents per Mcf plus the right to file for escalations of one cent every five years. Such rates include the 15 cent ceiling price for the area to be paid to the producer U.S. Natural, and the five cent spread for Western for delivery of the gas to CIG. No other provision is made for increase in rates. In the event the venture turns out to be unprofitable the gas-consuming public cannot be called upon to make it profitable. The contract price would control under the circumstances. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corporation*, 350 U.S. 332.

As in *Medina* the risk of economic feasibility rests solely upon Western and its investors and cannot be shifted to the gas-consuming public. Whatever gas enters CIG's line will be at 20 cents plus a possible one cent escalation at five-year intervals. This price is considerably lower and more attractive than CIG's gas price for comparable gas at that point. Western's willingness to have a rate condition attached to its certificate insuring limitation of the five-cent spread over the lawful rate in effect for the sale of the gas to it from U.S. Natural (and such condition will be included in its certificate) results in a somewhat more lenient appraisal of the economic feasibility of the project. Under that kind of appraisal it appears that the effect upon the public convenience and necessity of granting the certificate is considerably minimized even though not entirely removed. *Cf. Medina*, etc.

The burden of justifying the price of the gas which is the subject of the contracts involved in this hearing rests with the applicants. Furthermore, the parties' reliance on the Commission's policy statement price level is not in itself sufficient to justify an initial price at that level. It is only so where there is no record evidence that there has been any preponderance of comparable sales in this area certified at any lower price. *Skelly Oil Company, et al.*, 28 FPC 401, *Union Texas Petroleum, et al.*, 29 FPC 273, 275. There is no evidence in the record of this hearing relating to initial rates for jurisdictional sales currently being made in the area involved, or bearing on the issue of the "in line" price of the gas. In the absence of any evidence to the contrary, or opposition or protest, except as hereinafter referred to in connection with Staff's position re arm's-length bargaining, the guideline price of 15 cents per Mcf at 14.65 psia established by the Commission in its policy statement 61-1, 24 FPC 818, which is the contract price in these proceedings, will be accepted as the "in line" price.

Based upon the cost of service studies presented, including the Staff's, there can be no question but that the 5 cent spread between the purchase price of the gas and the delivery price to CIG is a reasonable one. The applicant has established that there is a market for the gas at the proposed price and, for the purposes of this case in any event, that economic feasibility will not affect the public convenience and necessity. It has made out a prima facie case at the price contracted for, and in the absence of any evidence rebutting its presentation, a certificate should be issued to it. *Hope Natural Gas Company*, 19 FPC 405, 407, *Middle States Petroleum Corporation*, 21 FPC 493, 499.

The staff inferentially attacks the rates fixed in the contracts on the basis of an alleged absence of arm's-length dealings between Western and U.S. Natural. No evidence, however, was introduced to indicate that the 20 cents per Mcf rate to be paid by CIG was higher than that which could have been obtained had there been no affiliation between Western and U.S. Natural. Certainly there was an arm's-length negotiation for the ultimate rate as between the applicants and CIG based on the competitive position of both parties.

Applicants' witnesses testified that due to the inability of U.S. Natural to finance the building of the pipeline, formation and organization of Western was required. Testimony was also adduced on the issue relating to the in fact affiliation between U.S. Natural and Western allegedly precluding arm's-length negotiations. However, resolution of this issue is not required in the instant case since even if Western were a controlled affiliate of U.S. Natural, its certification to construct and operate the pipeline in question would not be precluded in the absence of any evidence indicating that such affiliation resulted in a price increase or other detriment to the ultimate consumer for whose protection the Natural Gas Act was enacted. *Oil Inc., et al.*, 25 FPC 1178, adopting in most part Examiner's decision 25 FPC 1180. Staff's concern that future stockholders might be in a position to render the contract between U.S. Natural and Western void because of the absence of arm's-length bargaining between companies appears to be ill founded. There certainly is no evidence or other indication of any fraud on the stockholders of either company, and no evidence of violation of any fiduciary obligation or unjust enrichment by any of the participating officers of either company, sine qua non for any such action. Certainly in previous cases, even where a conceded affiliate of the producer was to be the transporting company and was specifically created for that purpose, no problem was foreseen with respect to absence of arm's-length dealing or voidability of any contract for the transportation of the gas. See *Oil Inc., supra.*

The decision in the *Oil Inc., et al.* case, *supra*, is peculiarly applicable to the instant proceedings because of the many similarities involved. In that case the stock of the proposed transporting company was owned by the same persons and in exactly the same percentages as that of the stock of the parent and producing company. As in the instant case, the inability of the producers to make deliveries in the field impelled the building of a small pipeline, 16 miles in the *Oil Inc.* case and 26 miles in the instant one. The difference between the price which the transporting company proposed to pay for the gas and the price it proposed to sell and deliver the gas to the major pipeline was $.055 in the *Oil Inc.* case and $.05 in the instant case. The contract involving the transporting company in the *Oil Inc.* case was an open-end one, as in the instant case, providing that it would sell and deliver natural gas up to a maximum daily volume of 12,000 Mcf or 0.0183 percent of the economically recoverable reserves whichever was greater. (The amounts, of course, differ from those involved in the instant case.) In that case, as in the instant one, the testimony of record did not support a reasonable conclusion that an increase in reserves of sufficient magnitude would be obtained to affect substantially the daily contractual volume.

A prima facie showing at least has been made as to (1) the adequacy of the reserves for the purposes of the sale herein proposed; (2) the ability of the applicant to finance the project; (3) the economic and engineering feasibility of the project; (4) the eventual as well as present need in CIG's market for the gas proposed to be furnished; (5) "in line" rates to be charged.

The factors referred to did not result in the rejection of the certificate applications in either the *Oil Inc.* or *Medina* cases and neither do similar factors involved in the instant proceedings necessitate rejection of the certificate applications which are the subject of these proceedings.

For the reasons hereinabove stated, the Staff's motion to dismiss is denied.

ADDITIONAL FINDINGS AND CONCLUSIONS

The following findings and conclusions, made upon consideration of the record made in these proceedings, are deemed to be supplementary and in addition to those hereinabove stated:

(1) The applicant, U.S. Natural, upon initiation of the proposed sale to Western will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the the Commission. It is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Upon initation of its proposed service and sale, the applicant, Western, a Delaware corporation with its principal place of business located in Houston, Texas, will be a "natural-gas company" within the meaning of the Natural Gas Act; will be subject to the jurisdiction of the Commission; and will be a pipeline company for the purposes of the Commission's Regulations.

(3) The facilities to be constructed and operated by Western as herein described and more fully described in the application in Docket No. CP63-329, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and construction and operation thereof by Western are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sale of natural gas by U.S. Natural and the sale of natural gas by Western to CIG, all as heretofore described in the evidence and in the applications, will be made in interstate commerce subject to the jurisdiction of the Commission and such sale together with the construction and operation of any facility subject to the jurisdiction of the Commission necessary therefore are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The sale of natural gas by U.S. Natural, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefore are required by the present or future public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) The construction and operation of the facilities proposed by Western are required by the present or future public convenience and necessity and the certificate therefor should be issued as hereinafter ordered and conditioned.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission on appeal or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to each of the applicants referred to in findings 1 and 2 for the sale of natural gas in interstate commerce for resale as proposed in their applications together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificate issued to U.S. Natural Gas Corporation, the producer applicant, is hereby conditioned to prohibit any total initial price including all reimbursements and charges greater than 15 cents per Mcf at 14.65 psia, from the date of the issuance of this order until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates issued herein are conditioned upon the acceptance of the applicants of amendments to their contract eliminating the discrepancies between the quantity take clauses in such contract and those in the Western Transmission Corporation-Colorado Interstate Gas Company contract and conforming such clauses in the former contract to those contained in the latter contract.

(D) The certificate issued herein to the producer applicant is conditioned upon its acceptance in writing with thirty days of the issuance of this order.

(E) The certificates issued herein are not transferrable and shall be effective only so long as each of the said applicants continues the acts and operation as herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose or prejudice any further proceedings or objection relating to the operation of any price or related provisions in the gas contracts here involved.

(G) A certificate of public convenience and necessity is hereby issued to Western Transmission Corporation for the sale of natural gas to Colorado Interstate Gas Company together with the construction and operation of all facilities subject to the jurisdiction of the Commission and necessary therefor or as described more fully in the application and amendments thereto.

(H) The general terms and conditions set forth in Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificate issued herein to Western Transmission Corporation, and the facilities hereby authorized shall be constructed and placed in actual operation, as provided by subparagraph (b) of Section 157.20 of the Commission's Regulations, within four months from the date on which the Commission's order issues.

(I) The certificate issued to Western Transmission Corporation is further conditioned to require that its rate for sales to Colorado Interstate Gas Corporation shall not at any time exceed the sum of five cents per Mcf plus any rate lawfully in effect for the sale of gas to Western Transmission Corporation by U.S. Natural Gas Corporation.

(J) Western Transmission Corporation shall within 90 days after the first two years of operation file detailed data setting forth its costs upon the basis of actual experience.

(K) Western Transmission Corporation shall file a tariff in accordance with Sections 154.31–41 of the Commission's Regulations Under the Natural Gas Act which shall show as the rate in effect the full compensation to be received by Western Transmission Corporation per Mcf of gas sold as provided for by the contract with Colorado Interstate Gas Company and the conditions herein imposed.

(L) Staff's motion to dismiss the applications of Western Transmission Corporation and U. S. Natural Gas Corporation is hereby denied.

MAX L. KANE,
Presiding Examiner.

OPINION NO. 422-A

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62-1544, ET AL.*

MEMORANDUM OPINION AND ORDER ON REHEARING DENYING MODIFICATION OF OPINION NO. 422, CONTINUING DEFERRAL ON MOTIONS FOR EVIDENTIARY PROCEEDING, AND GRANTING STAY

(Issued May 27, 1964)

Syllabus

1. Decision with respect to refund issue [where temporary contained no refund condition] further deferred until after consideration of previously requested briefs. P. 1316.
2. Moratorium condition was made necessary by fact that any rate filings to a level higher than 18 cents per Mcf in District No. 4 will have adverse impact on pricing structure in area through operation of price redetermination clauses. P. 1317.
3. Escalation increases in excess of 18 cents cannot be allowed. P. 1318.
4. Compression and dehydration of gas are normal requirements imposed on producers and cannot be considered a premium feature of exceptional benefit to either pipeline or consumer. P. 1318.
5. Fact that any one producer's price may have *de minimis* effect on consumers, does not alone justify exceeding for such producer the in-line price for all producers in the area. P. 1319.
6. Upon rehearing, Commission *denies* applications for modification of prior opinion; *continues deferral* on motions for evidentiary proceeding and *grants* partial stay.

---

*Complete listing of case names and docket numbers printed with Opinion 422, 31 FPC 623.

Commissioner Ross *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

O'CONNOR, *Commissioner:*

Applications for rehearing were filed to our Opinion No. 422 and Order issued March 23, 1964, in the above-entitled proceedings by both producers and parties representing the interests of consumers. Certain of the parties also filed motions for stay of the order pending judicial review. With regard to one issue, whether refunds should be ordered where the temporary authorizations did not contain a refund condition, the filings are divided—the producers contending that we have no power to direct refunds or, alternatively, that the proceedings should be reopened for the introduction of evidence bearing thereon, and the consumer representatives arguing that full refunds should be ordered forthwith. On April 30, 1964, we granted rehearing in order to afford further time for consideration of the issues raised.[1]

In our Opinion and Order we determined that the initial price required by the public convenience and necessity for the sales consolidated therein is 16 cents per Mcf, including all reimbursements and charges, and that the certificates issued in the various dockets should be conditioned to this price. We also determined that none of the producers had shown adequate justification for an allowance over 16 cents per Mcf by reason of any of the "special services" performed by them prior to delivery of their gas to the pipeline purchaser. The certificates were further conditioned to provide for a moratorium on the filing of price increases above 18 cents per Mcf for a stated period and for possible revision of the take-or-pay for requirement in each contract on the basis of the final order in the Docket No. R–199 proceeding. Finally, in those dockets where the temporary authorization had a refund condition, the certificate order requires the immediate refund of amounts collected in excess of the in-line level. The matter of whether refunds should be required in those cases where no refund condition was included in the temporary authorization, a decision on which was deferred pending the submission of additional briefs, was discussed in our April 30 order. As therein indicated, no determination has yet been made whether the refunds will be required or if the proceedings will be reopened for the introduction of additional evidence. Our decision with respect to the procedure to be followed will be made after consideration of the briefs and reply previously requested.

Several of the producers argue that we erred in excluding from the record and refusing to consider the economic and financial requirements evidence offered in support of their initial contract prices. They also contend that we erred in failing to grant the application for the issuance of a subpoena to compel the production of the material utilized in determining the Policy Statement rate for initial service in Texas District No. 4. These claims were adequately answered in the Opinion and in our earlier orders and initial decision issued in these proceedings. No useful purpose would be served in recounting the variety of material sought to be introduced or secured or our reasons for denial of the requests. Most of these arguments are similar in nature to those disposed of in the other certificate proceedings referred to in the Opinion and relied upon in this case. The contention, also made, that we have erred in applying the in-line formula as the sole determinant of the present or future public convenience and necessity is identical in all ways to the applicant's argument in Opinion No. 383 and where, in the order denying rehearing, we rejected the claim on the ground that the courts considering the issue have upheld our use of "sales prices in the area as the basis for fixing the initial prices in certificate cases and indicate that the Commission was not required to consider other evidence as to financial position and costs of production."[2]

---

[1] A listing of the parties applying for rehearing and/or stay is included in the footnotes to the April 30 order, 31 FPC 1041.

The charge of error in conditioning the certificates to the final order in the rule-making proceeding in Docket No. R-199 likewise has been considered by us in a number of past proceedings. On each occasion the requests for its deletion have been denied.[3] The provision was upheld in the recent decision of the D.C. Circuit, although the remand of the case has been temporarily stayed. As drafted, the condition provides for a maximum reduction in the take-or-pay requirement to 80 percent of the contract quantity and has been so limited that it will have only prospective application. "Should the producers here involved be required to file modified provisions they could then obtain review."[4] We are convinced that the protection of the public interest represented by the condition is necessary. The requests for modification will be denied.

All applications for rehearing filed by the producers allege that we erred in imposing a condition limiting the filing of price increases to 18 cents per Mcf pending a final decision in the Texas Gulf Coast area rate proceeding in Docket No. AR64-2 or until January 1, 1968, whichever is earlier. We have indicated that the condition was made necessary by the fact that any rate increase filings to a level higher than 18 cents per Mcf in District No. 4 will have an adverse impact on the pricing structure in this area through the operation of price redetermination clauses. We further indicated that the condition was the same as that applied in another proceeding, *Hassie Hunt Trust, Operator, et al.*, involving other sales by other producers from this same area. On April 17, 1964, we issued an order in the named proceeding denying rehearing on the price moratorium and specifying in detail the basis on which the 18-cent limitation was derived and our reasons for imposing the condition. As we stated, "The purpose of the Section 7 condition on the initial price can be effectively frustrated if six months later the producer is free to increase his price to levels that will raise the level of price redetermination rates in the area. In such circumstances the *CATCO* command to 'hold the line' would become almost impossible of fulfillment. The imposition of a moratorium on the certificate at the maximum price which, for the reasonable future, can be found to be consistent with the public interest is, we believe, a practical method of meeting the Commission's obligation with fairness to both the producers and the public." The producers whose initial contract prices are less than 18 cents may file increases up to this amount at such times as their contracts permit. Those producers whose initial price is 18 cents or more, and whose certificates have been conditioned down to the 16-cent in-line price, are able to file immediately for an increase under Section 4 to 18 cents and to collect this price in accordance with the appropriate terms. It is only in regard to escalations in excess of 18 cents that we have concluded increases cannot be allowed.

---

[2] *Texaco Seaboard, Inc.*, Opinion No. 383-A, issued August 27, 1963, 30 FPC 613 at p. 615. We note that in its petition for certiorari to review the D.C. Circuit's decision of January 23, 1964 in *Skelly*, Prado Oil & Gas Co. seeks to again present to the Supreme Court the question of the exclusion of "probative cost and financial evidence adduced by producers in support of their initial contract prices." (Brief for petitioners, p. 2.)

[3] *Skelly*, Opinion No. 362-A, 28 FPC 1065 at 1067; *Texaco Seaboard, Inc.*, Opinion No. 383-A, *supra*, p. 615; *Placid Oil Co.*, Opinion No. 398-A, 30 FPC 682, 683-684.

[4] *P.S.C. of New York* v. *F.P.C.*, No. 17582, *et al.*, 329 F. 2d 242, D.C. Cir., January 23, 1964, slip opinion p. 248.

The Supreme Court has re-emphasized the Commission's duty to exercise its certificating authority in order to prevent a triggering of general price raises in the recent case of the *F.P.C.* v. *H. L. Hunt, et al.*, decided March 30, 1964 376 U.S. 515. While the issue in the case dealt with our power to condition temporary certificates, the court stated that "[C]learly, the Commission was given the power to lay down the conditions precedent to the entry of the natural gas into interstate commerce . . ." and cited cases in which the Commission "required modification of many tariff and contract provisions as a condition to the granting of a certificate." The Court observed that "the experience since our opinion in *Atlantic Refining Co., supra.*, indicates that a triggering of price raises often results from the out of line initial pricing of certified case." The reasonable conditions herein imposed are to prevent such triggering. In this way, and to our minds in no other, can we continue to "hold the line" pending the determination of just and reasonable rates. Without it, the "complete, permanent and effective bond of protection" which the court has described as the purpose of the Act becomes grossly complete, temporary in duration and most importantly, of limited efficacy in protecting the consumers whose obligation it will be to pay the excess charges.[5]

Texaco Inc., *et al.*, Sun and Clark allege error in that, as they claim, we have failed to consider the value of the special services performed by the producers beyond the wellhead. In each instance the charge for the special services was included in the producer's initial contract price. We have indicated that application of the in-line comparison requires that we give consideration at the time of certification to "premium features" of a sale which are of objectively measurable value.[6] This is not to say, however, that all the special activities performed by the producer are *ipso facto* "premium features." Sun contends that it is entitled to an allowance over the in-line price because it incurs charges varying in amount from 2.0 to 3.74 cents per Mcf for gathering, compressing and dehydrating its gas prior to delivery to the pipeline purchaser. As stated in the Opinion, all but one sale permanently certified in the District at 15 cents or higher involve some gathering before the delivery is effected. Compression of the gas where necessary to enable its entry into the pipeline and dehydration for removal of excess water content are normal requirements imposed on producers and cannot be considered a premium feature of exceptional benefit to either the pipeline or the consumer.

---

[5] That the refund remedy is itself not adequate in many situations to protect the public was specifically recognized by the Supreme Court in its recent decision in *F.P.C.* v. *Tennessee Gas Transmission Company, et al.*, 371 U.S. 145, 154, where it stated:

> . . . True, the exaction would have been subject to refund but experience has shown this to be somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due.

This general inadequacy of the refund remedy is additionally highlighted in this proceeding by the extensive repercussions which could flow from the very collection of the increased rates provided in the rate schedules. *Placid Oil Co., et al.*, Opinion No. 398, issued July 17, 1963, 30 FPC 283, 297–298. This case is currently under review before the Fifth Circuit in *Callery Properties, Inc., et al.* v. *F.P.C.*, No. 20872, *et al.* [Ed. note, Reversed and remanded, 335 F. 2d 1004 : petitions for cert. pending.].

[6] *Medina Gathering Corp., et al.*, Opinion No. 397, issued July 16, 1963, 30 FPC 227, 231.

Although the transportation charges incurred by Clark in effecting delivery of its gas to the main line of Tennessee Gas Transmission Company were expressly considered at pages 637, 638 of the Opinion, Clark contends that we have disregarded these special circumstances in refusing to permit it an allowance over 16 cents per Mcf. The reason for refusing to grant an extra allowance is brought out by Clark itself where, in the application for rehearing, it stated, "Tennessee does not come anywhere near the producing leases of Clark and [Clark] *in order to sell the gas* has paid a gathering company to transport the gas to Tennessee." (emphasis added) Whether Clark's leases are less advantageously located in relation to the line of its buyer than are those of other sellers, or its reserves are not of sufficient size to warrant Tennessee's extension of a purchase lateral to the central points to which Clark does gather the gas, are immaterial to our determination. The fact is that Clark has incurred these additional costs solely "in order to sell the gas." As such they are as much a cost of doing business for Clark as any other expenses incurred by it in the production and sale of its gas. Clark's gas as delivered to Tennessee is worth no more, or the public convenience and necessity does not require that it be paid more, than the initial price at which we have determined the certificates should be issued. To the extent that other producers may not incur the additional transportation charge, they will perforce net a greater amount per Mcf assuming equality in the other costs of production. This is not to say, however, that the consumer is to be required to make up for what is an inherently lesser value of Clark's gas gathered at the central field point, nor is he to be required to compensate Clark an additional amount because of Clark's inability to strike a better bargain for its production.

Sun asserts error in our refusal to consider evidence relating its initial contract prices to prices paid by the ultimate consumer. The effect of any one producer's sales price may always be *de minimis* in its effect on consumers. This does not, alone however, justify exceeding for that one producer what is determined to be an in-line price for all producers in a given area. Sun also points out that one distributor has refused to flow through pipeline refunds. Thus, Sun assumes that the benefits of the prospective price reductions and refunds ordered in this proceeding will likewise not accrue to the ultimate consumer. As we have repeatedly stated, area in-line prices are established upon prices certified in the area. The lodging of refunds in either purchasing pipelines or local distributors has never been a determinant in establishing this price. Whether it is relevant in determining whether refunds should be ordered in temporaries not containing refund conditions is not before us at this time.

The application for rehearing filed by the Eastern Seaboard Interveners, which has been adopted by the Public Service Commission of New York and The Brooklyn Union Gas Co., alleges error in our finding of an in-line price level of 16 cents per Mcf. These arguments are the same as those dealt with in the Opinion; they include no material not previously considered by us in reaching our determination.

A number of applications for rehearing include motions for stay of ordering paragraphs (B), (C), (E), (F), (G), (H) and (I) pending the outcome of judicial review. Paragraphs (B) and (C) apply the 16-cent condition to the initial prices and require the filing of supplements to the presently effective rate schedules to reflect the conditioned price as the initial rate. Paragraphs (E) and (F) provide for the making of refunds under the four refund conditioned temporaries where deliveries were made at prices in excess of 16 cents per Mcf and for the submission of a report of compliance. Paragraph (G), as indicated earlier, deals with the issue regarding refunds under non-refund conditioned temporaries. Paragraphs (H) and (I), respectively, provide for the moratorium on the filing of price increases in excess of 18 cents per Mcf and condition the certificates to the outcome of the rule-making proceeding in Docket No. R-190. Consistent with our resolution of similar requests,[7] stay of paragraphs (C) and (E) will be granted under the terms hereinafter ordered. Stay of paragraphs (B) and (F) are unnecessary. The motions for stay of paragraph (G) have been denied in the April 30, 1964 order. Stay of paragraph (H) will be denied, since to grant the request would be to defeat the very purpose for which the condition has been instituted. Paragraph (I) has no immediate application and therefore, no stay of the provision is necessary.

The Commission finds:

(1) The assignments of error and grounds for rehearing and reopening set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 422, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) Good cause exists for granting, in part, the motions for amendment to the Order issued herein on March 23, 1964, so as to stay the actions required by paragraphs (C) and (E) pending judicial review of Opinion No. 422.

The Commission orders:

(A) The completion of the acts and compliance with the requirements set forth in ordering paragraphs (C) and (E) of the Order accompanying Opinion No. 422 are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion or until the Order otherwise becomes final, provided, however, that with respect to all amounts herein allowed to be charged in excess of the rate prescribed in paragraph (B) of the said Order, each applicant shall execute and file within 60 days an agreement and undertaking to refund all such excess amounts received after March 23, 1964, with interest at 7 percent per annum from the date of receipt to the date of payment, upon affirmation of the Order.

(B) The motions for stay of paragraphs (B), (F), (H) and (I) of the Order accompanying Opinion No. 422 are denied.

(C) The deferral of action on the motions for evidentiary hearing under paragraph (G) is continued until further order of the Commission.

(D) In all other respects said Opinion and Order are confirmed.

Commissioner Ross *dissenting* for the reasons set forth in his dissenting statement to Opinion No. 422 issued March 23, 1964, 31 FPC 623 at 642.

---

[7] *Hassie Hunt Trust, Operator, et al.*, Docket No. G-19115, *et al.*, Opinion No. 412-A, issued January 24, 1964, 31 FPC 181; orders issued February 24 and April 17, 1964, 31 FPC 447 and 946.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP64-36

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING

(Issued May 27, 1964)

Texas Eastern Transmission Corporation (Texas Eastern) on April 24, 1964, tendered for filing certain revised tariff sheets[1] to its FPC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to become effective as of January 1, 1964. The revisions propose reductions in Texas Eastern's jurisdictional rates of approximately $2,365,000 annually, based upon sales for the year 1963.

The proposed rate filing reflects a reduction in Texas Eastern's cost of service based upon, (1) the recent change in the Federal income tax rate for corporations from 52% to 50%; (2) the lowering of its purchased gas costs resulting from rate reductions by Texas Gas Transmission Corporation and Southern Natural Gas Company, reflecting the reduction of Federal income tax rates; (3) a reduction in Texas Eastern's tax liability to the State of Texas by reason of the unconstitutionality of the Texas Dedicated Reserve Gas Tax; and (4) a lowering in rates of certain of Texas Eastern's gas suppliers.

In its letter of transmittal, Texas Eastern states that the reduction in rates reflecting a reduction in its tax liability to the State of Texas by reason of the unconstitutionality of the Texas Dedicated Reserve Gas Tax is in accordance with the letter order of the Commission dated September 25, 1962 in Docket Nos. G-12706 and G-18841 and that the refunds will be made when it has received such refunds from the State of Texas. As to the reduction in rates related to the rate reduction of certain of Texas Eastern's suppliers, it states that such reductions were not previously reflected in its rate reductions and are being made pursuant to paragraph (F) of the Commission's order issued January 25, 1961 in Docket Nos. G-12706 and G-18841.

Texas Eastern urges the Commission to waive to the extent necessary, its Regulations under the Natural Gas Act in order to permit the tendered revised tariff sheets to become effective on January 1, 1964.

The proposed rate filing does not change or otherwise affect Texas Eastern's existing obligations under any settlement agreements or Commission orders in any proceedings involving the rates and charges of Texas Eastern.

No protests or objections to Texas Eastern's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the 30-day notice and other requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified above may become effective as hereinafter ordered.

---

[1] Second Revised Sheets Nos. 12A, 28A and 44B; Fourth Revised Sheets Nos. 65G and 65H; Fifth Revised Sheets Nos. 7, 9, 10, 11, 14, 16, 17, 19, 23, 30, 32, 33, 35, 39, 41, 44, 46, 48, 49, 51, 55, 65B, 65F; Sixth Revised Sheets Nos. 27, 56 and 59; Seventh Revised Sheet No. 24; Ninth Revised Sheet No. 61 to Texas Eastern's FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Sheet No. 322 and Third Revised Sheets Nos. 232 and 235 to Texas Eastern's FPC Gas Tariff, Original Volume No. 2.

(2) The proposed revised tariff sheets and the rate reductions contained therein are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day notice requirement and other provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets described above are accepted for filing to become effective January 1, 1964.

(B) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission Staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Texas Eastern or any other persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO REOPEN PROCEEDINGS FOR ADDITIONAL EVIDENCE

(Issued May 27, 1964)

On April 29, 1964, Placid Oil Company, Hassie Hunt Trust, H. L. Hunt and Hunt Oil Company (Movants) filed a "Joint Application for Rehearing and Reconsideration" of our order of March 31, 1964, denying Movants' motion to reopen the above-captioned proceeding for additional evidence. Since our order of March 31, 1964, is not a "final decision or order" and is not subject to an application for rehearing,[1] we shall treat Movants' pleading as a motion for reconsideration and deny such motion.

In both the motion to reopen and the motion for reconsideration of the denial of such motion, Movants contend that the examiner excluded proper evidence and that "new evidence", developed in Area Rate Proceeding, AR61-2, should be admitted into this proceeding. The latter is characterized by Movants as "Group Composite Cost of Service Exhibits".

In our order denying Movants' motion to reopen, *supra*, we concluded that both the excluded evidence and the "new evidence" is of a kind not relevant in producer certificate cases where the proper initial price should be determined by reference to the "in-line" price in the area rather than upon the determination of just and reasonable rates. (See cases cited therein, 31 FPC 756). We adhere to that view.

The Commission finds:

No new facts or principles of law have been presented in the motion for reconsideration which were not fully considered by the Commission prior to the issuance of the aforesaid order denying motion to reopen the proceeding for additional evidence, or, having now been so considered, warrant further hearing, modification or revocation of such order.

---

[1] See Rules of Practice and Procedure, Sec. 1.34 (a) (18 CFR 1.34 (a)).

The Commission orders:

The joint motion for reconsideration filed herein on April 29, 1964, by Placid Oil Company, Hassie Hunt Trust, H. L. Hunt and Hunt Oil Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

F. JULIUS FOHS, ET AL., DOCKET NO. RI61–411

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued May 28, 1964)

On April 24, 1964, F. Julius Fohs, *et al.* (Fohs) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sale of natural gas to Tennessee Gas Transmission Company (TGT) by Fohs. The offer relates to a sale made under Fohs' FPC Gas Rate Schedule No. 4 in Matagorda County, Texas (Texas R. R. Com. District No. 3). The proposed increased rate of 16.16947¢ was suspended by order of the Commission for the statutory period, and was made effective by Fohs on November 27, 1961.

Under the terms of the offer, Fohs proposes to eliminate the favored-nation, price redetermination and the present periodic escalation provisions from its rate schedule and to establish a 14.6¢ per Mcf rate for the subject sale. Fohs also proposes to limit future periodic escalations to 1.0¢ per Mcf on January 1, 1969, and five years thereafter. Fohs' annual revenues will be decreased about $20,800 from the presently effective rates. No protests or objections have been filed to the offer.

Fohs will refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $41,600 exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Fohs' offer of settlement shall not be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Fohs' rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Fohs' on April 24, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Fohs' April 24, 1964, is hereby approved in accordance with the provisions of this order.

(B) Fohs shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 14.6¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 4, eliminating the favored-nation, price redetermination clauses, and amending the periodic escalation provisions therein. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Fohs shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate with simple interest at 7 percent, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order; the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Fohs has complied with the terms and conditions of the order, the rate and charge of 14.6¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Fohs' offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Fohs, including area rate or other similar proceedings.

Before Commissioners: Harold C. Woodward, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G-16760, ET AL.; UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. G-18389

ORDER DENYING MOTION TO SEVER AND FOR ISSUANCE OF PERMANENT CERTIFICATE

(Issued May 28, 1964)

On April 14, 1964, Union Oil Company of California (Union) filed a motion in the above-styled proceedings requesting severance from the consolidated proceedings in Docket No. G-16760, *et al.*,[1] and for the issuance of a permanent certificate for sales which it is presently making to Florida Gas Transmission Company.[2] These sales, made under contract dated February 18, 1959, from the Kentucky Mott Field, Victoria County, Texas, have been made pursuant to a temporary certificate granted February 19, 1960, in Docket No. G-17896, *et al.* Union's initial rate was 17¢ per Mcf, however, a rate of 18¢ per Mcf is being collected subject to refund in Docket No. RI63-355. This rate has been collected since March 4, 1963. Union now proposes a prospective settlement rate of 16¢ per Mcf and requests that its application be severed from the consolidated proceedings in Docket No. G-16760, that it be granted a permanent certificate at the 16¢ rate, and be relieved of refund obligations which may arise in Docket No. RI63–355. In support of its motion, Union states that the amounts involved are *de minimis* and do not justify its participation in the present proceedings.

---

[1] Consolidated by order of the Commission issued March 25, 1964.

[2] Formerly designated Coastal Transmission Corporation.

No responses or answers to the motion have been filed.

The Commission finds:

In view of the consolidated proceeding in Docket No. G–16760, *et al.*, instituted to determine the in-line rate for sales of natural gas from Texas Railroad District No. 2, good cause has not been shown for allowing Union's proposed rate or for permitting severance of this matter from such consolidated proceedings or for relieving Union of refund obligations in Docket No. RI63–355.

The Commission orders:

Union's motion for severance and issuance of a permanent certificate filed April 14, 1964 in the above-styled proceedings is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–12193, ET AL.,[1] AND G–12401

ORDER AMENDING ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued May 28, 1964)

By order issued May 5, 1964, *supra* p. 1101, we approved a rate settlement proposal filed in these proceedings by Socony Mobile Oil Company, Inc. (Socony) on March 30, 1964. Subsequent to the issuance of said order, a review of the files and records of the Commission concerning the proceedings involved herein, and reconsideration of certain matters in the light of other of our recent orders approving general rate settlements, indicate that the order should be amended in certain respects.

It appears that sales of natural gas by Socony to Lone Star Gas Company in the Katie Field, Oklahoma, under Socony's Rate Schedule No. 77 have ceased. Therefore, the Seventh Amendment to the Statement of General Policy, No. 61–1 is not applicable thereto, and the settlement rate set forth on page 1112 of Appendix A to the order should be 11.0¢ per Mcf.

On page 1104 of the order, in the last paragraph, we provide that the certificate to be issued in Docket No. CI61–1281 shall be conditioned to provide that the rate for acreage in the Oklahoma Panhandle shall not exceed 17¢ per Mcf at 14.65 psia, including tax reimbursement. However, we do not provide for an initial rate for the acreage in the Other Oklahoma area for the sale under said docket. That rate shall not exceed 15.0¢ per Mcf at 14.65 psia, including tax reimbursement, and said certificate shall be so conditioned.

Included in the settlement were three rate schedules in Texas Railroad Commission District Nos. 2 and 4 where sales are being made under temporary certificates and in-line rates have not been determined for such sales. Consistent with our settlement orders in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837, and *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.*, 30 FPC 5 (order issued July 1, 1963), we shall condition the certificates to require adjustment of the rates under Socony's FPC Gas Rate Schedule Nos. 236–2, 328 and 330 to conform with the appropriate in-line price determination. Socony has advised that it is agreeable to such a condition.

---

[1] The additional dockets involved herein are set forth in the Appendices to the order issued herein on May 5, 1964, and additionally certain proceedings are included by this order.

The order herein of May 5, 1964, included rates under Socony's FPC Gas Rate Schedule No. 332 in Texas Railroad Commission District No. 4 and its Rate Schedule No. 164 in South Louisiana at our guideline ceilings. Permanent certificates had previously been issued for these sales at or above our guideline ceilings. In view of the fact that the lawfulness of these rates is presently under review in area proceedings in Docket Nos. AR64–2 and AR61–2, respectively, and the moratorium agreed to by Socony, approval of the settlement rates is appropriate.[2]

We shall also amend the order of May 5, 1964, herein, to correct typographical errors and inadvertent omissions in listing dockets for severance and termination.

The Commission finds:

Amendment of the order issued herein on May 5, 1964, as hereinafter provided is in the public interest, and is appropriate in carrying out the provisions of the Natural Gas Act.

The Commission orders:

The order approving rate settlement proposal, terminating proceedings and prescribing refunds, issued in these proceedings on May 5, 1964, is hereby amended in the following respects:

(1) Approval of this settlement is conditioned so as to require Socony to reduce its rate under its FPC Gas Rate Schedule No. 328, Docket No. CI63–875, to the in-line rate finally determined, after court review or otherwise, in the *Sinclair Oil & Gas Company, et al.*, proceedings, Docket No. G–17760, *et al.*, and to reduce its rates under its Rate Schedule Nos. 236–2 and 330, Docket Nos. CI60–653 and CI63–465, respectively, to the in-line rate finally determined after court review or otherwise, in the *Amerada Petroleum Company, et al.*, proceedings, Docket No. CI62–1544, *et al.* In the event that a rate is reduced as a result of such proceedings, Socony shall refund excess amounts collected from the date of this order. The refund requirement imposed herein shall not be construed to affect or limit the position of the parties in the *Sinclair* or *Amerada* proceedings with respect to refund obligations under temporary authorizations.

(2) Ordering Paragraph (G) of the order (page 1106) is hereby amended to read:

(G) Upon full compliance by Socony with all the terms and provisions of this order, as amended, the Section 5(a) proceedings in Docket No. G–12401, and the Section 4(e) proceedings listed in Appendix A hereto, except those related to Rate Schedule No. 16, shall terminate.

(3) Ordering Paragraph (H) of the order (page 1106) is hereby amended to read:

(H) Upon termination of the Section 4(e) proceedings listed in Appendix C, as amended, said proceedings shall be severed from the consolidated pro-

---

[2] See order approving settlement, *Texaco Inc.*, Docket No. G–8969, *et al.*, issued December 30, 1963, 30 FPC 1631.

ceedings in Docket Nos. AR61–2, AR64–1 and AR64–2, respectively; the Section 7(c) proceedings listed in Appendix C are hereby severed from their respective consolidated proceedings.

(4) Page 1113 of Appendix A to the order is hereby amended to add Docket No. RI60–391 as a Section 4(e) proceeding involving Socony's Rate Schedule No. 233. Additionally, a footnote ("QQ") should be shown to the data concerning Socony's Schedule No. 326 set forth on page 1113, to note that the proceedings in Docket No. RI60–198 are terminated only insofar as they pertain to Socony.

(5) Appendix C to the order is hereby amended to add Docket Nos. G–20300, G–20301 and RI60–391 to the Section 4(e) proceedings presently consolidated with Docket No. AR64–1. Additionally, Docket No. G–20344 is added to the Section 4(e) proceedings presently consolidated with Docket No. AR64–2.

(6) Docket No. G–12480 in footnote 8 on page 1104 of the order is corrected to read Docket No. G–12840.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TRANSWESTERN PIPELINE COMPANY, ET AL., DOCKET NO. CP63-204, ET AL.

ORDER DENYING MOTION TO SUSPEND OR TERMINATE PROCEEDINGS

(Issued June 1, 1964)

On April 30, 1964, the Public Utility Commissioner of Oregon (Oregon) filed with this Commission a motion to suspend or terminate the above-named proceedings. This motion alleges that as a result of the decision in *United States* v. *El Paso Natural Gas Company, et al.*, 376 U.S. 651, No. 94, October term, 1963, decided April 6, 1964, the former Pacific Northwest Pipeline Corp. (Pacific) will once again become a competitor for the California market, and that unless the present proceedings are suspended, or, in the alternative, terminated, Pacific will be precluded from effective competition for that market.

Answers to this motion were filed by El Paso Natural Gas Company, Gulf Pacific Pipeline Company, Pacific Lighting Gas Supply Company, Southern California Edison Company, Humble Oil & Refining Company, The Air Pollution Control District of The County of Los Angeles, and the Commission Staff. All of these answers, as well as a telegram filed by Transwestern Pipeline Company, were in opposition to the Oregon motion.

Oregon has taken the position that as a result of the Supreme Court's decision a new "Pacific Northwest Pipeline Corporation" must be created, El Paso must be divested of this new corporation and the new corporation will become a competitor for the California market. In the meantime, it would appear, neither El Paso, nor any other pipeline company should be permitted to expand service to the gas market in California, whatever the needs may be. Of course, Oregon does not say, but it must necessarily follow, that any expansion by the existing El Paso into the Pacific Northwest territory, must be held in abeyance pending the re-creation of Pacific Northwest. Such a result, in either case, is undesirable and unwarranted. It would serve no purpose to delay expansions into either of these territories pending the rebirth of Pacific Northwest.

Although the Supreme Court ordered divestiture without delay, we cannot assume that it will occur instantaneously. We must recognize that the economics of implementing the Court's decision must be considered. The new company, and the old, must have economic stability. The nature of the divestiture, intertwined as it is with the necessity for action both by the District Court and the Commission, almost without precedent, dictates that it must take some time to complete. It would be highly improper for this Commission to delay the instant proceedings indefinitely on the mere speculation that at the end of that period a new company will be created which will be both willing and able to serve southern California at that time.

Indeed it can hardly be alleged that the Supreme Court contemplated any such action in the *El Paso* opinion, since they referred to "* * * new increments of demand that may emerge with an expanding industrial or household use of gas." (p. 660) There is no reason for this Commission to delay these proceedings, for a reconstituted Pacific Northwest should find ample room for expansion in the foreseeable future.

The Commission cannot penalize the consumers in southern California by denying to them natural gas (assuming a need therefor) which existing pipeline companies are able and willing to serve to them, or, for that matter, to penalize those natural gas companies which are presently seeking to serve that market. This proceeding has been designed both to test those needs and to determine whether any of the companies whose applications are consolidated in the proceeding should construct and operate facilities to deliver additional volumes of gas to the southern California market. It should not be delayed indefinitely on the chance that a reconstituted Pacific Northwest could immediately compete for the same market.

The Commission orders:

The Public Utility Commissioner of Oregon's motion to suspend or terminate these proceedings should be, and is hereby, denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

CUMBERLAND NATURAL GAS COMPANY, INC., DOCKET NO. G-18740; J. C. MILLER OIL COMPANY, INCORPORATED, DOCKET NO. G-18743; TRUMAN DRAKE, DOCKET NO. G-18744; CREEK OIL COMPANY, INC., DOCKET NO. CI64-457; J. C. MILLER OIL COMPANY, INCORPORATED, DOCKET NO. CI64-1107

ORDER DENYING STAY OF ORDER, GRANTING REHEARING AND RECONSIDERATION OF ORDER VACATING ORDER IN PART, DENYING MODIFICATION OF TEMPORARY CERTIFICATES, GRANTING INTERVENTIONS, CONSOLIDATING PROCEEDINGS AND SETTING DATE OF HEARING

(Issued June 1, 1964)

On June 8, 1959, J. C. Miller Oil Company, Incorporated (Miller) filed in Docket No. G-18743 and Truman Drake filed in Docket No. G-18744, applications for certificates of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act for authority to sell natural gas to Cumberland Natural Gas Company, Inc. (Cumberland).

Cumberland concurrently filed a related application in Docket No. G-18740, for a certificate of public convenience and necessity pursuant to Section 7(c) of the Act, for authority to construct gathering facilities and to sell natural gas to Texas Gas Transmission Corporation (Texas Gas).

All of the above applications contained requests for the issuance of temporary certificates, and temporary certificates were issued in all three dockets. However, action on the permanent certificates was held in abeyance pending receipt of further information.

Notice of the filing of these applications was issued April 7, 1964, (29 F.R. 5518).

On October 16, 1963, Creek Oil Company, Inc. (Creek) filed in Docket No. CI64-457 an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Act, for authority to sell natural gas to Cumberland. Cumberland thereupon amended its application in Docket No. G-18740 to include construction and operation of additional facilities necessary to purchase the gas from Creek.

Tartan Oil Company (Tartan) filed petitions for leave to intervene in Docket Nos. CI64–457 and G–18740 on November 14, 1963, and December 11, 1963 respectively.

On March 18, 1964, Miller filed in Docket No. CI64–1107 an application, pursuant to Section 7(b) of the Act, for permission and approval to abandon the sale of gas and use of facilities temporarily authorized in Docket No. G–18743. Notice of this application was issued March 24, 1964, (29 F.R. 4690) and a petition for leave to intervene together with an objection and motion to dismiss the abandonment application and terminate that proceeding, was thereupon filed by Cumberland on April 20, 1964.

On April 2, 1964, an order was entered in Docket Nos. G–18740 and CI64–457 granting, inter alia, a temporary certificate to Creek to sell gas to Cumberland as proposed in its application, denying Tartan's petition for leave to intervene in that proceeding, and amending the temporary certificate previously granted to Cumberland to conform to Cumberland's application as amended.

On May 4, 1964, Tartan filed a petition for (1) rehearing and/or reconsideration of our order of April 2, 1964, (2) stay of said order pending such rehearing and (3) vacation of said order to permit Tartan to intervene in Docket No. CI64–457. The petition further requests certain amendments to be made to the temporary certificates issued in Docket Nos. G–18740 and CI64–457.

The petition seeks vacation of the Commission's order for the purpose of allowing Tartan full participation in the matters relating thereto for the purpose of showing that the reserves of Creek, and the availability of gas therefrom are so small (700 Mcf daily or a maximum of 255,500 Mcf annually) it is not in the public interest to grant authorization for the sale thereof, or for the construction of facilities by Cumberland to the source thereof.

Tartan further asserts the proposals of Creek to sell and deliver gas to Cumberland at the rate of 360,000 Mcf annually from reserves stated to be only 1,000,000 Mcf will exhaust Creek's reserves in three years, and such rapid drainage can cause water to rise in the area of Creek's well so as to cut the field in two, defeat recovery of gas from other parts of the field, and make eventual use of the field for storage of off-peak gas for peak-day deliveries impossible.

In addition to the assertions that it is uneconomic to permit Creek to sell gas to Cumberland and to permit Cumberland to extend its facilities to Creek's production, Tartan assails the Commission action in granting Creek and Cumberland temporary authorizations on the asserted grounds (1) that no emergency situation exists permitting temporary authorizations to be issued by the Commission, and (2) the Commission erroneously held that in any event Tartan had not demonstrated any basis for intervention, since the functions of prorating takes and adjusting correlative private rights of producers are within the purview of the State of Kentucky, and not of the Commission.

It is clear that, even assuming the existence of Tartan's assertions of fact, it would not be appropriate for the Commission to stay its order of April 2, 1964. To stay our said order and/or to modify the temporary authorizations granted to Creek and Cumberland would, under the circumstances, be tantamount to denying Creek the very right being presently exercised by Tartan; namely, the production of natural gas from its properties.

However, it appears from the petition filed by Tartan that Tartan may be in a position to provide useful information to the Commission in the hearing with respect to the over-all nature of Cumberland's activities which is clearly warranted by the various allegations which have been made in these several dockets.

It also appears that the public interest would be served by setting for early consolidated hearing the various certificate applications plus Miller's application to abandon its sales to Cumberland.

As purchaser of the gas, Cumberland has an interest in said abandonment proceeding that is not adequately represented by existing parties. However, it is clear that there can be no basis for denying Miller the right to a hearing on his abandonment application, and Cumberland's petition to dismiss or terminate that proceeding must be rejected.

The Commission finds:

(1) The grounds relied on by Petitioner Tartan in Docket Nos. CI64–457 and G–18740 are insufficient to warrant stay of our order of April 2, 1964, or any modification of the temporary certificates issued in said proceedings.

(2) Upon reconsideration of the Petition of Tartan for leave to intervene in Docket No. CI64–457, and upon initial consideration of the petitions of Tartan for leave to intervene in Docket No. G–18740 and of Cumberland for leave to intervene in Docket No. CI64–1107, it appears that the participation of the above-named Petitioners in said proceedings may be in the public interest, and that we should exercise our discretion to permit such intervention.

(3) These related matters should be heard on a consolidated record and disposed of under the applicable rules and regulations.

The Commission orders:

(A) The motion of Tartan that our order of April 2, 1964, be stayed or, in lieu thereof, that the temporary certificates issued in Docket Nos. CI64–457 and G–18740 be modified, is hereby denied.

(B) The petition of Tartan for rehearing and/or reconsideration of our denial of Tartan's petition for leave to intervene in Docket No. CI64–457, is hereby granted, and paragraph (K) of our order of April 2, 1964, is hereby vacated.

(C) Tartan is hereby permitted to intervene in Docket Nos. CI64–457 and G–18740 subject to the rules and regulations of the Commission.

(D) Cumberland is hereby permitted to intervene in Docket No. CI64–1107 subject to the rules and regulations of the Commission.

***Provided, however,* that the participation of each Intervener in these proceedings shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and**

***Provided, further,* that the admission of such Interveners shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered in these proceedings.**

(E) The motion of Cumberland to dismiss the application of Miller and terminate the proceedings in Docket No. CI64–1107 is hereby denied.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Section 7 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a consolidated hearing will be held on July 13, 1964, at 10:00 a.m. (EDT) in a Hearing Room of the Federal Power Commission, 441 G Street, N. W., Washington, D.C. concerning the matters involved in and the issues presented by all of the applications listed in the heading hereto.

(G) Direct testimony and exhibits of all applicants shall be filed in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.26) on or before July 8, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP61-143; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-149; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-163

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued June 2, 1964)

On March 23, 1964, Colorado Interstate Gas Company (Colorado) in Docket No. CP61-143; on March 30, 1964, Natural Gas Pipeline Company of America (Natural) in Docket No. CP61-149, and Arkansas Louisiana Gas Company (Arkansas Louisiana) in Docket No. CP61-163 filed applications to amend further the Commission's order issued January 3, 1963, in Docket No. CP61-143, *et al.*, as amended, by authorizing the extension of the duration of the certificates of public convenience and necessity issued by said order, as amended, until May 1, 1965, all as more fully set forth in the respective applications to amend further.

The order of January 3, 1963, 29 FPC 8, as amended, issued certificates authorizing Colorado to sell up to 25,000 Mcf of natural gas per day at 14.5 cents per Mcf to Arkansas Louisiana and authorizing the exchange of natural gas among Colorado, Arkansas Louisiana and Natural in order to effect said sale of gas. Said certificates originally were limited in duration to a period extending through December 31, 1963; by order issued December 30, 1963, this period was extended to May 1, 1964.

The gas sold by Colorado is delivered to Arkansas Louisiana by Natural in Grady County, Oklahoma; Colorado delivers equivalent volumes to Natural at an interconnecting point between their two systems in the Mocane field, Oklahoma. Colorado states that it has a supply of gas temporarily in excess of its current market requirements and that, therefore, it is continually attempting to make short-term sales pending future disposition of gas on a long-term basis. Further, Applicant states that the proposed short-term sale will assist in reducing the possibility of having to pay for gas not taken or of having to make gas supply prepayments and in minimizing possible liability under its leases.

On March 23, 1964, Colorado tendered for filing its Third Revised Sheet Nos. 37 and 39, Fifth Revised Sheet No. 38, Second Revised Sheet No. 39A and Original Sheet No. 39B to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the sale of gas to Arkansas Louisiana. Also, on March 23, 1964, Colorado tendered for filing its Fourth Revised Sheet No. 49 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the exchange arrangement.

On March 31, 1964, Natural tendered for filing its Second Revised Sheet No. 32 and Fourth Revised Sheet Nos. 33 and 34 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the exchange arrangement.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register of May 6, 1964 (29 F.R. 5975). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commissioner's order issued January 3, 1963, in Docket No. CP61-143, *et al.*, as amended, be further amended as hereinafter ordered.

(2) The public convenience and necessity require that the revised tariff filings of Natural and Colorado, hereinabove described, be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) The Commission's order issued January 3, 1963, in Docket No. CP61–143, *et al.*, as amended, be and the same is hereby further amended by authorizing the extension of the duration of the certificates of public convenience and necessity issued by said order, as amended, to May 1, 1965, all as hereinbefore described and as set forth in the respective applications to amend.

(B) Colorado's Third Revised Sheet Nos. 37 and 39, Fifth Revised Sheet No. 38, Second Revised Sheet No. 39A, Original Sheet No. 39B and Fourth Revised Sheet No. 49 to its FPC Gas Tariff, Second Revised Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

(C) Natural's Second Revised Sheet No. 32 and Fourth Revised Sheet Nos. 33 and 34 to its FPC Gas Tariff, Second Revised Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

(D) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP64–154; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–155; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI64–781

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULE FOR FILING

(Issued June 2, 1964)

On January 6, 1964, American Louisiana Pipe Line Company (American Louisiana) filed in Docket No. CP64–154 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to expand its system capacity by approximately 88,000 Mcf per day in order to meet the increased demands of existing customers for the 1964-65 heating season, all as more fully set forth in the application on file with the Commission.

Specifically, American Louisiana proposes to construct and operate the following facilities:

(1) A total of 50,000 additional horsepower on Applicant's main line as follows:

(a) 10,000 horsepower at each of three new compressor stations to be known as Station Nos. 1, 7 and 10;

(b) 12,000 horsepower at one new compressor station to be known as Station No. 4;

(c) 2,000 horsepower at each of two existing compressor stations—Station Nos. 5 and 9; and

(d) 4,000 horsepower at existing compressor Station No. 2;

(2) 77.7 miles of 12 to 20-inch diameter gas supply lines in Louisiana; and

(3) Two new purchase meter stations—one each in the Jeanerette and Bayou Fields, St. Mary Parish, Louisiana.

The application indicates that increases in the contract demands of Michigan Consolidated Gas Company and Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) are proposed in the amounts of 50,000 Mcf per day and 35,000 Mcf per day, respectively. The increase in contract demands of certain other customers is proposed in the total amount of 2,670 Mcf per day.

American Louisiana states that the gas supply required to meet the proposed increases in sales will come from reserves connected to its system since its last expansion and from supplies American Louisiana has contracted to purchase from The Atlantic Refining Company (Atlantic), in the Jeanerette and Bayou Fields, St. Mary Parish, Louisiana, at an initial price of 20.625 cents per Mcf.

The total estimated cost of the proposed facilities is $25,107,000, which cost will be financed with funds presently available and which will be generated internally.

On January 6, 1964, as supplemented on April 9, 1964, Michigan Wisconsin filed in Docket No. CP64–155 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to expand its system capacity by approximately 70,000 Mcf per day in order to meet the increased demands of existing customers for the 1964-65 heating season, all as more fully set forth in the application on file with the Commission.

Michigan Wisconsin states that its customers have requested it to supply increases in maximum daily quantities aggregating 71,994 Mcf for the contract year 1964-65. To meet these increased demands, Michigan Wisconsin proposes to purchase an additional 35,000 Mcf per day from American Louisiana and to expand utilization of storage. The application shows that to expand the utilization of storage it will be necessary to complete the second stage of development of the North Hamilton storage field and to provide additions and improvements to facilities in the Austin storage field. The application shows further that these fields are owned by Michigan Consolidated Gas Company (Consolidated) and leased to Michigan Wisconsin. The additional facilities for the two fields will be constructed by Consolidated at an estimated cost of $2,571,000. Further, Michigan Wisconsin will lease said facilities and proposes herein to operate same.

Further, Michigan Wisconsin states that to accommodate normal load growth in various segments of its system, it proposes to construct and operate the following facilities:

(1) 8.2 miles of 30-inch loop line between Stations 10 and Wisconsin A and an additional 2500 horsepower at the latter station;

(2) 9.8 miles of 12-inch loop line on the line extending to Two Rivers, Wisconsin;

(3) 5.5 miles of 10-inch loop line on the line extending to Columbus, Wisconsin; and

(4) 8.7 miles of 12-inch and 12.7 miles of 8-inch loop lines on the line extending to Tomahawk, Wisconsin.

The total estimated cost of these facilities is $3,712,000, which cost will be financed by bank loans and funds generated internally; however, it is contemplated that financing will ultimately be part of an overall financing program involving the issuance of First Mortgage Pipe Line Bonds.

On January 7, 1964, as amended on February 18, 1964, Atlantic filed in Docket No. CI64–781 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to American Louisiana produced from the Jeanerette and Bayou Sale Fields, St. Mary Parish, South Louisiana, all as more fully set forth in the application, as amended, on file with the Commission. The initial price is 20.625 cents per Mcf at 15.025 psia.

Atlantic's application, as amended, is similar to those settlement proposals submitted and approved with respect to the applications for certificates consolidated with *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* Atlantic has agreed that reimbursement for future tax increases should be limited to 50 percent of the increase during the initial first five year period. Additionally, the rate is to be subject to prospective adjustment dependent upon the final determination in Docket No. AR61-2, *et al.*

The provisions for adjustments in rates according to our order or orders in Docket No. AR61-2 seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in the instant case which will control our conclusions in Docket No. AR61-2. The instant proposal also provides that adjustments in price growing out of Docket No. AR61-2 should go into effect upon conclusion of judicial review of our final order therein. We can not now commit the Commission to staying conditionally the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding, and our approval of the application, as amended, herein, will be so conditioned.

On January 7, 1964, Atlantic filed the gas sales contract, dated December 17, 1963, as its proposed FPC Gas Rate Schedule No. 284, together with two letter agreements each dated December 17, 1963, as its proposed Supplement Nos. 1 and 2 to said rate schedule.[1] On February 18, 1964, Atlantic filed a letter dated February 18, 1964, as its proposed Supplement No. 3 to said rate schedule.

On February 5, 1964, as amended on May 1, 1964, Wisconsin Public Service Corporation filed petitions to intervene in Docket Nos. CP64-154 and CP64-155. The burden of such filings is that petitioner does not request formal hearing and does not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, but that petitioner desires to preserve its rights to appear and participate fully in the event that these matters should be set for formal hearing. Inasmuch as the shortened hearing procedure is being used herein, no further action on the intervention petitions appears necessary.

On February 19, 1964, as amended on May 1, 1964, the Public Service Commission of Wisconsin filed a notice of intervention in Docket Nos. CP64-154 and CP64-155. Said notice states that there is no objection to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, and, further, that in the event the shortened procedure is used herein, said notice may be disregarded.

On January 29, 1964, the Public Service Commission of the State of New York filed a notice of intervention in Docket No. CI64-781. However, on February 24, 1964, said notice was withdrawn.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the applications in Docket Nos. CP64-154, CP64-155 and CI64-781 has been filed.

At a hearing held on May 28, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, supplements, amendments and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

---

[1] Proposed Supplement No. 1 is a transmittal letter and agreement and proposed Supplement No. 2 modifies Exhibit B to the gas sales contract.

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 1, 1954, Docket No. G-2306, *et al.* (13 FPC 380).

(2) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1950, in Docket No. G-1302 (9 FPC 167).

(3) Applicant, The Atlantic Refining Company, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(4) The proposed facilities hereinbefore described, as more fully described in the applications in Docket Nos. CP64-154 and CP64-155, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by American Louisiana and Michigan Wisconsin and the operation of the facilities Michigan Wisconsin proposes to lease from Consolidated are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sale of natural gas by Atlantic hereinbefore described, as more fully described in the application in Docket No. CI64-781, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Atlantic, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The sale of natural gas by Atlantic, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by American Louisiana and Michigan Wisconsin and the operation of the facilities Michigan Wisconsin proposes to lease from Consolidated are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(8) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) Public convenience and necessity require that the certificates issued hereinafter to American Louisiana and Michigan Wisconsin in Docket Nos. CP64-154 and CP64-155, respectively, and the rights granted thereunder be conditioned upon said Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(10) The certificate issued hereinafter to Michigan Wisconsin should be conditioned as follows:

(1) The monthly reports being filed by Michigan Wisconsin in compliance with the Commission's order in Docket No. CP63–230 issued November 12, 1963, be continued for the contract year commencing September 1, 1964.

(2) Prepaid gas, applicable to presently certificated gas supply arrangements included in the rate base in any subsequent rate filing will not exceed the balance as of December 31, 1963, either as to volume or amount.

(11) Atlantic's proposed FPC Gas Rate Schedule No. 284, together with Supplement Nos. 1, 2 and 3 thereto, should be accepted for filing to be effective on the date of initial delivery.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Applicants, American Louisiana Pipe Line Company and Michigan Wisconsin Pipe Line Company, authorizing the former to construct and operate the proposed facilities and to sell and deliver natural gas and authorizing the latter to construct and operate the proposed facilities, to operate the facilities to be leased from Consolidated and to sell and deliver natural gas, as hereinbefore described, all as more fully described in the application in Docket No. CP64–154 and the application, as supplemented, in Docket No. CP64–155, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued, upon the conditions set forth herein, authorizing the sale by Atlantic of natural gas in interstate commerce for resale for ultimate public consumption, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application, as amended, in Docket No. CI64–781.

(C) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon American Louisiana's and Michigan Wisconsin's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation and the operation of the facilities by Michigan Wisconsin to be leased from Consolidated shall commence and the sales and delivery of natural gas authorized in paragraph (A) above shall have commenced, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(E) The certificate issued by paragraph (A) above to Michigan Wisconsin is hereby conditioned as follows:

(1) The monthly reports being filed by Michigan Wisconsin in compliance with the Commission's order in Docket No. CP63–230 issued November 12, 1963, be continued for the contract year commencing September 1, 1964.

(2) Prepaid gas, applicable to presently certificated gas supply arrangements, included in the rate base in any subsequent rate filing will not exceed the balance as of December 31, 1963, either as to volume or amount.

(F) The certificate issued to Atlantic in paragraph (B) above is not transferable and shall be effective only so long as Atlantic continues the acts or operations hereby authorized in accordance with the provisions of the Natural

Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificate issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Atlantic. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(H) Atlantic's proposed FPC Gas Rate Schedule No. 284, together with Supplement Nos. 1, 2 and 3 thereto, are hereby accepted for filing to be effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–171

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 2, 1964)

On January 31, 1964, Kentucky Gas Transmission Corporation (Applicant) filed in Docket No. CP64–171 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Menifee Storage Field, located in Menifee, Powell and Montgomery Counties, Kentucky, all as more fully set forth in the application.

It appears that by reason of the present design of its transmission pipeline system to take full advantage of the available high pressure delivery service from its gas supplier, the continued operation of the Menifee Storage Field, above mentioned, is no longer required. The economic advantages of the storage operation which was initiated about the year 1918 have steadily declined until it is not now required for present or future operations or service. It further appears that the stored gas now in the said storage field will be withdrawn and the native gas will be produced and used to supply the Lexington Market Area in Kentucky as long as it is economically feasible. Thereafter, market requirements for the area will be met from contract demand volumes from United Fuel Gas Company, the supplier, at a cost that would result in a saving of $192,000 per annum from the cost of continuing the operation of the Menifee Storage Field.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kentucky Gas Transmission Corporation, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 10, 1956, in Docket No. G-9689 (16 FPC 437).

(2) The facilities and operation proposed to be abandoned as hereinbefore described, all as more fully described in the application, are subject to the jurisdiction of the Commission and abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment of the facilities and operation by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

The Commission orders:

Permission for and approval of the abandonment by Applicant, Kentucky Gas Transmission Corporation, of the use and operation of the Menifee Storage Field located in Menifee, Powell and Montgomery Counties, Kentucky, be and the same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-182

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued June 2, 1964)

On February 17, 1964, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64-182 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of existing meter facilities and the exchange of natural gas, on an equal volume basis, with Natural Gas Pipeline Company of America (Natural) during the calendar year 1964, in order to enable Applicant to sell natural gas to Cabot Corporation (Cabot), all as more fully set forth in the application.

Applicant proposes to deliver a maximum to 10,000 Mcf per day and a maximum daily average of 5,000 Mcf to Natural; the latter will redeliver gas to Cabot for the account of Applicant, all in the state of Texas. Cabot will utilize the gas in its carbon black plant in Carson County, Texas. Deliveries and receipts of gas are subject to curtailment by Applicant on a day-to-day basis as necessary to accommodate Applicant's firm obligations. The sale of gas to Cabot will be at a rate of 14.0 cents per Mcf.

Applicant will reimburse Natural an estimated $500 for Natural's cost of providing the required tap and valve on its pipeline at the delivery point to Cabot.

Applicant states that it has a supply of gas temporarily in excess of its current market requirements and that, therefore, it is continually attempting to make short-term sales pending future disposition of gas on a long-term basis. Further, Applicant states that the proposed short-term sale will assist in reducing the possibility of having to pay for gas not taken or of having to make gas supply prepayments and in minimizing possible liability under its leases.

Concurrently with the filing of the subject application, Applicant tendered for filing its Original Sheet Nos. 86, 87, 88, 89, 90 and 91 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the proposed exchange arrangement.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation of existing facilities and the exchange and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of existing facilities and the proposed exchange and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) The public convenience and necessity require that the revised tariff filings of Applicant, hereinabove described, be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to operate existing facilities and to exchange and deliver natural gas during the calendar year 1964 as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The exchange and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the

Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) Applicant's Original Sheet Nos. 86, 87, 88, 89, 90 and 91 to its FPC Gas Tariff, Second Revised Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-204

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1964)

On March 16, 1964, as supplemented on March 26 and March 27, 1964, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64–204 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of two existing meter stations and the sale and delivery of up to 50,000 Mcf of natural gas per day in the Kansas Hugoton Field for a three year period to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), all as more fully set forth in the application, as supplemented.

The proposed deliveries will be made at existing interconnections of Applicant's and Kansas-Nebraska's systems in Kearny and Finney Counties, Kansas.

Pursuant to an agreement, dated February 26, 1964, between Applicant and Kansas-Nebraska natural gas will be sold at a rate of 12.5 cents per Mcf. Further, Kansas-Nebraska has agreed to take or pay for a minimum volume of 20,000,000 Mcf during the three year term of the agreement. All deliveries herein proposed shall be subject to curtailment by Applicant to accommodate its other system requirements.

Applicant states that it has a supply of gas temporarily in excess of its current market requirements and that, therefore, it is continually attempting to make short-term sales pending future disposition of gas on a long-term basis. Applicant further states that the proposed short-term sale will assist in reducing the possibility of having to pay for gas not taken or of having to make gas supply prepayments and in minimizing possible liability under its leases.

By letter, dated April 10, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transporta-

tion and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation thereof and such transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of the existing facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to operate existing facilities and to sell and deliver natural gas as hereinbefore described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

OPINION NO. 430

UNITED FUEL GAS COMPANY, DOCKET NO. G-20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G-20272

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER, DETERMINING JUST AND REASONABLE RATES, AND PROVIDING FOR REFUNDS

(Issued June 2, 1964)

*Syllabus**

1. Under *Seaboard* fixed costs and expenses are normally assigned 50-percent to demand and 50-percent to commodity; variable costs are normally assigned 100-percent to commodity. P. 1346.
2. Rates with moderately higher demand charges and lower commodity charges would be more realistic than rates reflecting *Seaboard* allocation and are justified by a preponderance of the evidence. P. 1347.
3. Record here reveals that use of *Seaboard* for rate design has serious infirmities; primarily because of its artificial assignment of 50-percent of all fixed costs to demand component of two-part rates. Such assign-

---

*Initial decision appears on P. 1363. Rehearing and stay granted July 20, 1964, 32 FPC 224; modified by Opinion No. 430-A, 32 FPC 1106.

ment rarely reflects accurate utilization of system by various classes of service; and since various mitigating circumstances appear in almost every case, it is generally necessary to adjust direct *Seaboard* rates to get workable results. P. 1347.

4. **It is shortsighted to assume that an allocation method, derived on basis of judgment of by-gone facts, modified from time to time to meet current exigencies, must forever remain immutable despite changes in the industry. P. 1347.**
5. **Mitigating circumstances here justify rates which recover a larger portion of their overall costs through demand component of the rate—principal one, in case of Atlantic Seaboard, is desirability of retaining and increasing interruptible industrial sales. P. 1348.**
6. **Interruptible sales help maintain high system load factors by balancing system demands and enabling more efficient utilization of facilities. P. 1348.**
7. **Principal mitigating circumstance justifying deviation to demand in United Fuel's rates is desirability of encouraging continued operation and development of costly storage, and peak shaving facilities. P. 1349.**
8. **Where 50-percent of fixed costs are included in commodity component of rate of company selling gas at less than 100-percent load factor, high load factor customer is assessed a disproportionate share of cost of unused capacity created by low load factor customer. P. 1349.**
9. **For Respondents and their customers to meet increased peak requirements without reductions in system load factors and resultant increased unit costs, they must increase interruptible industrial sales, or storage operations, or both—rates prescribed here promote these objectives more effectively than rates directly reflecting *Seaboard* unit costs. P. 1350.**
10. **To improve load factors and balance anticipated growth of residential and space-heating loads, commodity levels should permit distributing companies to offer rates that will induce continuing increase in interruptible sales—direct translation of *Seaboard* unit costs into rates would not hold out sufficient inducement in this regard. PP. 1350, 1351.**
11. **Correctly stated, low-load factor operations make storage *necessary*, not possible—because of low-load factor operations companies undertake storage at very substantial costs, operation thereof reduces costs below what they would be if additional pipeline capacity equivalent to peak requirements were constructed. P. 1351.**
12. **Management has function initially to fix and maintain proper depreciation accrual rates; such rates are based on facts and experience peculiar to each company and in deciding propriety thereof managerial judgment is entitled to great weight. P. 1353.**
13. **Under Section 9(a) of the Gas Act, Commission has obligation to approve or disapprove such depreciation rates. P. 1353.**
14. **On facts here, United Fuel was conservative when it increased its depreciation rates for underground storage and transmission, thus current depreciation rates are reasonable. P. 1353.**
15. **Commission *approves* BTU adjustment giving recognition to fact that occasionally during summer months heat content is less than during winter months which are used for establishing demand responsibility. P. 1354.**
16. **Presently, if heat content of gas in month is lower than in one during which a customer's billing demand is determined, such customer could not possibly receive all heat units for which it is paying. P. 1354.**

17. Citing relevant authorities, Commission *rejects* INGAA contention that coal interests be barred from intervention in pipeline rate cases. P. 1356.
18. There is no merit to contention that a rate filing cannot injure coal interests and that such injury if any, stems from precedent certificate proceeding—reduction in a rate can well cause new or enhanced economic injury to competitive fuels. P. 1357.
19. In future proceedings, persons claiming right to intervene because of competitive status must allege facts in pleading of such sufficiency, if true, to indicate nature of injury—where validity of such showing is appropriately challenged, Commission reserves right to set matter of injury for hearing prior to authorizing intervention. P. 1357.
20. Commission *concludes* that in developing Respondents' rates, refunds and rate reductions from suppliers made prior to date of issuance of instant opinion, should be reflected exclusively in demand component of such rates. P. 1358.
21. In proceeding arising under Section 4, of the Natural Gas Act, Commission *determines* just and reasonable rates and provides for refunds. Commissioner Ross *dissenting in part.*

C. E. Goodwin, Herbert W. Bryan, Tilford A. Jones, Richard A. Rosan, and *Giles D. H. Snyder* for United Fuel Gas Company and Atlantic Seaboard Corporation.

Walter E. Beckjord and *Richard H. Rhein* for The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company.

William Anderson, Edward B. Calland, Wallace R. Barnes, and *William C. Hart* for The Manufacturers Light & Heat Company and Cumberland Allegheny Gas Company.

Julian De Bruyn Kops and *William E. Herron* for The Dayton Power and Light Company.

James A. Biddison, Jr. for Baltimore Gas and Electric Company.

James J. Ryan and *Robert J. White* for The City of Cincinnati.

J. David Mann, Jr., William W. Ross, and *Frederick Moring* for United Gas Improvement Company.

Michael E. Shea and *Phebe Eppes Gordon* for Lynchburg Gas Company.

Oscar Berry, Karl Michelet, Reuben Goldberg, and *George Spiegel* for Washington Gas Light Company and Shenandoah Gas Company.

Robert L. Stewart for Public Service Commission of West Virginia.

Jerome J. McGrath, John A. McGrath, Robert E. Lee Hall, and *Welly K. Hopkins* for Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America.

W. F. Laird and *Ralph N. Mahaffey* for The Ohio Fuel Gas Company.

James O. Watts, Jr. and *Stanley M. Morley* for Commonwealth Natural Gas Corporation.

C. Howard Johnson for The City of Columbus, Ohio.

Paul E. Summers, Jr. for The City of Charlottesville.

Chester H. Gray, Andrew C. Conlyn, and *George F. Donella* for Public Utilities Commission of the District of Columbia.

W. A. Dickinson for Roanoke Gas Company.

Joseph I. Lewis, Alan R. Squires, and *Herbert E. Squires* for Pennsylvania Public Utility Commission.

John T. Miller for Independent Natural Gas Association of America (*amicus curiae*).

Edwin M. Miller, Alan J. Roth, and *William I. Harkaway* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

O'CONNOR, *Commissioner*:

These are pipeline rate cases arising under Section 4 of the Natural Gas Act (Act), upon applications for proposed increased rates filed by United Fuel Gas Company (United Fuel) and Atlantic Seaboard Corporation (Atlantic Seaboard), referred to collectively as Respondents. The cases are before us on exceptions by Respondents and others[1] to the Presiding Examiner's decision issued June 19, 1963, and after oral argument before the Commission on December 19, 1963.

The principal issue presently before us is common to both dockets and concerns the level of the demand and commodity components of the Respondents' rates, *i. e.*, the rate design.[2] A concomitant issue relates to the manner in which Respondents are to reduce rates and make refunds to reflect rate reductions and refunds from their respective suppliers. Other questions requiring disposition are applicable to the Respondents individually, and pertain to the heat content adjustment provision to the demand charge contained in Atlantic Seaboard's tariff, the depreciation rates to be applied by United Fuel to its underground storage and transmission properties and to its Kenova Extraction plant, and certain reserved tax issues.

Prior to the hearing on the above issues the parties stipulated to Respondents' costs of service and certain other matters, and these settlements have been approved by Commission orders issued on December 29, 1961 (26 FPC 945), February 19, 1962 (27 FPC 369) and March 20, 1962 (27 FPC 538). The settlements provide two approved costs of service for each Respondent as a basis for designing their rates: one cost of service for rates from April 5, 1960 to May 1, 1961, and another for rates from and after May 1, 1961.[3] United Fuel and Atlantic Seaboard are both subsidiaries of the Columbia Gas System. United Fuel sells gas for resale to Atlantic Seaboard and eight other wholesalers, including principally Manufacturers Light & Heat Company (Manufacturers) and The Ohio Fuel Company (Ohio Fuel). United Fuel purchases a substantial portion of its gas from Tennessee Gas Transmission Company and producers in Louisiana, and serves an area covering the central Appalachian area extending from Kentucky and Ohio to the Hudson River Valley in New York. United Fuel also makes some retail sales in West Virginia and one direct industrial sale in Ohio.

---

[1] Exceptions were filed on July 24, 1963, by Staff, jointly by Respondents, jointly by Manufacturers Light & Heat Company and Cumberland and Allegheny Gas Company, and severally by The Ohio Fuel Gas Company, Baltimore Gas and Electric Company, Commonwealth Natural Gas Corporation, The Dayton Power and Light Company, Lynchburg Gas Company, Washington Gas Light Company, United Gas Improvement Company and Fuels Research Council, Inc., *et al.* (Coal Interveners). Replies to exceptions were also filed by various parties.

[2] United Fuel's rates include a CDS-1 (Contract Demand Service) rate, AOS-1 (Authorized Overrun Service) rate, SGS-1, (Small General Service) rate, and ES-1 (Emergency Service) rate, as contained in United Fuel's FPC Gas Tariff, Fifth Revised Volume No. 1. Atlantic Seaboard's rates include a CDS-1 (Contract Demand Service) rate, CDS-2 rate (for its Zone 2) and also CDS-PR-1 and 2 (Contract Demand Service-Pipeline 2 rate (for its Zone 2) and also CDS-PR-1 and 2 (Contract Demand Service-Pipeline) rates, AOS-1 and 2 rates, and IS-1 and 2 (Interruptible Service) rates, as contained in Atlantic Seaboard's FPC Gas Tariff, Seventh Revised Volume No. 1.

[3] As hereinafter set out, these costs of service will require modification to reflect the transfer of certain facilities from Atlantic Seaboard to United Fuel, reductions in rates and refunds by United Fuel's suppliers, and reductions in rates and refunds by United Fuel to Atlantic Seaboard.

Atlantic Seaboard, which purchases most of its gas from United Fuel, makes only jurisdictional wholesale sales to eleven distributing company customers serving Washington, D.C., Baltimore, and other cities in Maryland and Virginia and vicinity. Atlantic Seaboard's largest customer is Washington Gas Light Company (Washington Gas), which serves the Washington metropolitan area.

Both United Fuel and Atlantic Seaboard make most of their sales of gas under their two-part, contract demand (CDS) rates. They have system sales load factors of approximately 65 percent and 55 percent, respectively. Their principal customers have substantially different billing demand load factors, ranging from nearly 100 percent for Manufacturers and Ohio Fuel, to about 44 percent for Washington Gas. The very favorable load factors of Manufacturers and Ohio Fuel result from their extensive storage operations, as well as their interruptible industrial sales. However, these industrial sales do not include large boiler fuel sales because of a limitation in the tariff on such sales.

On the principal issue of rate design, Respondents, and most of their major customers contend that we should not directly translate into rates the unit demand and commodity components resulting from the application of the *Seaboard* method of cost classification-allocation. Under the *Seaboard* method, fixed costs and expenses are normally assigned 50 percent to demand and 50 percent to commodity and variable costs are normally assigned 100 percent to commodity. Certain other costs are classified in proportion to the classification to demand and commodity of the fixed and variable costs, and purchased gas costs are normally classified as billed. They recommend rates for United Fuel which, when compared to those resulting from *Seaboard*, would recover by the demand charge some 11.4 percent more costs, and for Atlantic Seaboard, demand charges which would recover almost 22.5 percent more costs. The amounts recovered in the commodity charges would be correspondingly reduced.

Of all Respondents' customers, only Washington Gas[4] a customer of Atlantic Seaboard, recommends the direct translation into rates of *Seaboard* unit costs. Since Washington Gas operates at a considerably lower load factor than its pipeline supplier, and since it has little interruptible industrial market potential and no underground storage, it prefers the relatively low demand charges and high commodity charges that would result from the direct translation of *Seaboard* unit costs into rates. The Coal interveners also recommend the same rate levels since their competitive position is favored by a relatively high commodity charge. The Commission's Staff recommends rates for Atlantic Seaboard that would recover by the demand charge some 13.48 percent more costs than would be recovered under the *Seaboard* method, and rates for United Fuel that would reflect a direct translation of *Seaboard* unit costs.

The *Examiner* held that rates for Respondents with moderately higher levels of demand charges, and correspondingly lower commodity charges, than would result from the direct translation into rates of *Seaboard* unit costs are supported by all the circumstances, including a preponderance of the evidence respecting the economic and operating factors involved. The Examiner's rates for *Atlantic*

---

[4] The City of Charlottesville also took Washington Gas' position at the hearing but has filed no exceptions to the Examiner's decision.

Seaboard would recover *13.48* percent more demand costs than would rates reflecting *Seaboard* unit costs (following Staff's recommendation), while his rates for *United Fuel* would recover *4.78* percent more costs by the demand charge.

We conclude with the Examiner that rates with moderately higher demand charges and lower commodity charges would be more realistic than rates reflecting *Seaboard* allocations, and are justified by a preponderance of the evidence. In our judgment, CDS rates for Atlantic Seaboard with commodity charges patterned after those of the Examiner are reasonable and should be adopted; and in the case of United Fuel, a CDS rate with a commodity charge patterned after that of the Company is reasonable and should be adopted.[5] Inasmuch as the rationale for our decision as well as the rates we establish do not precisely coincide with the Examiner's, we will indicate our divergence and answer, where necessary, objections of the various parties.

The Examiner thought that although for rate design purposes, the *Seaboard* method often had been departed from, it was proper to apply it here for the preliminary purpose of deriving tentative rates. However, he held that here "mitigating circumstances"[6] exist which justify the recovery of more costs through the demand component than would rates reflecting a literal translation of *Seaboard* classified costs. The most weighty circumstance was the importance of retaining marginal interruptible sales that might be lost to competing fuels, and of encouraging additional sales which would benefit all of Respondent's customers. Other circumstances were: the desirability of not burdening high load factor customers with an unfair portion of fixed costs associated with unused capacity; the desirability of protecting Respondents from low commodity rate competitors; and the fact that Atlantic Seaboard's rates have always recovered more by the demand charge than would straight *Seaboard* rates.

This record, as well as our previous experience, unmistakably reveals that use of *Seaboard* for rate design has serious infirmities. The primary infirmity results from its artificial assignment of 50 percent of all fixed costs to the demand component of two-part rates. This assignment rarely reflects with accuracy utilization of the system by the various classes of service, and, inasmuch as mitigating circumstances of considerable variety appear in almost every case, it is generally necessary to adjust direct *Seaboard* rates to get workable results. This adjustment has at times been up to 100 percent.[7]

It is short-sighted to assume that an allocation method, derived on the basis of judgment of by-gone facts, and modified from time to time to meet current exigencies, must forever remain immutable despite the changes that have occurred in this dynamic industry. We recognize that a judgment factor will always have to be applied in the final design of rates. That judgment, however, should be applied within a classification and allocation formula that insures its exercise with reasonable certainty, and should give recognition to known industry changes.[8] The Commission Staff has introduced in two recent proceedings, not yet before the Commission, alternative methods of rate design, which not only seek to overcome the *Seaboard* infirmities, but also to reflect these changes.[9] However, we must caution those who have a strong interest in rate design, not to delegate the responsibility to devise and propose a new method to the Commission Staff, but that they, as well, propose alternative methods and introduce adequate factual support.

---

[5] We shall require Respondents to file specific rates as set forth hereinafter, reflecting the adjustments necessary to Respondents' costs of service referred to at the outset of this opinion.

[6] In the language of the *Atlantic Seaboard* Opinion, 11 FPC at 62.

[7] In the *United Fuel* decision in 12 FPC 351 (1953), for example, we approved rates that deviated to demand by about 100 percent. A large deviation to demand was also approved in *Midwestern Gas Transmission Company,* 21 FPC 658 (1959), and other extreme instances can be cited.

Respondents and interveners propose new or modified methods for fixing the levels of Respondents' rates, but such methods are unfortunately subject to the same infirmities as the Seaboard method. Respondents' method starts by classifying alleged fixed costs to demand and alleged variable costs to commodity but there is no built-in assurance that interruptible customers who pay only the commodity charge will make a substantial contribution to the fixed charges for the investment required to deliver gas to them. Additionally, as Respondents make clear, their method involves the consideration of numerous economic and other factors. Similarly, the method proposed by the intervener Manufacturers involves judgment on the basis of variable costs with the remainder of the costs being assigned to the demand charge, and giving particular attention to protecting the company from instability or erosion of earnings. Here too, however, the assignment of costs to the particular services involved is not accomplished on a satisfactory basis, for consideration of the many complex and uncertain factors referred to would virtually preclude the exercise of judgment on a reasonably predictable basis. We shall, therefore, for lack of an acceptable alternative on this record use the *Seaboard* method as a point of departure here while we continue the search for a better method.

We conclude that mitigating circumstances in this case justify rates for Respondents which recover a larger portion of their overall costs through the demand component of the rate. The principal such mitigating circumstance in the case of Atlantic Seaboard[10] is the desirability of retaining and increasing interruptible industrial sales.

Such sales help maintain high system load factors by balancing system demands and enabling more efficient utilization of facilities, thereby lowering unit gas costs. The CDS rates we approve for Atlantic Seaboard will aid its distributing company customers to retain and increase such sales.[11] Moreover, the evidence introduced by Baltimore Gas, Commonwealth Natural Gas Corporation, Lynchburg Gas Company, Roanoke Gas Company, United Gas Improvement Company[12], and Staff indicates that the benefits to Respondents and their customers will, in the long term, offset the increased costs sustained by Washington Gas, Atlantic Seaboard's principal low load factor customer, and virtually the only one advocating straight *Seaboard* rates.

---

[8] Respondents' evidence shows in some detail the changes in the natural-gas industry that have made the *Seaboard* formula ill-adapted for present conditions. For example, their evidence shows that the price of fuel oil has not increased appreciably between 1952 and 1962 (No. 2 fuel oil in Baltimore rising from 9.20 to 10.64 cents per gallon). In contrast, Atlantic Seaboard's annual reports show that city-gate prices for sales by Atlantic Seaboard to Baltimore Gas have increased approximately 50 percent in the same interval. Also in this general interval, residential space heating sales of gas have about doubled and are still increasing. Other circumstances not important when *Seaboard* was decided but crucial here are discussed herein below.

[9] *Chicago District Pipeline Co.*, Docket No. RP64–5; *Cities Service Gas Co.*, Docket No. RP64–9.

[10] This circumstance is not so important in the case of United Fuel, since the commodity charges recommended for it by all the parties would be lower than those in its presently filed rates, which have been in effect for several years.

[11] The record shows that Atlantic Seaboard's customers have lost interruptible loads to competing fuels in the recent past.

The principal mitigating circumstance justifying a deviation to demand in United Fuel's rates is the desirability of encouraging its continued operation and development of costly storage, and, to a less extent, peak shaving facilities.[13] As we have often pointed out, storage facilities, whether they belong to the pipeline company or the customer company, are desirable because they increase the company's operational load factor and reduce its unit costs of gas, thereby reducing the total charges to all customers and consumers served. While storage facilities are expensive, they eliminate the need for *more* expensive transmission capacity and gas purchases to meet peak demands, and permit the utilization of existing capacity during off-peak periods when it would otherwise be idle. These facilities have become increasingly significant in recent years in offsetting the effect of rising space-heating sales, inherently low-load factor. Although the extent of the benefits vary, all customers receive some benefit from the installed storage facilities of a fellow customer, as well as from those installed by the pipeline. The design of rates must recognize the benefits and origin of storage facilities, and not penalize a customer for having improved its load at considerable expense.

It becomes obvious in the design of rates that when 50% of fixed costs are included in the commodity component of a rate of a company selling gas at less than 100% load factor, the high load factor customer is assessed a disproportionate share of the cost of unused capacity created by the low load factor customer. This fact is amply demonstrated by the Examiner, *infra*, p. 1372 of his Decision where he shows for the test period that such high load factor customers as Lynchburg, Ohio Fuel and Manufacturers bore volumetric responsibilities in excess of their demand or capacity responsibilities of from 23.2% to over 60%. Conversely, such low load factor customers as Washington Gas and Kentucky Gas have volumetric responsibilities of 20 to 30% *below* their demand or capacity responsibilities.

It is clear from the foregoing that the Examiner gave insufficient weight to the above considerations as grounds for departing from rates based on *Seaboard* unit costs. The Examiner found that the development of high load factor sales through the use of peak shaving and storage is generally desirable, but that because of insufficient evidence respecting the specific economics of peak-shaving by the distributing companies, no finding could be made that a higher demand charge would be beneficial in this regard. He also thought that an examination into the economics of storage by Ohio Fuel and Manufacturers was unnecessary in this case. We do not think a more detailed showing, or examination into these matters, is necessary in order for us to make such a finding. The conclusions we reach above, apart from the evidence of record which sustains them, are firmly grounded on fundamentals of principle and policy.

---

[12] For example, Baltimore Gas predicted it would lose seven of its present fifteen interruptible customers to oil, or a loss of estimated sales of 1,750,000 Mcf in 1962, with even larger future losses, if there were any price increase resulting from an increase in Atlantic Seaboard's commodity charge. Any such increase would jeopardize a large prospective sale to the Bethlehem Steel Company for blast furnace use of approximately 8,800,000 Mcf in 1964, a sale which would increase Baltimore Gas' requirements by some 30 percent, and its city gate load factor by some 12 percent, over those otherwise expected.

[13] United Fuel currently operates 16 underground storage pools representing an investment of some $51,700,000. Atlantic Seaboard owns and operates two underground storage pools (only one in operation during the test period), with a third under development. The recorded cost of Atlantic Seaboard's underground storage (including stored gas) was stated to be $18,700,000. Ohio Fuel's underground storage plant has an estimated net original cost of some $60,134,000, with a corresponding cost of service of some $13,273,000. Manufacturers has invested over $52,000,000, including current gas stored, in underground storage. Extensive peak-shaving has been developed by many of Respondents' customers also.

A mitigating circumstance affecting both Atlantic Seaboard and United Fuel, related to the need for interruptible sales as well as underground storage, is that Respondents' future load growth will probably take place largely in the residential space-heating market. The record indicates that Respondents' space-heating requirements have nearly doubled since 1952, when *Seaboard* was decided.[14] Deliveries for space-heating are made at a relatively low load factor, the incremental load factor of residential space heating for Manufacturers, for example, being only 25 percent. In order for Respondents and their customers to meet such increased peak requirements without reductions in system load factors and consequent increases in unit costs, they must increase their interruptible industrial sales, or their storage operations, or both. The rates we prescribe will unquestionably promote these objectives more effectively than would rates which directly reflect *Seaboard* unit costs.[15]

Several arguments of Washington Gas and the Coal Interveners respecting the above matters not specifically discussed above can be dealt with briefly.

Washington Gas and the Coal Interveners contend that there is no substantial evidence showing that high demand-low commodity rates are required to retain and increase interruptible industrial sales. Washington Gas argues that it was not shown that the distributing companies would lose any customers under rates directly reflecting *Seaboard* unit costs, but that the evidence, which the Examiner himself called "defective," consists only of inconclusive generalities that there is "every likelihood of a loss" or a "strong probability" of a loss. Also the Coal Interveners argue that the procedure by which the specific rates are arrived at is not defined and thus no relationship was shown between the evidence presented and the rates approved; and that actually the controlling factor is the comparative costs of competitive fuels, a determination which essentially is left to the discretion of management.

In our view, the evidence on this point indicating a strong probability of losses is sufficient. As the record shows, some customers are receiving marginal benefits from Respondents' rates and it would be imprudent to withhold relief until injury results. It cannot be seriously questioned that the recoupment of a more realistic portion of overall costs by the demand and commodity charges we approve will help retain present sales.

Moreover, we do not base our conclusions solely on threatened *losses* of interruptible sales. There is also need that the commodity levels set by us shall permit distributing companies to offer rates that will induce a continuing increase in interruptible sales, in order to improve load factors and balance the anticipated growth of residential and space-heating loads.[16] In our judgment, the direct translation of *Seaboard* unit costs into rates will not hold out a sufficient inducement in this regard.

---

[14] Illustrative of this increase is the increase in the contract demand of Washington Gas with Atlantic Seaboard, from 165,271 Mcf in 1952 to 397,000 Mcf currently.

[15] The growing importance of interruptible industrial sales, of underground storage, and of residential space-heating sales, as well as the increase in purchased gas costs are among the significant changes that have taken place in the natural-gas industry since the *Seaboard decision* in 1952, and which make questionable the desirability of future adherence to direct translation of *Seaboard* unit costs into rates.

Washington Gas and the Coal Interveners argue further that the evidence does not show, as our *Southern Natural* and *El Paso* decisions require,[17] that the benefits from increased interruptible industrial sales will outweigh the detriments to the residential consumers resulting therefrom, but shows, on the contrary, that the benefits from the Examiner's rates are exceeded by the resulting increases in costs to Washington Gas. Thus, they conclude that any deviation from straight *Atlantic Seaboard* rates is legally impermissible.

Washington Gas' argument is invalid. As we said in *Atlantic Seaboard*, rates derived by the formula enunciated therein would be adjusted in the presence of "mitigating circumstances", which we have found to exist here. Neither the *Southern Natural* opinion nor the *El Paso* opinion, decided subsequently, stand for the proposition that adjustments would be ordered *only* upon a specific showing that costs to firm customers would be greater if current industrial sales were lost than if the demand component were immediately increased. In *Southern Natural*, the firm customer cost factor was carefully described as a "consideration" and not, as Washington Gas would have it, as the sole determinative factor. Moreover, the weight of this consideration necessarily diminishes where, as is here the case, the deviation from straight *Seaboard* rates is minimal.

Washington Gas also contends that storage considerations do not justify any departure from rates based on *Seaboard* unit costs. It argues that capacity and gas for the storage operations of Respondents and their high-load factor customers Ohio Fuel and Manufacturers is available only as the result of the operations of low-load factor customers such as Washington Gas. Accordingly, it argues that Washington Gas deserves a "reward" for making possible storage operations that benefit other high-load factor customers, rather than a "penalty" in the form of high demand-low commodity rates which will shift such costs to the low-load factor customers.

Washington Gas has misconceived the correct relationship of storage and low-load factor operations. Correctly stated, low-load factor operations make storage *necessary*, not possible. It is because of low-load factor operations that companies undertake storage at very substantial costs. The operation of storage facilities reduce the costs below what they would be if additional pipeline capacity equivalent to peak requirements were constructed.

Further, Washington Gas contends that benefits resulting from improved load factors, interruptible industrial sales and storage do not support the lower commodity charges in Respondents' rates, because additional interruptible sales and storage would necessitate purchasing additional firm gas, increasing the capacity of Columbia Gulf Transmission Company (the pipeline subsidiary that delivers gas from the fields of Louisiana to United Fuel), and increasing the capacity of United Fuel's system downstream from storage. Washington Gas says that the result would be an increase in the investment and operating costs which would outweigh the benefits of the improvement in sales load factors.

---

[16] Although Atlantic Seaboard's system load factor increased from 51 percent in 1952 to 54 percent in 1960, we believe that a greater inducement to increased efficiency is needed. This is also true of United Fuel, with its 65 percent load factor, particularly in view of the limitation in its tariff on boiler fuel sales.

[17] *Southern Natural Gas Company*, 29 FPC 323, and *El Paso Natural Gas Company*, 22 FPC 659.

The argument is fallacious. It erroneously assumes a future static, rather than a dynamic, sales pattern when, in fact, residential and space-heating sales have increased in the past and will continue to increase in the future, thereby necessitating increases in capacity and firm gas purchases in any event. Thus, the increased interruptible sales that may result from the rates we approve will not cause but will accompany normally predictable expansion.

Transfer of Boldman Compressor Station and Other Facilities to United Fuel.—As mentioned at the outset of this opinion, our orders approving the settlement of Respondents' cost of service provided that United Fuel's cost of service would reflect the transfer to it from Atlantic Seaboard of the Boldman Compressor Station, with Atlantic Seaboard being obligated to make appropriate refunds reflecting such transfer.[18] The Boldman Compressor Station, and certain other facilities consisting principally of a portion of Atlantic Seaboard's KA–20 line, were the subject of a certificate proceeding in Docket No. CP61–107, involving Atlantic Seaboard's request to transfer such facilities to United Fuel. This request, and certain related authorizations, were granted by Commission Op. No. 377.[19] On September 17, 1963, the Securities and Exchange Commission authorized the transfer of these facilities and related transactions, which were consummated effective as of the close of business September 30, 1963. Thus, we conclude that Respondents costs of service should reflect the transfer of the Boldman facilities to United Fuel effective as of April 5, 1960, and the transfer of the remainder of the facilities effective as of October 1, 1963.

Depreciation Accrual Rates on United Fuel's Facilities.—Our order conditionally approving the settlement of United Fuel's cost of service,[20] reserved for hearing the question of the proper depreciation accrual rates to be applied to United Fuel's Kenova Extraction Plant, its underground storage facilities and its transmission properties. The settlement reflects United Fuel's test year depreciation accrual rates of 6.67 percent on the Kenova facilities, and various depreciation rates on the different classes of property comprising the underground storage and transmission facilities. The latter rates represent increases over the rates applied prior to July 1, 1957.

Staff initially urged a 3 percent depreciation rate for the Kenova plant, and raised no objection to the percentage rates presently booked for the remaining facilities. After reviewing United Fuel's evidence, however, staff withdrew its opposition to the 6.67 percent Kenova rate. Staff presented no evidence on the issue of depreciation rates, and, inasmuch as cost of service represents a settlement and not a full evidentiary determination, asserts that we need make no findings.

The Examiner held that the increased depreciation accrual rates were just and reasonable. He reasoned that changes in these rates are primarily matters of managerial judgment, to be exercised to maintain adequate reserves, and concluded that the absence of any reference to the changed rates in the Commission order of March 20, 1962 was significant. He specifically rejected the contention that under Section 9(a) of the Natural Gas Act[21] only Commission prescribed rates of depreciation may be included in costs of service.

---

[18] The transfer of the facilities reduces Atlantic Seaboard's cost of service and rates and increases those of United Fuel.

[19] 29 FPC 90 (1963).

[20] 27 FPC 538 (1962).

[21] Section 9(a) provides in part that "The Commission may . . . determine . . . proper . . . rates of depreciation" and "no natural-gas company . . . shall charge . . . any depreciation . . . charges other than those prescribed by the Commission."

We agree with the Examiner that management has the function initially to fix and maintain proper depreciation accrual rates. These rates are based on facts and experience peculiar to each company, and thus in deciding their propriety managerial judgment is entitled to great weight. Particularly is this so where, as here, the facts were essentially unchallenged by any party, and the Company's position was unopposed by Staff. It is equally clear that under Section 9(a) we have the obligation to approve those rates and thus the power to overrule managerial decisions. On the present record, however, we find no justification for overturning what the evidence indicates was a reasonable decision.

This evidence substantially supports the rates currently being booked by United Fuel. As to the 6.67 percent annual depreciation rate applied to the Kenova Extraction Plant, the evidence shows that that rate is based upon the estimated 15-year economic life of the plant, and amortizes over such period only the initial investment, without reference to any additions to replacements which must inevitably occur. The evidence further shows that the gas reserves available for the Kenova operation (local Kentucky sources) are estimated to be sufficient for only fifteen years. Clearly, therefore, the annual rate of 6.67 percent on the Kenova facilities, reflecting 1/15th of their total cost, is not excessive. As to the depreciation accrual rates applicable to the underground storage and transmission properties, United Fuel has discovered from experience that its rates were simply not large enough to maintain adequate reserves to cover present and future charges against the various property accounts involved. To cite but one of the facts underlying that judgment, continuing increases in labor costs have increased the cost of retiring or removing property. We are satisfied by our consideration of the facts that the company was quite conservative when it increased its depreciation rates for underground storage and transmission, and that the current depreciation rates are reasonable.

Accordingly, the depreciation accrual rates we prescribe in this proceeding are those which United Fuel is booking and which underlie the settlement in this proceeding.

Continued Inclusion in Atlantic Seaboard's Tariff of Heat Content Adjustment Provision.—Our order conditionally approving the settlement of Atlantic Seaboard's cost of service[22] reserved for hearing the further issue of the propriety of the continued inclusion in Atlantic Seaboard's Rate Schedules CDS-1, CDS-2, CDS-PR-1 and CDS-PR-2 of a Btu content adjustment provision insofar as it relates to the demand charge. This provision provides for increases or decreases in the demand charge to reflect variations in the heat content of the gas from 1,000 Btu per cubic foot.[23] It was originally included in Atlantic Seaboard's tariff pursuant to our Op. No. 225[24] to avoid possible discrimination from variations in the Btu content of gas delivered to customers from one or the other of the two main lines (20 and 26 inches) on Atlantic Seaboard's system.

At the hearing Roanoke Gas Company and Lynchburg Gas sought the elimination of the Btu adjustment provision applicable to the demand charge, contending that it results in operating difficulties and unjustified differences in rates between localities. Staff recommended that the demand charge Btu adjustment provision be modified in order to recognize that there are occasions in the summer months when the heat content is less than in winter months when demand responsibility is established.

---

[22] 26 FPC 945 (1961).

[23] Atlantic Seaboard's tariff also contains a Btu adjustment provision applicable to the commodity charges of the CDS and CDS-PR rates.

[24] 11 FPC 43, 60 (1952).

The Examiner held that Atlantic Seaboard's Btu adjustment provisions should be retained in its tariff, and that Staff's proposed modification of the demand charge provision should be rejected. He thought that there are still differences in the Btu content of the gas transported through Atlantic Seaboard's two main lines and therefore still good reason to continue the provisions in order to equalize the rates; that by virtue of the provisions, each of the customers pays the same price per therm; and last, that the provisions were agreed to by all parties to the earlier settlement.

Only Lynchburg Gas excepts. First, it contends that the provisions are no longer justified because they were originally approved at the insistence of one of Seaboard's customers which purchased gas on an Mcf basis and sold to the public on a now outmoded thermal basis. Second, it contends that the provisions cause operating difficulties. Third, it argues that the provisions are discriminatory, since they require customers like Lynchburg Gas, receiving relatively high Btu gas, to pay a considerably higher charge per Mcf than the customers which take larger volumes of lower Btu gas. It says that there is no practical relationship between the customers' demands and the heating value of the gas delivered, since variations in Btu may occur during off-peak periods. Accordingly, Lynchburg Gas asks that the Btu adjustment provision applicable to the demand charge be eliminated, leaving only the provision applicable to the commodity component. This would permit it to pay through the demand charge for the particular pipeline capacity it receives from Atlantic Seaboard, and to pay through an adjustment to the commodity charge for the premium attached to high Btu gas. In the alternative Lynchburg Gas endorses Staff's modification of the demand charge provision.

We conclude that the Examiner's decision should be modified on this issue by the adoption of Staff's proposal. Staff would attach a proviso to the language of the present Btu adjustment provision applicable to the demand charge so that that provision would then read as follows (Staff's proposed proviso italicized):

> The demand charge shall be increased or decreased in proportion to the amount by which the average total heating value of the gas delivered in the month in which the Billing Demand was established is greater or less than 1000 Btu per cubic foot; *provided, however, that such adjustment shall not exceed that which would result from utilization of the average total heating value of the gas delivered in the current month.*

By this means, recognition would be given to the fact that there are occasions during the summer months when the heat content is less than it is during those winter months which are used for establishing the demand responsibility. Such recognition is desirable and necessary in the interest of equal treatment, for under the present provision, if the heat content of the gas in a current month is lower than that in the month during which a particular customer's billing demand is determined, that customer could not possibly receive all of the heat units for which it is paying. This is a frequent occurrence.

Respondents opposed Staff's recommendation by testimony in the record and by brief. First, they contend that Staff's proposed modification is outside the issue of the "inclusion" of the said provision as reserved in our settlement order cited above. Second, they contend that their evidence shows that the new language would complicate Atlantic Seaboard's billing procedure, and, since the effect of the modification on any of Atlantic Seaboard's customers would be extremely minor, it would serve no useful purpose.

These objections have little real substance, in our view. The broad issue of whether to eliminate this tariff provision can reasonably be considered to embrace the more narrow issue of whether to modify it where, as here, the affected parties were afforded full opportunity to contest the issue at the hearing, and cannot be prejudiced by such a restricting of the issue. Respondents' claim of complications in billing procedures is not convincing, and what is a "minor" effort to Respondents may be of substantial importance to a customer.

Accelerated depreciation, statutory depletion and well-drilling costs, and Texas Severance Beneficiary Tax.—The Examiner held that the stipulated costs of service were not dispositive of the tax treatment to be accorded accelerated depreciation under Section 167 of the Internal Revenue Code, or the tax treatment to be accorded statutory depletion and intangible productive well-drilling costs. However, he held that since the record contains no evidence on these issues, he could make no findings with respect thereto.

The Respondents except, contending that these matters are no longer issues in the case. They admit that the settlement agreements are not dispositive of the above matters. However, they contend that as to accelerated depreciation, Article V of the settlement agreements provides that if the United States Court of Appeals for the Fourth Circuit in Case No. 8101,[28] held that the Commission's order there under review with respect to tax treatment of accelerated depreciation is erroneous, further proceedings may be had to determine the ultimate disposition of the amounts included in the jurisdictional costs of service for this item. They say the court upheld the Commission's order and dismissed the petition for review, thus disposing of the accelerated depreciation tax issue reserved in this case, and that since this item is properly being included in Respondents' costs of service, no further action is required with respect thereto.

As to statutory depletion and intangible productive well-drilling costs, Respondents say that it was agreed by all parties to the United Fuel settlement, as set forth in Article V thereof, that if the treatment accorded these tax deductions should prove inconsistent with the ultimate determination of the issues by the United States Court of Appeals for the Fourth Circuit in Case No. 8106,[29] the stipulated cost of service would be adjusted consistent with the court's decision. Respondents say further that in our settlement order of March 20, 1962, respecting United Fuel, we provided that in accordance with the aforesaid court opinion, the total costs in the stipulated cost of service should be reduced by the elimination of Adjustment (5) this being the effect on the stipulated cost of service of the tax treatment accorded therein to statutory depletion and intangible productive well-drilling costs. And they contend that this elimination, amounting to $4,003,031, as shown in Exhibit 18, Schedule 1, line 10, has been made and is already reflected in the rates proposed by Respondents and those found by the examiner.

We conclude that Respondents are correct in their above contentions for the reasons they give, and Examiner's decision should be modified accordingly.

---

[28] Subsequently reported as *Cities of Lexington* v. *F.P.C.* 295 F. 2d 109 (CA4–1961).
[29] *Ibid.*

Respondents further contend that Article VI of United Fuel's settlement agreement noted that $25,490 was included covering the Texas Severance Beneficiary Tax, which was paid by United Fuel to the State of Texas under protest. They say that United Fuel ceased paying the tax on March 31, 1961, and the settlement provided that in the event United Fuel receives a refund of all or any portion of the said tax included in the stipulated cost of service, United Fuel would refund the jurisdictional portion thereof to its wholesale customers. The record shows that United Fuel has received a refund from the State of Texas with respect to this tax, and the jurisdictional portion thereof will be refunded to United Fuel's wholesale customers, together with other refunds and rate reductions received, pursuant to the terms of the settlement agreement.

This issue is disposed of by ordering clause (C), *infra*, providing that all refunds by suppliers shall be properly refunded by Respondents.

Intervention of the Coal Interests.—A question is presented concerning the intervention in rate proceedings by the Coal Interests. By Commission order issued June 21, 1962, the Coal Interests were permitted to intervene herein on the limited issue of rate design. The Independent Natural Gas Association of America (INGAA) protested such intervention and petitioned to intervene herein to oppose it, or alternatively, to participate as *amicus curiae*. By order issued August 17, 1962, we denied INGAA permission to intervene but permitted it to participate as *amicus curiae*, and to argue on brief and orally whether the Coal Interests have a legal right to intervene in rate proceedings, and whether or not their intervention in this case has in fact proved to be in the public interest. The Examiner did not discuss these questions since our order permitting INGAA to participate provided for briefs and oral argument addressed to the Commission.[27]

In its brief and oral argument, INGAA vigorously opposes the intervention of the Coal Interests on three grounds. First, it contends that the legislative history shows that Congress intended that the Coal Interests should be barred from participating in pipeline rate cases. Second, it contends that the Coal Interests' participation is not, under Section 15(a) or any other provision of the Act, a matter of Commission discretion. And third, it contends that such intervention results in delay of the regulatory scheme which Congress provided to expeditiously deal with the rates of pipeline companies.

The relevant cases clearly indicate that where an adequate showing is made that a person would be competitively injured if the Commission were to approve a proposed change in a pipeline's rates, it is entitled to intervene and participate in any hearing with respect to all matters relevant to the Commission's determination as to the appropriateness of the requested rate change. See *F.C.C.* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 475–477 (1940); *Associated Industries* v. *Ickes*, 134 F. 2d 694, 705 (2d. Cir. 1943), dismissed as moot 320 U.S. 707; *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 265 F. 2d 364, 368 (D.C. Cir. 1959); *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921, 926 (D.C. Cir. 1958); *City of Pittsburgh, et al.* v. *F.P.C.*, 237 F. 2d 741 (D.C. Cir. 1956); *National Coal Association* v. *F.P.C.*, 191 F. 2d 462, 466–467 (D.C. Cir. 1951). The *Sanders* case, *supra*, held that even if the competitive injury to the would-be intervener is not a factor which the agency could consider in reaching its final judgment in the proceeding, this is not a basis for rejecting intervention. See also *City of Pittsburgh* v. *Federal Power Commission, supra*, at 746. The *National Coal Association* case, *supra*, at page 467, makes clear that despite the discretionary language of Section 15 of the Natural Gas Act "any person who would be 'aggrieved' by the Commission's order, such as a competitor, is also a person who has a right to intervene." See also to this effect, the second *Virginia Petroleum Jobbers Association* case (265 F. 2d at 368). This latter case expressly rejected the argument that the Commission could deny intervention to a person who would suffer economic injury unless he could also show that he could represent the public interest and that it was necessary for him to do so. (See footnote 1 at pp. 367–368.)

---

[27] Since our above-cited order permitting INGAA to participate as *amicus curiae* in effect reserved the intervention issue for the Commission, INGAA's letter dated August 2, 1963, calling this issue to our attention, does not constitute an exception or supplemental brief, and the letter of the Coal Interests dated August 5, 1963, objecting thereto and requesting opportunity to reply is without merit and the request should be denied.

It is argued that all of the Federal Power Commission cases dealing with intervention related to certificate applications under Section 7 of the Act and that the early decision of the Tenth Circuit in *Alston Coal Co.* v. *F.P.C.*, 137 F. 2d 740, holds that the contrary is true with respect to rate proceedings like the present one. We do not so read the *Alston* case. At most it holds that the Commission had discretion to deny a petition to intervene in a Section 5(a) proceeding initiated by the Commission where intervention was sought "for the purpose of establishing the economic effect a reduction in gas rates would have upon the coal industry" (137 F. 2d at 742). We agree that the effect of a rate reduction upon the coal industry, as such, is not a relevant consideration in determining whether a proposed rate change meets the standards of Sections 4 or 5 of the Natural Gas Act and if the intervention petition here had been so limited, we would have been inclined to reject it. But the teachings of the cases cited in the preceding paragraph are that, while a competitor may not be in a position to argue his own injury as grounds for denial of a proposed revision of a pipeline's rates, this injury does give him standing to participate in any hearing which we order, and to introduce evidence or make arguments with respect to all of the factors which are relevant to our determination under Sections 4 and 5 of the Act. Certainly, there is no merit to the contention that a rate filing cannot injure the Coal Interests and that their injury, if any, stems from the precedent certificate proceeding; a reduction in a rate or a portion of the rate can well cause new or enhanced economic injury to competitive fuels.

What we have said above is predicated upon the assumption that the Coal Interests here actually would be aggrieved by the rate changes either as proposed by United Fuel and Atlantic Seaboard or as ordered herein. From what we are able to glean from the record it seems highly unlikely that this is in fact the case. We recognize, however, that we permitted the Coal Interests to intervene in this proceeding on the basis of allegations in their petition and did not require them to support these allegations on the record. We see no reason for delaying the decision here to make any such determination at this late date. However, in the future we will expect persons claiming the right to intervene because of their competitive status to allege facts in their pleadings sufficient, if true, to indicate the nature of the injury. Where the validity of such a showing is appropriately challenged, we reserve the right to set the matter of injury for hearing prior to authorizing intervention. See *Chicago District Pipeline Co.*, Docket No. RP64-5, order of December 16, 1963.

Rates and refunds.—As indicated at the outset of this opinion, rates must be fixed for both Respondents for two periods, namely, from April 5, 1960 to May 1, 1961, and from and after May 1, 1961, and refunds must be made by Respondents accordingly. We shall require both Respondents to file rates based upon their approved jurisdictional costs of service and upon our determinations in this opinion. First, however, we should decide a question deferred until now by our settlement orders (27 FPC 538, 26 FPC 945), namely in what manner shall United Fuel and Atlantic Seaboard make rate reductions and refunds resulting from rate reductions and refunds by their suppliers.[28]

Respecting this issue, the Examiner held that, following Staff's recommendation, refunds should "flow through" Respondents to their customers precisely as received from the suppliers. Under this method, refunds received by United Fuel from its suppliers would be passed on by United Fuel to its customers in the same proportions of demand and commodity charges as refunded by the suppliers. Correspondingly, United Fuel's demand and commodity charges would be reduced to reflect the reductions in its suppliers' demand and commodity charges. Generally, the same procedure would be followed as to the refunds and rate reductions Atlantic Seaboard receives from United Fuel.

Only Washington Gas excepts, contending that if *Seaboard* unit costs are not utilized in developing Respondents' rates, refunds and reductions should be computed so as to more nearly approach rates reflecting *Seaboard* unit costs. It further contends that if it is decided that a commodity charge of a particular level is required to protect existing interruptible industrial sales, it would be anomalous to permit reductions and refunds to reduce even further that commodity charge which would, it contends, be the result if refunds and reductions are handled on an "as received" basis.

We conclude that in developing Respondents' rates, refunds and rate reductions from suppliers made prior to the date of issuance of this opinion should be reflected exclusively in the demand components of Respondents' rates.[29] In designing rates for Respondents in this case, the basic problem has been to find commodity charges that will meet the prevailing economic and market requirements of Respondents and their customers, including the need of Washington Gas for a relatively low demand charge stemming from its low load factor operation and lack of interruptible industrial sales. Having arrived at commodity charges which meet these requirements, the most reasonable course is to adhere to them consistently, to the extent practicable, and make any necessary adjustments to Respondents' rates in the demand charges. Further, we think this procedure should be followed not only with respect to adjustments reflecting supplier refunds and rate reductions, but also adjustments reflecting the transfer to United Fuel of the Boldman Compressor

---

[28] United Fuel purchases gas principally from Tennessee Gas Transmission Company and certain producers in Texas and Louisiana. United Fuel pays Tennessee under a demand-commodity rate for purchased gas, and also for gas Tennessee transports for United Fuel from a Texas producer, Champlin Oil & Refining Company, from which United Fuel purchases gas. Also, United Fuel pays a cost-of-service rate to its affiliate, Columbia Gulf, for the latter's transportation of gas purchased by United Fuel from other producer-suppliers in Louisiana. United Fuel pays the producers at commodity rates.

A very substantial portion of the gas which United Fuel purchases is at rates which were made subject to refund. These rates, on which the costs of service of United Fuel in these proceedings are based, include both the demand and commodity components in Tennessee's rates and the producers' commodity rates.

Atlantic Seaboard also purchases gas from Transcontinental Gas Pipe Line Corporation.

[29] Supplier refunds and reductions made subsequent to the date of issuance of this opinion shall be reflected in Respondents' rates on an "as received" basis.

Station and other facilities discussed previously in this opinion. Our review of the resulting indicated rates satisfies us that this procedure is not subject to any material objection. It will assure the equitable distribution to Respondents' various customers of the refunds and rate reductions involved while largely satisfying Washington Gas' desire for a relatively low demand charge rate.

As to the particular rates for Respondents in this proceeding, United Fuel shall file rates acceptable to the Commission effective April 5, 1960, based upon its jurisdictional cost of service heretofore approved in this proceeding. Consistent with the foregoing determinations in this opinion, in developing the CDS–1 rate to be filed, United Fuel shall utilize its proposed commodity charge of 29.44 cents per Mcf, and shall reflect in the demand charge of the rates to be filed United Fuel's acquisition of the Boldman Compressor Station as of April 5, 1960.

United Fuel shall also file rates acceptable to the Commission effective May 1, 1961, based upon the jurisdictional cost of service heretofore approved in this proceeding. In determining the CDS–1 rate to be filed, United Fuel shall utilize its proposed commodity charge of 29.58 cents per Mcf, and shall reflect in the demand charge of the rates to be filed its previous acquisition of the Boldman Compressor Station. Further, the demand charge of the rates to be filed shall also reflect, effective as of the date received, all reductions in the rates of United Fuel's suppliers on and after May 1, 1961. Further, the demand charge of the rates to be filed shall also reflect, effective as of October 1, 1963, United Fuel's acquisition of the KA–20 pipeline facilities and the merger of Amere Gas Utilities Company into United Fuel.

Atlantic Seaboard, in turn, shall file rates acceptable to the Commission effective April 5, 1960, based upon its jurisdictional cost of service heretofore approved in this proceeding. In determining the contract-demand rates to be filed, Atlantic Seaboard shall utilize the Examiner's proposed commodity charges of 32 cents per Mcf, as set forth in his decision (corrected by his errata sheet), and shall reflect in the demand charge of the rates to be filed Atlantic Seaboard's transfer of the Boldman Compressor Station as of April 5, 1960, and also the utilization of the Btu adjustment provision applicable to the demand charge proposed by Staff and hereinabove approved.

Atlantic Seaboard shall also file rates acceptable to the Commission effective May 1, 1961, based upon the jurisdictional cost of service heretofore approved in this proceeding. In determining the contract-demand rates to be filed, Atlantic Seaboard shall utilize the Examiner's proposed commodity charge of 32.16 cents per Mcf, as set forth in his decision, and shall reflect in the demand charge of the rates to be filed its previous transfer of the Boldman Compressor Station. Further, the demand charge of the rates to be filed shall also reflect, effective as of the date received, all reductions in the rates of United Fuel on or after May 1, 1961; and shall also reflect, effective as of October 1, 1963, Atlantic Seaboard's transfer of the KA–20 pipeline and the merger of Amere Gas Utilities Company into United Fuel, and shall also reflect the utilization of the Btu adjustment provision applicable to the demand charge proposed by Staff and hereinabove approved.

Each Respondent shall compute the refunds owing to its customers on the basis of the rates to be filed as described above, and in the light of the other determinations in this opinion, and shall file with the Commission and satisfactory to it, their plans for making refunds showing the amounts to be refunded, the amounts for principal and interest computed separately for each jurisdictional customer,[30] and the details of their calculations underlying the said amounts, such plans to be filed within 45 days of the date of issuance of this opinion, as more fully provided in the order hereto.

The Commission further finds:

(1) United Fuel and Altantic Seaboard are "natural-gas companies" under the Natural Gas Act, and their sales in interstate commerce of natural gas for resale involved in this proceeding are subject to Commission jurisdiction.

(2) United Fuel's proposed increased rates and charges contained in its Second Revised Sheets Nos. 8 and 9, Fourth Revised Sheets Nos. 7, 27, and 33, and Fifth Revised Sheet No. 22 to its FPC Gas Tariff, Fifth Revised Vol. No. 1, which were made effective April 5, 1960, by the Commission's order issued May 6, 1960, in Docket No. G-20270, have not been shown to be just and reasonable or otherwise lawful under the Act, and should be disallowed.

(3) Atlantic Seaboard's proposed increased rates and charges contained in its Third Revised Sheets Nos. 8, 9, 13, 14, 16D, 17D, 26 and 28,[31] Fourth Revised Sheets Nos. 7, 12, 16A and 17A, and Fifth Revised Sheets Nos. 22 and 24 to its FPC Gas Tariff, Seventh Revised Volume No. 1, which were made effective April 5, 1960, by the Commission's order issued April 26, 1960, in Docket No. G-20272; Fourth Revised Sheets Nos. 16C and 17C which were made effective by Commission orders issued November 27, 1962 and January 25, 1963, in Docket G-16401, to supersede the Third Revised Sheets Nos. 16C and 17C, which are subject to this proceeding; and Second Revised Sheets Nos. 10, 15, 16F, and 17F, which were made effective April 5, 1960, by the Commission's order issued January 10, 1961, in Docket No. G-20272, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Act, and should be disallowed.

(4) United Fuel and Atlantic Seaboard should, within 45 days of the date of issuance of this opinion, file with the Commission and satisfactory to it, revised tariff sheets providing for rates and charges to be effective as of April 5, 1960, to May 1, 1961, and on and after May 1, 1961; and such rates shall be developed as specified in the Rates and Refunds section of this opinion, and shall take effect as of the aforesaid dates upon Commission approval of the said filings.

(5) United Fuel and Atlantic Seaboard should compute and refund to its jurisdictional customers the amounts by which the rates and charges disapproved in paragraphs (2) and (3) above, exceed the rates and charges which Respondents must file subject to Commission approval under paragraph (4) above, together with interest at 7 percent per annum, as more fully provided in the Rates and Refunds section of this opinion, the Commission orders permitting Respondents rates to take effect subject to refund cited in paragraph (2) and (3) above, and in the order hereto.

(6) Exceptions not discussed herein are disposed of by the Examiner's decision or are immaterial to the result in this case. Except to the extent herein granted, all the exceptions filed are without substantial support in the facts or reasonable basis in law and should be denied.

---

[30] There shall be deducted from the principal and interest so computed, the interim refund of principal and interest made to the jurisdictional customers under the Commission's order issued September 14, 1962, permitting interim refunds.

[31] Sheets 26 and 28 were erroneously referred to in the Commission's order issued April 26, 1960, and in the Examiner's decision herein on page 1380, and in finding (5) and ordering paragraph (F), as Fourth Revised Sheets 26 and 28.

The Commission orders:

(A) The proposed increased rates filed by United Fuel and Atlantic Seaboard, referred to in paragraphs (2) and (3) above, are hereby disallowed.

(B) United Fuel and Atlantic Seaboard shall, within 45 days of the date of issuance of this opinion, file with the Commission and satisfactory to it, revised tariff sheets providing for rates and charges to be effective as of April 5, 1960, to May 1, 1961, and on and after May 1, 1961; and such rates shall be developed as specified in the Rates and Refunds section of this opinion, and shall take effect as of the aforesaid dates upon Commission approval of the said filings.

(C) United Fuel and Atlantic Seaboard shall compute and refund to their jurisdictional customers the amounts by which the rates and charges disapproved in findings (2) and (3) above exceed the rates and charges which Respondents must file subject to Commission approval under paragraph (B) above, together with interest at 7 percent per annum, as more fully provided in the Rates and Refunds section of this opinion, and in the Commission orders permitting Respondents' rates to take effect subject to refund, cited in findings (2) and (3) above. In this connection, United Fuel and Atlantic Seaboard shall, within 45 days of the date of issuance of this opinion, file with the Commission and satisfactory to it, and with all their jurisdictional customers, the refund plans more fully described in the "Rates and Refunds" section of this opinion, respecting the amounts Respondents must refund to their jurisdictional customers on the basis of the rates to be filed herein, and shall make the said refunds within 15 days of the date of Commission approval of the said refund plans.

(D) Respondents shall, within 30 days after making the refunds required by paragraph (C) above, file with the Commission in writing and under oath a report showing that they have made the refunds ordered herein, together with releases from each of their jurisdictional customers. Upon making the refunds ordered in paragraph (C), to the satisfaction of the Commission, the undertakings given by Respondents to make refunds shall be discharged and these proceedings shall be terminated.

(E) All natural-gas companies subject to the jurisdiction of the Commission which directly or indirectly receive refunds as a result of this opinion and order shall refund to their customers without additional interest all refunds received from United Fuel and Atlantic Seaboard within 45 days of receipt of such amounts. If any such natural-gas company objects to making such refunds, it shall file a protest with the Commission and before being required to make such refunds will be afforded a hearing. Within 30 days after making the refunds required by this paragraph, all such natural-gas companies shall report to the Commission in writing and under oath the manner of making such refunds, including a list of customers and the amount refunded to each customer.

(F) The Examiner's decision issued in this proceeding on June 19, 1963, is modified as herein set forth and as so modified is adopted by the Commission as of the date of issuance of this opinion, to constitute with this opinion the Commission's decision in this case. Exceptions to the Examiner's decision not granted herein are denied.

Commissioner Ross *dissenting in part.*

Ross, Commissioner, *dissenting in part:*

This was to be the case—finally—when the Commission in all due solemnity, would perform the last rites for the Atlantic-Seaboard "formula".[1] But the condemned method, whose obituary was heralded in *Southern Natural* (Op. No. 379, 29 FPC 323) has miraculously survived to officiate at what was to be its own funeral—to the surprise of all including the intended executioners.

To be completely fair, it does seem evident that the Commission does not really adhere to the Seaboard method but chooses a particular commodity rate, for reasons not always clearly elucidated, and works backwards to compute the tilt, deviation, or what have you, from the Seaboard method. The obvious and as yet unresolved question posed here is why the majority considers it necessary to go through this exercise when they too recognize in this very case "that the use of *Seaboard* for rate design has serious infirmities". (*Supra*, p. 1347)

Why don't we stop the pretense? Why not sensibly begin with a functional cost assignment and then consider the various other relevant factors? It seems necessary to emphasize that it is *costs* we are to allocate. The purpose of a valid cost allocation is to trace or attribute to units of output (*i.e.* an Mcf of gas of off-peak or on-peak service) the costs incurred in their production.[2] Where a readily discernible and measurable relationship exists between variation in output (Mcfs) and variations in costs, the assignment of this type of costs to units of output is clear. Thus, purchase gas costs and compressor fuel costs which vary in proportion to output (number of Mcfs sold) should be assigned a uniform share of such costs with possible minor exceptions.

Fixed or capacity costs are not so readily assigned. The apparent reason for the difficulty is the false assumption that fixed costs are "joint costs" incurred in the production of joint products: on-peak and off-peak service. However, Professor Bonbright and Ralph Davidson have made a convincing case in their books referred to above that capacity costs are not joint costs. Rather, they are costs incurred in the production of common products, one of which—off-peak service—is a distinct by-product, whereas the other—on-peak service—is the main product, the *raison d'etre* of the pipeline. Fixed costs, by definition, do not vary with units of output.

With this classification as a starting point, the Commission could then examine the resulting commodity rate in the light of the other pertinent factors: promotion of efficient (high load factor) operation; avoidance of discriminating against economic peak showing, including underground storage, as well as any undue discrimination; competition from other pipelines and energy sources; stability of earnings; predictability of demand and commodity rates; expected growth of sales, and others. In my opinion, the commodity and consequent demand rates recommended by both respondents are reasonable, considering all these factors. The resulting commodity levels are 29.58¢ for United Fuel and 30.81¢ (CDS–1) and 29.11¢ (CDS–2) for Atlantic Seaboard. In each case, the commodity component includes over 2¢ per Mcf of fixed costs. Thus the interruptible customers would not receive a "free ride".

---

[1] The assignment of 50% of pipeline's fixed costs to the commodity component has no present economic basis and, in my judgment, never did.

[2] In addition, it would be preferable to separately classify those costs due exclusively to serving a particular customer. Bonbright, *Principles of Public Utility Regulation*, pp. 311–2, 347–9; Davidson, *Price Discrimination in Selling Gas and Electricity*, pp. 62, 64, 181–2.

It would not be surprising if the majority's apparent reluctance to the above approach is founded on its fear that, in a case involving substantial direct (nonjurisdictional) sales, abandonment of Seaboard would mean an increase in jurisdictional rates.[3] I do not subscribe to this unstated and untested fear. When the costs of a half empty pipeline under Seaboard are compared to a full pipeline with nominal fixed costs in the commodity component, I feel certain that both jurisdictional and nonjurisdictional customers would benefit under the latter approach.

The majority's refusal to take every reasonable advantage to reduce Atlantic-Seaboard's commodity rate is hard to explain in the light of its decision in *Atlantic-Seaboard Corp.* (Op. No. 368, 28 FPC 860, Nov. 27, 1962). There the Commission accepted certain tariffs whose legality is, at best, questionable, in order to protect Atlantic-Seaboard's markets which were vulnerable to other pipeline suppliers. The reason Atlantic-Seaboard was vulnerable was because of its excessively high commodity rate—a rate the majority is here perpetuating.

The majority, inconsistent with the above opinion, now says that this factor as well as the other factors described above are too "complex and uncertain" and "would virtually preclude the exercise of judgment on a reasonable predictable basis". (*Supra*, p. 1348)[4] This conclusion of the majority is unsupported. Predictability is, of course, an important factor in rate design. However, it is one factor which should be weighed with other relevant factors. Here, as in the Seaboard formula itself, the majority confuses the initial step of functional cost classification with other factors affecting rate design.

My final major criticism of the majority opinion is its utter failure to explain why it adopted the company suggested rates regarding United Fuel and the Examiner's recommended rates regarding Atlantic-Seaboard.

For these reasons, I dissent to the opinion on the rate design issue.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON PROCEEDINGS PURSUANT TO SECTION 4(e) OF THE NATURAL GAS ACT

(Issued June 19, 1963)

WILLIAMS, *Presiding Examiner:* This is a consolidated proceeding pursuant to Section 4(e) of the Natural Gas Act involving proposed increased rates by United Fuel Gas Company (United Fuel) and Atlantic Seaboard Corporation (Atlantic Seaboard) in revised tariffs tendered for filing on November 4, 1959. The Federal Power Commission (Commission) by orders of December 4, 1959 and March 1, 1960, subjected such filings to public hearing and suspended the imposition thereof until April 5, 1960. The rates of United Fuel and Atlantic Seaboard were placed in effect upon such date subject to refund with the latter company's filing reflecting certain subsequent revisions approved by the Commission in orders dated April 26, 1960 and January 10, 1961.

Rate settlement agreements were entered into by United Fuel and Atlantic Seaboard with their customers, certain non-customers interveners and the Staff of the Commission. The stipulated costs of service of which there are two with respect to each Applicant (Exhibits 1 and 2), are based upon

---

[3] Such a concept illogically assumes that because jurisdictional *cost* would be higher relative to nonjurisdictional costs, that jurisdictional rates would be higher on an absolute basis.

[4] Then the majority proceeds to use these same complex and uncertain factors to justify a tilt from Atlantic-Seaboard! (Op. p. 1348, et seq.)

the same test period, namely, the twelve-month period ending March 31, 1960. One cost of service in each case is to be used in designing rates for the period from April 5, 1960, to May 1, 1961, and the other has been adjusted to reflect increases in purchased gas costs and is to be used in designing rates to become effective as of May 1, 1961. Such agreements were conditionally approved by the Commission in orders dated December 29, 1961; February 19 and March 20, 1962, respectively.

With respect to United Fuel, a public hearing was ordered for the purpose of resolving the following issues:

1. The level of the demand and commodity components of the rate in Rate Schedule CDS-1 and the rate levels in Rate Schedules AOS-1, SGS-1 and ES1, included in United Fuel's FPC Gas Tariff, Fifth Revised Volume No. 1, applicable (i) to the period April 5, 1960, through April 30, 1961, and (ii) to be effective on and after May 1, 1961, until superseded.

2. The manner in which United Fuel shall make refunds or further revise its rates pursuant to the settlement agreement or the provisions of Paragraph D of the Order of March 20, 1962.[1]

3. The depreciation rates of United Fuel to be applied to its underground storage and transmission properties and its Kenova Extraction Plant.

As to the Atlantic Seaboard, it was likewise directed that the following matters be heard:

1. The level of the demand and commodity components of the rate in Rate Schedules CDS-1, CDS-2, CDS-PR-1, and CDS-PR-2, and the rate levels in Rate Schedules AOS-1, AOS-2, IS-1 and IS-2 included in Seaboard's FPC Gas Tariff, Seventh Revised Volume No. 1 (i) for the period beginning April 5, 1960 through March 31, 1961 and (ii) to be effective on and after April 1, 1961 until superseded.

2. The manner in which Atlantic Seaboard shall reduce rates and make refunds to reflect rate reductions and refunds from suppliers and to meet the requirements of Paragraph C of the Order of December 29, 1961.[2]

3. The continued inclusion in the heat content adjustment provision of said Rate Schedules CDS-1, CDS-2, CDS-PR-1 and CDS-PR-2 of the clause:

> Demand charge
>
> The Demand Charge shall be increased in proportion to the amount by which the average total heating value of the gas delivered in the month in which the Billing Demand was established is greater or less than 1000 Btu per cubic foot.

The Commission permitted the intervention of some twenty-two parties in this proceeding as set out in the previous specification of appearances.

On June 27, 1962, the Independent Natural Gas Association of America petitioned to intervene in this proceeding upon a limited basis for the purpose of contesting the participation of the Coal Interests or, alternately, to appear as *amicus curiae*.

The Commission subsequently denied the petition to intervene, but granted the right to file briefs and participate in oral argument with respect to the issue presented.

---

[1] See note in connection with paragraph 2, below.

[2] While the wording of this paragraph differs from the companion provision in the order relating to United Fuel, the Examiner deems the latter language to correctly state the issue for decision.

Public hearings commenced on June 25, and with limited recesses intervening, were completed on October 26, 1962. On September 14, 1962, the Commission authorized the Applicants to make payment of interim refunds pending the outcome of the issues involved in the instant matter.

United Fuel, a West Virginia corporation and a wholly-owned subsidiary of the Columbia Gas System, is engaged in the production, purchase, transmission, underground storage and distribution of natural gas. A very substantial portion of its gas supply, commonly referred to as Southwest gas, is purchased from Tennessee Gas Transmission Company (Tennessee) and producers in Louisiana.

United Fuel sells gas at wholesale to Atlantic Seaboard, Columbia Gas of Kentucky, Inc., Kentucky Gas Transmission Corporation, The Manufacturers Light & Heat Company (Manufacturers), The Ohio Fuel Gas Company (Ohio Fuel), The Ohio Valley Gas Company, The Portsmouth Gas Company, Luther Lusher, and Consumers Gas Utility Company, for resale to ultimate consumers extending from Kentucky and Ohio in the west, to the Hudson River Valley, Baltimore and Washington in the north and east. In addition to its wholesale business, United Fuel sells gas at retail to customers in West Virginia, to a few small intrastate wholesale customers in Kentucky, and to one direct industrial customer in Ohio.

Atlantic Seaboard, also a wholly-owned subsidiary corporation of the Columbia Gas System, owns and operates a 420 mile 20-inch gas transmission pipeline extending from Boldman, Kentucky to the Maryland-Pennsylvania state line north-east of Washington. It also owns and operates a multiple 262 mile, 26-inch gas transmission pipeline extending in an easterly direction from Clendenin, West Virginia to a point near Rockville, Maryland, where it joins the 20-inch line previously mentioned. In addition, both lines are connected by a 24-inch transmission pipeline extending approximately 49 miles from a point in Hardy County, West Virginia to a point in Greene County, Virginia. While the major portion of Atlantic Seaboard's gas supply is purchased from United Fuel, the corporation buys small amounts from independent producers in West Virginia and Kentucky who are close to the pipelines, the Amere Gas Utilities Company in the Beckley and Mullens, West Virginia area and Transcontinental Gas Pipe Line Corporation in Virginia and Maryland.

Atlantic Seaboard sells gas only at wholesale and it neither owns nor operates any distribution properties. The customers of the corporation, all jurisdictional, are Amere Gas Utilities Company; Baltimore Gas and Electric Company (Baltimore); The City of Charlottesville, Virginia; Commonwealth Natural Gas Corporation (Commonwealth); Cumberland and Allegheny Gas Company (Cumberland); Lynchburg Gas Company (Lynchburg); The Manufacturers Light & Heat Company (Manufacturers); Roanoke Gas Company (Roanoke); Virginia Gas Distribution Corporation (Virginia Gas); Washington Gas Light Company (Washington) and Zebulon Gas Association, Inc.

Both Applicants operate extensive underground storage pools and have substantial investments in such facilities.

United Fuel and Atlantic Seaboard with minor exceptions make their sales of gas under two-part contract demand rates to their respective customers, all of whom have substantially different billing demand load factors, ranging from approximately 100 percent in the case of Manufacturers and Ohio Fuel to about 45 percent with respect to Washington.

The demand portion of the two-part rate is related to the peak requirements of a customer (CDS-1 Tariff) while the commodity charge is related to the volumes of gas actually delivered. The two-part rate is generally used by the pipeline industry, for the purpose of equitably distributing the supplier's cost of service among its customers having different load factors. Because the composite load requirements of the various customers leave substantial amounts of unused pipeline capacity during off-peak periods, the failure to use such capacity results in comparatively high average unit costs per Mcf of gas transported. In order to reduce these high average costs, pipeline customers are inclined to build underground storage or peak-shaving facilities of various kinds, and to promote the sale of gas on an interruptible basis to commercial and industrial consumers.

The principal and most controversial issue in this proceeding is whether the demand and commodity charges in the proposed contract demand rate schedules of the Applicants must reflect a precise translation of the classified and allocated costs of the respective companies, or whether the evidence presented during the course of litigation warrants a reasonable departure from mathematically derived rate levels.

The Applicants urge that the matter of designing an equitable and proper rate is a complex one and may not be achieved by resorting to a mathematical formula. It is their contention that rates must be designed upon the basis of informed managerial judgment which takes into consideration, for example, the following questions:

a. How much of the fixed or capacity costs should be recovered in the demand charge?

b. Should the supplier's fixed costs be recovered from the customers in proportion to their peak requirements which caused the supplier to incur such costs?

c. Should the fixed charges to the customers be the same as the fixed costs incurred by the supplier?

d. Should part of the fixed costs be recovered in the commodity component of the rate and part in the demand component? And if so, how much in each?

While the Applicants do not object to using as a guide the so-called "Seaboard Formula", a classification and allocation of costs adopted by the Commission in Opinion No. 225 (*Atlantic Seaboard Corp., et al.*, 11 FPC 43, 56) it is their position that other equally important factors peculiar to their individual situation, should be considered in designing rates.

The principal witness appearing in support of the Applicants' affirmative case was Mr. C. H. Workman, Vice President of the Charleston group of companies of the Columbia Gas System which includes United Fuel, Atlantic Seaboard, Amere Gas Utilities Company, Columbia Gas of Kentucky, Inc., Kentucky Gas Transmission Corporation and Virginia Gas Distribution Corporation. Mr. Workman, Vice President in charge of the rate and depreciation department of this organization since 1958, has had some 34 years of cumulative experience in the natural gas industry.

The rates recommended by the Applicants were designed by Mr. Workman and, according to his testimony, they will enhance the competitive position of United Fuel and Atlantic Seaboard, more equitably distribute costs among their respective customers and promote more efficient use of facilities through the encouragement of interruptible off-peak sales and peak-shaving by wholesale customers. It is Mr. Workman's position that the recognition of these factors will keep to a minimum the unit cost of service to ultimate consumers, including the rapidly increasing number of residential customers. The thrust of the Applicants' case is that the foregoing empirical factors may be given proper recognition only through rates which are tailored to meet individual circumstances and not through the application of a predetermined formula. Mr. Workman characterizes his approach to rate design as one depending upon informed judgment. This approach, in his opinion, is necessary because of the many significant developments which have affected the natural gas industry since Opinion No. 225 embracing the Seaboard formula was issued in 1952.

Dr. Nelson Lee Smith, distinguished rate expert, college professor and a former member of the Federal Power Commission, testified in behalf of the interveners supporting the Applicants, that a rate design should be adopted by the present Commission which will offset declining load factors resulting from the substantial increases in space-heating and residential sales. It is Dr. Smith's opinion that the sale of interruptible off-peak gas at prices which recover something in excess of incremental cost is one of the most effective means (along with peak-shaving and storage) of counter-balancing the space-heating load. Mr. Frank A. Knecht, Manager of the Rate Research Department of Baltimore Gas and Electric Company, testified that contemplated sales of interruptible gas will increase Baltimore's purchases from Atlantic Seaboard by 30% with a consequent improvement in the company's purchase load factor of 12.1 percentage points by 1964. He felt, however, that if Atlantic Seaboard's commodity component is increased, such sales will not materialize and that many present interruptible customers will be lost to competitive fuels. Mr. C. E. Starkey, Vice President of Commonwealth related that his company has already lost substantial interruptible business and that more industrial customers will terminate their contracts unless Commonwealth's rates can be made competitive with lower priced fuels. Witnesses testifying for Roanoke, Virginia Gas, Manufacturers, Lynchburg, United Gas Improvement and Ohio Fuel likewise favored a low commodity and high demand rate in order to encourage and, in fact, to retain current interruptible business.

Two interveners, Washington and the Fuels Research Council, Inc., *et al.* (Coal Interests), urge rate levels determined strictly within the framework of the method of cost classification and allocation set forth in the previously-mentioned Opinion No. 225, and in Opinion No. 228 (*Northern Natural Gas Company*, 11 FPC 123).

The parties sanctioning the adoption of rate levels which, in their opinion, conform strictly with costs classified and allocated in accordance with alleged Commission precedents, contend there can be no departure from such precedents except upon a showing that "mitigating circumstances" are present.[8]

---

[8] At Page 6 of the Brief of Washington Gas Light Company a portion of Opinion No. 225, is paraphrased as follows: "The Commission held in that case that in the absence of mitigating or unusual circumstances, the allocated demand and commodity cost of service components should be used for the design of rates so that the demand and commodity rate revenues would correspond with the demand and commodity components of the total jurisdictional costs of service (*Atlantic Seaboard Corporation*, 11 FPC 43, at 62; 22 R. 2725, Benson)."

The actual words of the Commission were:

> We have previously expressed our opinion as to the proper method for allocation of costs to the demand and commodity components of the costs of service. While, as we have pointed out, such an allocation of costs is not necessarily controlling in the *fixing of the precise level of the demand and commodity components of the rates, they are,* in the absence of other mitigating circumstances, *a reasonably accurate guide* as to the appropriate level for the demand charge and the commodity charge. In this case there are no unusual mitigating circumstances. [Italics supplied.]

Proponents of departure contend that the wording of Opinion No. 225 does not compel a direct translation of costs into rates since costs are nothing more or less than a reasonably accurate guide in the process of determining rate levels. They further urge that circumstances prevail today which did not exist and were not contemplated at the time the Atlantic Seaboard opinion was issued. It is alleged that the unusual and onerous nature of prevailing circumstances would require prompt Commission mitigation of the resulting distress which would inevitably follow if "Seaboard" rates are imposed. The usual or mitigating circumstances referred to by the parties will hereinafter be discussed in detail.

The Examiner has reviewed the opinions of the Commission relied upon by the Applicants and the various interveners to support their respective positions as to rate design. Particular attention has been paid to the opinions (or orders) of the Commission which have been cited as precedents for current concepts of cost classification, cost allocation and rate design. The review of Opinion No. 225 and subsequent opinions bearing upon the matter of rate design leads the Examiner to the conclusion that the procedures established by the Commission as to cost classification have, for the most part, a persuasive continuity, whereas those relating to allocation and rate design seem to have been developed upon a case by case basis, with apparently less reliance placed upon precedent than upon the circumstances present in particular cases.

It is patently clear from a reading of Opinion No. 225 that the rate design procedure established therein did not result from a strict translation of the classified costs. At page 58 *supra*, under the heading, "Allocations to firm customers", the Commission adopted the findings of the Examiner in determining costs (revenue requirements) applicable to firm sales. This was accomplished by deducting from the total commodity costs the revenues anticipated to be received from interruptibles. The Examiner stated in his initial decision, reported at page 528, *supra*:

> As there is no evidence of record that revenues estimated to be received in connection with interruptible sales[7] will not cover the cost of rendering interruptible service on the basis of a 6 percent return,[8] the amounts of such revenues are appropriately deductible from the total cost of service, to obtain costs with respect to which applicants are entitled to look to other customers (firm) for further revenue.
>
> [7] As revised with respect to West Virginia Pulp and Paper Co., *infra*, and as adjusted for heat content in each instance, also *infra*.
>
> [8] The evidence is that revenues from sales to Manufacturers, for resale to Lukens, *more than cover the cost* to applicants of rendering that service. [Italics supplied.]

The interruptible revenues referred to above were determined from the interruptible rates set forth in the Examiner's decision, *supra*, at pages 538-539 and are the same as the rates in Findings (9) and (10) of Opinion No. 225. These rates are straight-line rates of 28.55 and 30.00 cents per Mcf (subject to a heat adjustment) for sales for resale to industrial consumers normally using more than 100,000 Mcf per month and less than 100,000 Mcf per month, respectively. It is obvious that the interruptible rates found to be just and reasonable by the Commission contain substantial demand charges since the Contract Demand Rate Schedule CDS-1 contained a demand charge of $1.46 and a commodity charge of 24.5 cents per Mcf. Thus, the deduction of interruptible revenues, which undisputably contained a large element of demand costs, from the total commodity cost *did not result in a rigid translation of costs into rates in the very opinion* *which is relied upon so heavily as a firm precedent for strict "Seaboard" rates.* The effect of the foregoing revenue deduction procedure in Opinion No. 225 obviously resulted in a higher demand charge and a lower commodity charge than would have been found if classified costs, before adjustment, had been translated into rates.

The following paragraphs quoted from Opinion No. 228 (*Northern Natural Gas Company,* 11 FPC 123, 146) describe the manner in which rate levels were determined in that proceeding:

> On the facts of the record, we prescribe the following rate for the CD-1 schedule as just and reasonable:
>
> Demand charge—$1.30 per M.c.f. of billing demand.
>
> Commodity charge—15 cents per M.c.f.
>
> This rate was developed in the following manner: A unit commodity price was first developed by dividing the total commodity costs by the total volume of gas delivered during the test period. The total demand costs were reduced by the difference between *revenues* from the overrun gas rate of 17 cents per M.c.f. and the developed unit commodity cost. A unit demand cost was then developed by dividing the *adjusted* demand cost by the total billing demand units. [Italics supplied.]

At Page 145, *supra,* the Commission referred to overrun gas as follows:

> Rate schedule for overrun interruptible gas.—At the present time, several of Northern's customers take substantial volumes of gas in excess of their contract demand on an interruptible basis. Northern has no separate rate schedule for such gas, and the utility is charged for such gas merely the commodity charge of the demand-commodity rate. As we have pointed out above in our discussion of the minimum billing demand provision, Northern would charge utilities not taking their contract demand volumes the demand charge for such gas, and assess only the commodity charge against companies purchasing the gas. The sale of gas above the contract demand volumes on an interruptible basis is a separate service for which there should be a separate rate schedule, as required under our rules. We believe also that the rate for such service should include not only the commodity cost related thereto, but, in addition, should include some of the demand cost related thereto. The Staff's proposed rate schedule R-1 describes the service provided and it appears to represent reasonable demand and commodity costs associated with such service. Therefore, the staff's rate schedule R-1 will be prescribed for this service. [Footnote omitted.]

Thus, in Opinion No. 228, the levels of the demand and commodity charge were also *not a direct translation of costs,* but were *arrived at by deducting revenues from costs as classified and allocated.* The Examiner does not question the rates ordered by the Commission in such opinion, but it is obvious that if the Commission had followed the precepts of Opinion No. 225 with mathematical precision, it could not have arrived at a rate of 17 cents per Mcf for overrun gas. If, however, a strict translation of costs into rates had been followed, the rate would have been 15 cents per Mcf.

The costs and rates of United Fuel were subject to Commission adjudication in Docket Nos. G-1781 and G-2055 (*United Fuel Gas Company,* 12 FPC 251 and 351, respectively) within approximately one year after the issuance of Opinions No. 225 and 228. In the opinions in these cases, Nos. 258 and 258-A, the Commission extensively reviewed, *inter alia,* the matters of cost allocation and rate design on the United Fuel system. With respect to Opinion No. 258, the table at p. 287 of the printed report shows the demand charge revenues under the rates prescribed by the Commission would amount to $4,695,515 whereas the table at p. 280 shows the costs contained in demand component of the Interstate Sales for resale are $3,347,826. The difference between the demand revenues and costs amounts to $1,347,689 or a collection of demand revenues exceeding costs by 40.3 percent.

At page 286 *supra*, the Commission stated:

> Thus, we provide a demand-commodity type of rate which gives effect to load factor, but our time interval for determining the demand is greater than customary.
>
> The demand charge under the two rate schedules is $0.50 per month per M.c.f. of billing demand as defined in the rate schedules. This demand charge, when applied to test year sales would recover revenues somewhat in excess of the classified demand costs herein found proper. However, where a major change is made in a company's rate structure, and the elimination of the $1.45 demand charge from the present tariff would be such a change, there may be concomitant changes in its sales characteristics. Under the circumstances, therefore, we find it appropriate to prescribe a demand charge somewhat higher than a strict application of the classification of costs might appear to warrant.

In Supplemental Opinion No. 258-A, the Commission prescribed demand charges of $0.90 in each of the two rate schedules rather than the $0.50 demand charge previously ordered, but at the same time made an off-setting reduction in the commodity charge. Thus, the classified and allocated costs of United Fuel in this case were completely disregarded by reason of the final setting of a demand charge which would recoup more than 100 percent above demand costs. Also, in Docket Nos. G-16841 (Midwestern Gas Transmission Company) and G-16842 (Tennessee Gas Transmission Company), 21 FPC 653, 664, the Commission ordered Midwestern to file a rate which would recover in the demand component all the costs associated with Midwestern's investment, all purchased gas demand costs and a small amount of purchased gas commodity costs, or in the alternative Midwestern could file a straight line rate. The company filed the two part rate schedule.

In Opinion No. 273, (*Ohio Fuel Gas Company*, 13 FPC 281, 297) the Commission stated.

> Since the relative level of the demand and commodity components of the total rate in effect prior to February 11, 1952 may have had some influence on the characteristics of the operations during the test year, and as Ohio Fuel's customers had geared their operations over a number of years, to such a rate form, we find that it is reasonable to design a rate closely approximating such a historical rate. The demand charge of $2.00 contained in Ohio Fuel's FPC Gas Tariff, Volume No. 1, together with our modification of the billing demand determinations, appears to be reasonable although it produces demand revenues somewhat in excess of classified demand costs. The corresponding commodity charge in Docket No. G-1786 is 28.3 cents per Mcf.

The position taken by United Fuel and Atlantic Seaboard, concurred in by many of the interveners in this proceeding, seems to be consistent with the position taken by the Commission in the last mentioned case where, because of the particular circumstances involved, (apparently considered to be "mitigating" in nature) it approved a rate based upon historical influences rather than a rate derived from strict cost allocation or translation.

The above-cited cases relied upon by the proponents of rates conforming rigidly to costs classified and allocated in the "Seaboard" pattern, as well as other cases, such as Opinion No. 226 (*Alabama-Tennessee Natural Gas Co.*, 11 FPC 75), Opinion No. 227 (*Transcontinental Gas Pipe Line Corp.*, 11 FPC 94) and Opinion No. 235 (*Colorado Interstate Gas Co.*, 11 FPC 324), which were decided by the Commission shortly after the Seaboard case, do not, in the opinion of the Examiner, reveal "immutable principles"[4] with respect to rate design. In fact, deviation as a result of the consideration of individual circumstances appears to be the rule rather than the exception.

The Examiner's curiosity was provoked by the broad and somewhat ambiguous assertions of the Coal Interveners, appearing at page 3 of their reply brief to the effect that the Atlantic Seaboard formula has been the subject of discussion in at least 40 separate major pipeline certificate or rate cases and that in 26 of the 40 cases, the Seaboard formula was followed or quoted with approval.

A review of a representative number of the cases alluded to by the Coal Interests (listed in Appendix A of their reply brief) in support of the above-statement, reinforces the Examiner's previous conclusion that more often than not, the Commission, while approving a Seaboard cost classification and allocation, has not insisted upon a literal translation of the cost formula into rates.

The Applicants and many of the interveners in this proceeding contend that the Seaboard method of cost allocation is discriminatory since it penalizes high load factor customers by assessing them with an unfair portion of the fixed commodity costs associated with unused capacity. Washington and the Coal Interests on the other hand, claim that no inequities result from the division of operation expenses and fixed costs in the commodity component on the basis of annual volumes of gas sold during the test period. In support of its position, Washington relies upon Opinions Nos. 326 and 326-A (*El Paso Natural Gas Company*, 22 FPC 260, 279 and 659, 665, respectively) to the effect that: (a) high load factor customers obtain greater service from a pipeline and, therefore, should be required to pay a larger portion of capacity costs; (b) the argument of the high load factor customers assumes the invalidity of the Seaboard formula and (c) departure from such formula will place a greater cost burden on the domestic and low-load consumers for the benefit of industrial customers.

The Examiner believes that the operations of the El Paso system differ from those of United Fuel and Atlantic Seaboard in a significant number of details. The El Paso system operates at very high load factor, it has negligible storage, and the main sales load centers are located at the terminus of its line where jurisdictional deliveries to three customers account for approximately 88.0 percent of the total jurisdictional sales (82 percent of capacity). The load factor of purchases by these three customers is in excess of 95 percent while the load factors of the small customers in the more easterly and up-stream zones of Texas, New Mexico and Arizona run from 45 to 60 percent. It does not appear that any extreme burden has been placed upon the California customers by reason of the fact that they are required to pay approximately 88 percent of the fixed costs in commodity component rather than the 82 percent indicated by their demand responsibility, since the increase is only slightly more than 7 percent.

---

[4] I recognize the importance of this Commission's establishing reasonably simple and stable cost-allocation procedures which can be well understood and anticipated by all concerned; such standards should be followed, without deviation where, under all the circumstances and conditions of system operation and cost behavior, they are appropriate. But there is danger, as I see it, in too strict adherence to an arbitrary formula—no matter how easy and convenient this sterile approach may be—under circumstances, such as those here present, which makes its application of dubious validity.

We should, in my opinion, recognize the problem of cost allocation as what it is—not an accountant's or engineer's mere mathematical computation based on certain immutable 'principles,' but an application of expert judgment to the peculiar economic facts of the particular case before us. Far from confining such important procedures in a straight-jacket applicable to all situations—which I fear the Commission is permitting—we should, in my judgment, encourage the thoughtful testing of allocation procedures heretofore followed and the development of new and promising experimental approaches to unique situations, such as those suggested by the witness in this proceeding mentioned above. Concurring opinion of Commissioner Nelson Lee Smith in *Home Gas Company, et al.* 18 FPC 241, 279.

In contrast, however, the customers of the United Fuel and Seaboard systems having the greater capacity requirements, as measured by the billing determinants shown in Exhibits Nos. 72 and 75, do not have load factors higher than the lesser capacity customers. As for example, with respect to the 12 months ended March 31, 1960, the Ohio Fuel Gas Company billing demand responsibility is approximately 17.5 percent and its volumetric responsibility 27.6 percent, an increase in the latter of more than 50 percent over the percentage of demand responsibility. On the Seaboard system during the same year, the percentage increase to Lynchburg in commodity responsibility, as compared to demand responsibility, is approximately 23.2 percent and to Manufacturers the increase is more than 60 percent. Upon the basis of the cases before the Examiner, it cannot be said that undue discrimination exists by reason of such differences, but the facts of record do indicate that some deviation from a strict application of the Seaboard formula in the design of rates may be justified by reason of the heavy burden placed upon the high load factor customers.

The Examiner does not propose, nor do the Applicants, that the entire cost of unused capacity be placed wholly upon those who fail to use their contractual entitlements. If this position were taken, the classification of any fixed costs or operating expenses, excluding purchased gas costs, in the commodity component would be nothing more than a meaningless gesture. To the extent, however, that costs of unused capacity are included in the commodity component and distributed among customers on the basis of the annual sales volumes rather than upon the basis of their capacity requirements, there results an overstatement of the commodity price in a rate schedule where such rates are literally translated from costs classified in the Seaboard manner.

The opponents of rates deviating from a strict Seaboard allocation also claim that the development of high load factor sales are undesirable regardless of the manner in which they are achieved. They also allege that there is a conflict between the concept of developing high load factor sales through the means of an interruptible market and where, as in the present case, tariff restrictions exist. It is also argued that rates deviating from the Seaboard formula will not provide equal opportunity among all customers of the Applicants to improve their respective load factors. Finally, it is contended that additional interruptible sales are not desirable since the transmission facilities of Columbia Gulf are already being operated at maximum capacity and United Fuel's facilities which connect with Columbia Gulf and extend to Cobb Compressor Station, were specifically designed for maximum summer use.

It is a matter of record in this proceeding that certain customers of the Applicants purchase gas from these suppliers at load factors approximating 100 percent. In the main, the load factors of such customers have been achieved through the development of extensive storage facilities and curtailable industrial loads. Other customers of United Fuel and Atlantic Seaboard have developed comparatively high load factors through the use of peak-shaving equipment or by the attachment of commercial and industrial interruptible customers. The Examiner is convinced from the testimony of record that the management of the companies participating in these proceedings can not be charged with having developed high load factor sales without good reason or intelligent design. Certainly the development of storage capacity as close to load centers as practicable is sound engineering practice and economically beneficial to ultimate consumers. Manufacturers, which purchases from both United Fuel and Seaboard at a high load factor, has storage fields in Northern West Virginia, Ohio and Pennsylvania which permits it to serve customers at peak capacity requirements without the necessity of installing equivalent capacity in pipelines connecting with United Fuel or any other supplier.

The procurement of interruptible customers by distributors cannot be viewed as being inconsistent with the boiler fuel limitations imposed by the tariffs of United Fuel and Atlantic Seaboard since there is no evidence in this proceeding that the Applicants' customers have disregarded this tariff prohibition. The restrictive provisions refer specifically to boiler fuel sales in excess of 2000 Mcf per day and do not, in the Examiner's opinion, apply to other industrial or commercial uses which may be interrupted. Sales of this nature when priced at an equitable commodity amount by the pipeline company should be beneficial to all its customers by decreasing the overall unit commodity costs and rate prices.

The attitude taken by Washington that interruptible sales are in conflict with the Applicants' boiler fuel restrictions is hardly consistent with the position this intervener recently took before the District of Columbia Public Utilities Commission, (*Washington Gas Light Company*, 43 PUR 3d 250), in requesting approval of a new interruptible rate schedule for large volume users. At p. 254 of the reported case the Public Utilities Commission stated,

> The company has a special tariff for users of gas air-conditioning equipment, and another special tariff covering gas used for water heating, air conditioning, and the firing of boilers when the use of such gas is definitely off-peak in character. This later tariff is available only for the 8-month period from April 1st to November 30th. Both of the foregoing tariff's represent attempts by the company to develop sales of gas during off-peak periods. To a small extent they accomplish their purpose but fall short of effecting any real contribution toward an improvement of the load factor, as during the warm months the company has available to it an excess of gas. The company contends that the answer to its problem is to sell such excess gas to large volume customers who would be willing to use gas on an interruptible basis provided the rate is attractive.

In view of such language it is exceedingly difficult to reconcile Washington's contention then with the following statement appearing at page 55 of its main brief in this proceeding:

> As the [Federal Power] Commission knows, the area served by Washington is not industrialized and the limited opportunities for load factor improvement depend on the type of sales prohibited by Seaboard's tariff.

Washington insists that rates deviating from Seaboard rates will not provide an equal opportunity among the Applicants' customers to improve their load factor. While it may be true that Washington has less likelihood to improve its load factor than other distributors, the improvement of Atlantic Seaboard's load factor by off-peak sales to other distributors would redound in benefits to all distributor customers including Washington. Furthermore, it can hardly be argued that rates based strictly on the formula will provide equal opportunity to all distributors to improve their load factors if business of an interruptible nature is not equally available to all distributors.[5]

Interruptible sales, Washington contends, are not required to improve the load factor on the Columbia Gulf system and the system of United Fuel up to the Cobb Compressor Station because these facilities are already being operated at very high load factors. The Applicants do not deny this, but point out that due to the increasing requirements of the distributors and the lack of additional storage facilities, high load factor operations of United Fuel and Atlantic Seaboard can be accomplished only if existing interruptible loads are retained and additional business of the same kind is secured.

Washington is critical of the evidence offered by Baltimore, Commonwealth and other interveners concerning the prospective loss of interruptible customers should rates reflecting a literal translation of Seaboard costs be adopted. Such testimony is characterized as vague, speculative and without probative value.

While an element of uncertainty is obviously involved in forecasting what a customer may do under a hypothetical set of circumstances, the projections made by the various interveners, who appear to be fully aware of their respective competitive circumstances, should in the Examiner's opinion, be accorded some weight, despite the deficiencies revealed by Washington and the Coal Association in the cross-examination.[6] It would indeed be imprudent for management to delay taking action to prevent impending customer loss until after the loss has become an accomplished fact.

With respect to peak-shaving and storage, the Applicants and supporting interveners recommend that the demand charge in the rate of United Fuel and Atlantic Seaboard should be high enough to encourage the installation of such facilities by their customers. This recommendation is predicated upon the generally accepted belief that the improvement of the over-all system load factor will bring about a concomitant reduction in unit costs of service. Washington takes the position, however, that a high demand charge is not warranted in view of its already installed peaking capacity, the projected Ravensworth propane storage project and its support of rates derived from a Seaboard cost allocation. While the Examiner accepts the general proposition that a high demand charge tends to encourage purchasers to install peak-shaving facilities, there is insufficient evidence in this record to conclude that a higher demand charge will in the present instance lower operating costs to the Applicants and bestow resulting benefits upon the ultimate consumers. The evidence in this case demonstrates that the economics of peak-shaving installations are basically dictated by estimates of investment and operating costs, duration of loads, rates, size of installation and other matters pertaining to the individual distributor's operations. Thus, in the absence of probative evidence from the distributors relating to these considerations, it is impossible to make findings of fact bottomed upon such matters.

---

[5] Washington did not offer any evidence with respect to its efforts or ability to develop interruptible sales.

[6] A similar situation provoked the following comment by the Commission in Opinion No. 379 (*Southern Natural Gas Company*, docket Nos. G-20509 and RP60-15):

> There is little doubt that Southern would lose industrial sales under either (Rate) Basis No. 1 or Basis No. 2, although the record does not disclose the approximate volumes which would be lost. Even though the dollar effect of such losses on Southern's customers cannot be determined exactly, we are convinced that the adverse impact of increased costs to residential and commercial consumers would be such as to be avoided if at all possible. [29 FPC at 353]

The Applicants, Manufacturers, and Ohio Fuel contend that Seaboard rates give low load factor customers too large a share of the benefits which accrue from the substantial investments made by the latter companies in underground storage facilities. Washington maintains the high load factor purchases made by these companies do not contribute to United Fuel's storage operations, but that such companies benefit from the lower costs realized by United Fuel's storage operations.

The Examiner does not consider an examination into the economics of the storage operations of Manufacturers and Ohio Fuel to be necessary in this proceeding. It is sufficient to note in passing, that such operations permit these companies to purchase their requirements at extremely high load factors and to obtain thereby, low unit costs of purchased gas.

Exhibits Nos. 22 and 32 and testimony pertaining thereto, were offered by the Applicants for the purpose of setting forth their position as to classification of costs on a fixed and variable basis. They claim that such a classification of costs should be fully considered and given just weight by the Commission in conjunction with a classification made pursuant to the standards set out in Opinion No. 225. It is alleged that a fixed and variable cost classification shows the level of the commodity rate which is required to recoup all costs classified by the Applicants as variable, and the amount of fixed costs which would be recouped under a commodity rate set higher than the variable rate. Applicants do not, however, contend that rate design should follow a fixed and variable cost classification precisely.

As the witness testifying in behalf of Washington pointed out, there are many cost classification theories which are at variance with the fixed and variable classification used by United Fuel and Seaboard. For example, some authorities hold that return associated with stock capital and income taxes are true variable costs. Inherent in the companies' fixed-variable concept is the assumption that return is a fixed cost. This assumption has led to a widespread, but fallacious notion that natural gas companies are "guaranteed" revenues which will cover capital costs. At *F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942) the Court said:

> *But regulation does not insure that the business shall produce net revenues*, nor does the Constitution require that the losses of the business in one year shall be restored from future earnings by the device of capitalizing the losses and adding them to the rate base on which a fair return and depreciation allowance is to be earned. *Galveston Electric Co.* v. *City of Galveston*, 258 U.S. 388, 42 S. CT. 351, 66 L. Ed. 678; *San Diego Land & Town Co.* v. *Jasper*, 189 U.S. 439, 446, 447. 23 S. Ct. 571, 573, 574, 47 L. Ed. 892. The deficiency may not thus be added to the rate base for the obvious reason that *the hazard that the property will not earn a profit remains on the company* in the case of regulated, as well as an unregulated business. [Italics supplied]

The foregoing language of the court should be sufficient to dispel the notion that all return is a fixed cost. If return is not a fixed cost, it logically follows that income taxes, which are directly related to return, are likewise not a fixed cost.

It is reasonable to conclude, therefore, that the Applicants' fixed and variable method of cost classification has limited value in rate determination.

Concerning competition from other pipelines, the record indicates the Applicants serve a number of customers that purchase some portion of their gas requirements from other suppliers. Exhibit 39 lists such suppliers as Tennessee Gas Transmission Company, Texas Eastern Transmission Corp., Texas Gas Transmission Corp., and Transcontinental Gas Pipe Line Corp. This exhibit also shows the rate schedule prices of the contract demand schedules of United Fuel, Atlantic Seaboard and other Columbia companies in comparison with the corresponding rate prices in the schedules of the competing gas suppliers.

The witness sponsoring Exhibit 39, testified that the rate levels recommended by the Columbia companies, although deviating from Seaboard standards, do not recover as large a percentage of revenues in the demand component at 100% load factor as the rates of competing pipeline suppliers.

Such comparison of rates is of questionable value. In the absence of evidence showing the relative costs of purchased gas (the major cost item of every pipeline company), the differences in operations, load factors, etc., of the respective companies, the Examiner is not convinced that this exhibit is deserving of much weight.

The exhibit does show, generally speaking, that the demand charges in the rate schedules of the competing gas suppliers are higher and the commodity charges are lower than those proposed by United Fuel and Atlantic Seaboard in this proceeding. The comparison of rates seems to indicate that distributors served by either Applicant, as well as by other pipelines, will take high load factor purchases from competing pipelines and peak on the Applicants except in the case of United Fuel, where the 100% load factor price is lower than the price of competing pipelines in five out of the eight price listings.

The minimal amount of testimony in this case relating to competition from other pipelines is sufficient, however, since the Commission has had before it cases involving one or more of the Columbia companies in similar roles (*Central Hudson Gas & Electric Corporation, et al.* 14 FPC 544; *Lynchburg Gas Company,* 24 FPC 955, 1217; *Atlantic Seaboard Corporation, et al.* Opinion No. 368, issued November 27, 1962) and has determined that competition does, in fact, exist. The first two cases were proceedings under Section 7 of the Act and the issue of the level of competitive rates was not before the Commission. The third noted case arose through the filing of contract demand rate schedules for partial requirements customers by Atlantic Seaboard, Manufacturers, Kentucky Gas and Home Gas Company. In Opinion No. 368, the Commission recognized that competition existed and permitted the companies to file revised rate schedules for sales under their CDS-PR tariffs consistent with the terms and provisions set out in the opinion. The matter of rate deviation was not at issue in these proceedings. However, the Examiner notes that in Opinion No. 367, (*Natural Gas Pipeline Company of America,* Docket No. RP61-8) issued approximately one month earlier, the Commission with respect to competition stated,

> In the case before us, there are mitigating factors, for the record indicates 1) that Natural's distributor customers would stop taking substantial quantities of gas at rates exceeding 20.6¢ and 2) that substantial fixed costs are included in the commodity charge. [28 FPC at 734]

In view of the fact that the Commission has recognized the competitive position of Natural Gas Pipeline Company in relation to other suppliers to be a "mitigating circumstance" permitting deviation from Seaboard rates, and since circumstances are found to exist here, it is logical to conclude that a substantial ground for a rate deviation likewise prevails.

Based upon the record in this proceeding and the preponderance of the evidence, the Examiner concludes that a deviation from rates reflecting a strict or literal translation of Seaboard classification of costs is warranted by reason of the economic and operating factors heretofore considered. The circumstances in the instant case are not unlike those present in Opinion No. 379 (*Southern Natural Gas Company*, Docket Nos. G-20509 and RP60-15, February 18, 1963) where the Commission stated: [29 FPC 323 at 353]

> The exigencies of this case, and the responsibilities reposed in us by the Natural Gas Act, require that we make every effort to adopt a rate design which will retain a relatively high level of industrial sales in Southern's service area, without imposing a larger than necessary share of demand costs on low load factor distributors, and without unduly burdening the residential and commercial customers served by such distributors.

The Staff's conclusion that mitigating circumstances exist with respect to both Applicants, but particularly as to the prospective loss of sales by Atlantic Seaboard; coupled with the admission that the filed rates of Atlantic Seaboard have as a matter of historical record always been subjected to a certain degree of tilt, persuades the Examiner that a tilt is likewise justified in the present proceeding.

Staff's reason for recommending a tilt only in the case of Atlantic Seaboard does, however, seem inconsistent and without record justification. The evidence adduced in the course of the hearing relating to present and potential injury from competition certainly applies to both Applicants and there appears to be no logical reason to insist upon "Seaboard rates" for United Fuel and to sanction tilted rates for Atlantic Seaboard.

Staff's witness testified that a tilt of "three, four, five percent or something like that" is reasonable as to United Fuel and in view of the lack of evidence to the contrary, the Examiner agrees.

The rate deviations (commonly described as "tilt") found to be proper in the premises are not as great as those urged by the Applicants and the supporting interveners since, in the opinion of the Examiner, the weight of the evidence offered by such parties is insufficient to justify complete acceptance of their respective proposals.

On the other hand, proponents of Seaboard-type rates adopted more or less negative postures throughout the entire proceeding, restricted in the case of Washington, a low load factor customer, to achieving the lowest possible demand rate, and the Coal Interests, to enhancing the competitive market for their products.

The Examiner has in addition to the recommendations advanced by the respective litigants given careful consideration to the effect of the various rate proposals upon ultimate consumers, regardless of whether such consumers are residential, commercial, industrial, firm or interruptible in character, and it is his belief that rates deviating to a limited extent from inflexible and mathematically derived charges are indicated in this case. A tilt toward the demand component is required not only to retain the marginal interruptible sales that may be lost to competitive fuels, but to provide an incentive for all distributors to make additional sales, the cumulative effect of which will inure to the benefit of all consumers.

The actual deviation or tilt herein ordered for United Fuel is approximately 4.7 percent as measured by the excess collection through demand revenues over demand costs allocated in conformity with Seaboard procedures. The *effect* of the tilt, however, is not as drastic as it would first appear. Since a tilt adversely affects the lower load factor customers, the impact of the deviation ordered in the premises was calculated with respect to Ohio Valley Gas Company, United Fuel's lowest load factor customer. The resulting difference to Ohio Valley Gas Company which has a billing demand load factor of 34.8 percent,[7] is 0.31 cents per Mcf or 0.6 percent of the total average cost per Mcf.

With respect to the rates herein ordered for Atlantic Seaboard, the impact of the tilt upon Washington amounts to 0.62 cents per Mcf or 1.2 percent of the total average cost per Mcf, even though the tilt in rates for Atlantic Seaboard is 13.48 percent as commonly and, perhaps, misappropriately measured from a literal application of the Seaboard formula. The percentage of tilt is, therefore, nothing more than a guage or measuring stick and a number of instances have already been pointed out in this decision where the Commission has found that not all rate designs when measured with the Seaboard "yardstick" need be precisely 36 inches in length.[8]

In arriving at the rates hereinafter set forth, United Fuel's cost of service does not reflect a transfer of the Boldman Compressor Station from Atlantic Seaboard, but recognizes present ownership of such facility by the latter corporation. In Opinion No. 377 (*United Fuel Gas Company, Amere Gas Utilities Company, Atlantic Seaboard Corporation*, Docket No. CP61-107) dated January 16, 1963, the Commission established certain procedures to be followed by the Applicants upon final approval of the transfer of the Boldman Compressor Station and other properties which are not relevant to this proceeding. Since the transaction involving Boldman has not been finally approved, the Examiner feels that it would be improper to speculate upon its final outcome. Likewise, the Examiner deems it improper and contrary to the intent of the Natural Gas Act to include Boldman in the cost of service of both companies as suggested by the Applicants.

The Pennsylvania Public Utility Commission requested in its initial brief that Atlantic Seaboard's rates be reduced at least one cent per Mcf, effective January 1, 1963, to reflect the savings arising from the operations of the Terra Alta storage field.

In Opinion 373* (*Atlantic Seaboard Corporation*, Docket No. G-17774, issued December 28, 1962) the Commission found that substantial savings in Atlantic Seaboard's cost of service will not be reflected until the storage field can be operated at full capacity (estimated to be in 1965-66) and that it would be premature to attempt to determine what the import on Atlantic Seaboard's cost of service will be at that time.

The foregoing opinion of the Commission (issued shortly after the Pennsylvania Public Utility Commission filed its brief) is dispositive of the request and obviates the necessity for any further consideration thereof by the Examiner.

Further issues reserved by the Commission in its orders of December 29, 1961, February 19 and March 20, 1962 for decision by the Examiner in this proceeding concern (1) the manner in which the Applicants shall make refunds and reduce their rates in order to reflect the refunds and rate reductions which they in turn have received from their respective suppliers, and (2) the refunds and rate reductions which shall be made by the Applicants as a result of the transfer of the Boldman Compresser Station and pipeline KA-20 from Atlantic Seaboard to United Fuel.

The Applicants and the numerous interveners in this proceeding offer diverse views as to the proper method that should be used by United Fuel and Atlantic Seaboard in making refunds and rate reductions following similar action upon the part of the Applicants' suppliers. For example,

---

[7] Exhibit No. 69.

[8] In fact, the very rates approved by the Commission in Opinion 225 reflect a tilt of approximately 3.5 percent toward the demand component.

[*Opinion No. 373 printed at 28 FPC 1145; Opinion No. 377 at 29 FPC 90.]

Applicants and Commonwealth urge that such refunds and reductions be apportioned equally between the demand and commodity components and that the reduced rates of the Applicants be designed upon this evenly divided basis. Staff and Baltimore, however, recommend that refunds and reduced rates flow through to distributors precisely as received. Washington, on the other hand, contends that refunds and rate reductions must be consistent with costs and rates designed strictly in accord with the Seaboard formula. Other interveners suggest or imply that all refunds and reductions should flow through the commodity component only.

The Examiner is inclined to adopt the method recommended by Baltimore and the Staff of the Commission.[9] Insofar as the Applicants' position is concerned, it must patently be rejected since to hold otherwise would put the Examiner in the anomalous role of passing upon the propriety of matters previously approved by order of the Commission in other dockets. Furthermore, an equal division of the rate reductions or refunds received from an independent producer whose rates are stated as straight-line (commodity) rates would be a contradiction of the one element of cost classification that has been consistently followed by the Commission.[10] For similar reasons, the recommendation that any or all reductions flow through the commodity component is likewise objectionable.

Since the transfer of the Boldman Compressor Station has not received a final administrative imprimatur, the Examiner has, as in the case of proposed rates, considered the property to be vested in Atlantic Seaboard.

All matters having been fully considered, the following rates for the respective Applicants and for the periods indicated are deemed to be just and reasonable:

United Fuel

(Effective April 5, 1960)

Rate Schedule CDS-1	$2.01 Demand,	30.15¢ Commodity
Rate Schedule SGS-1		46.67¢ Commodity
Rate Schedule ES-1		46.67¢ Commodity
Rate Schedule AOS-1		36.76¢ Commodity

(Effective May 1, 1961)

Rate Schedule CDS-1	$2.01 Demand,	30.30¢ Commodity
Rate Schedule SGS-1		46.82¢ Commodity
Rate Schedule ES-1		46.82¢ Commodity
Rate Schedule AOS-1		36.91¢ Commodity

Atlantic Seaboard

(Effective April 5, 1960)

Rate Schedules CDS-1 and CDS-PR-1	$2.84 Demand,	32.00¢ Commodity
Rate Schedules CDS-2 and CDS-PR-2	$2.59 Demand,	30.30¢ Commodity
Rate Schedule OAS-1		41.34¢ Commodity
Rate Schedule OAS-2		38.81¢ Commodity

(Effective May 1, 1961)

Rate Schedules CDS-1 and CDS-PR-1	$2.86 Demand,	32.16¢ Commodity
Rate Schedules CDS-1 and CDS-PR-2	$2.61 Demand,	30.46¢ Commodity
Rate Schedule OAS-1		41.56¢ Commodity
Rate Schedule OAS-2		39.04¢ Commodity

---

[9] It is, of course, contemplated that the Applicants will take into account any and all interim refunds made by them.

[10] The Examiner has not been able to find any case wherein the Commission has classified purchased gas cost in part to commodity and in part to demand when the gas was bought at a straight-line rate.

Rate Schedules IS-1 and IS-2 of Atlantic Seaboard's tariff as of April 5, 1960, the date on which the revised rates of Atlantic Seaboard were put into effect by Commission order, were not proposed to be changed. The Examiner makes no findings with respect to these rates since service has never been rendered thereunder and no basis exists upon which to make a determination as to whether or not such rate levels are just and reasonable.

With respect to the issue of United Fuel's depreciation rates applicable to its underground storage, transmission properties and the Kenova Extracting Plant, the record indicates that the Applicant raised such rates effective as of July 1, 1957, almost three years before the increase in rates and charges involved in this matter were initiated.

The Examiner, therefore, is inclined to consider the absence of any reference in the Commission's Order of March 20, 1962 to the changed depreciation rates or the effect of such changes prior to the period beginning April 5, 1960, to be significant. Of further significance is the fact that no exception was taken to such order by any party to this proceeding.

Lynchburg citing Section 9(a) of the Natural Gas Act, claims that any change in authorized depreciation rates is subject to redetermination by the Commission, and that only a prescribed rate of depreciation may be included in a cost of service.

This contention, however, appears to be at variance with actual Commission practice. The import of Exhibit 6, as understood by the Examiner, is that the Commission does not prescribe depreciation rates for the natural gas companies subject to its jurisdiction. Paragraph five of this exhibit states, in substance, that the determination of annual depreciation is a matter for the exercise of independent judgment by the individual companies in the light of their peculiar circumstances.

It would seem, therefore, that United Fuel exercised a legitimate prerogative of management in initiating changes in its depreciation accrual rates in order to maintain an adequate reserve.

Since the evidence introduced by United Fuel in support of the reasonableness of its depreciation accrual rates stands unchallenged by the parties, the Examiner must conclude that such depreciation rates are, in fact, just and reasonable in the circumstances.

Atlantic Seaboard urges that the use of the heat content adjustment provision in its contract demand rate schedules be continued without change or modification since this provision was accepted by the Applicant, its customers and the Staff pursuant to a settlement conference and became effective on April 5, 1960, along with the Applicant's proposed rates.

Roanoke claims, however, that the provision is prejudicial since, as demonstrated by Exhibit 44, it results in unjustified differences in rates as between localities served by Atlantic Seaboard.

Lynchburg objects to the provision upon two grounds: one, that the month to month varying of Btu content causes operating difficulties and two, since it receives the highest Btu gas of any customer of Atlantic Seaboard, it has to pay the highest effective demand charge.

The Staff did not challenge the continuance of the provision in the form as reserved for hearing in Commission Order of December 29, 1961, but now proposes an insignificant modification thereof.

In Opinion No. 225, *supra*, the Commission ordered the inclusion of a heat content adjustment provision in the rate schedules of Atlantic Seaboard because of the difference in the Btu content of gas transported in the company's 20 and 26-inch pipelines. Since Exhibit 36 shows that a difference, although to a lesser degree, continues to exist in the richness of the gas passing through the respective lines, there appears to be sufficient reason to warrant the continuance of the provision.

Contrary to the proposition advanced in this proceeding that the heat adjustment clause promotes inequities, it would seem that such provision has the effect of equalizing rates. Roanoke's witness, when asked in the course of cross-examination with respect to Exhibit 44 if it is not a fact, from the point of view of thermal content, that each of the customers shown thereon is paying the same price, namely 32-1/2 cents per therm, replied that such a conclusion would appear to be true.

Since the form of provision was agreed to by all parties at the settlement conference prior to April 5, 1960, and since the fluctuation it was designed to compensate while considerably reduced continues to exist, there appears to be no persuasive reason to dispense with or, as the Staff proposes, to modify the current adjustment clause so long as the need for equalization of rates remains.

The stipulated cost of service between the parties was not dispositive of the normalized tax treatment accorded accelerated depreciation under Section 167 of the Internal Revenue Code; the tax treatment accorded statutory depletion and intangible productive well-drilling costs or the matter concerning a possible refund of the Texas Severance Beneficiary Tax.

The record is barren, however, of any evidence concerning these reservations; consequently, the Examiner has no basis for making any findings with respect thereto.

Additional Findings and Conclusions

Upon consideration of the entire record and the briefs filed in this proceeding, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) United Fuel Gas Company and Atlantic Seaboard Corporation are separately and severally engaged in the transportation and sale of natural gas in interstate commerce for resale; each corporation is a "natural-gas company" subject to the provisions of the Natural Gas Act and the rates and charges of these Applicants are subject to the jurisdiction of the Federal Power Commission.

(2) The increased rates and charges of United Fuel Gas Company contained in Second Revised Sheets Nos. 8 and 9, Fourth Revised Sheets Nos. 7, 27, and 33, and Fifth Revised Sheet No. 22 to its FPC Gas Tariff, Fifth Revised Volume No. 1, which were made effective April 5, 1960, by Commission order of May 6, 1960, in Docket No. G-20270 are excessive, and therefore, unjust, unreasonable and unlawful.

(3) The amounts by which the rates and charges found in Finding (2) to be unlawful exceed the rates and charges heretofore determined to be just and reasonable should be refunded by United Fuel Gas Company to its utility customers together with interest thereon at 7% per annum, provided, however, that there shall be deducted from the principal and interest so computed separately for each utility customer the interim refund principal and interest made to the respective utility customers under Commission order of September 14, 1962, approving agreements and granting motions to make interim refunds.

(4) The depreciation accrual rates presently being booked by United Fuel Gas Company applicable to its underground storage and transmission proper-

ties, and its Kenova Extraction Plant are just and reasonable and are appropriate components of its cost of service and are hereby approved.

(5) The increased rates and charges of Atlantic Seaboard Corporation contained in Third Revised Sheets Nos. 8, 9, 13, 14, 16C, 16D, 17C and 17D, Fourth Revised Sheets Nos. 7, 12, 16A, 17A, 26 and 28 and Fifth Revised Sheets Nos. 22 and 24 to its FPC Gas Tariff, Seventh Revised Volume No. 1, which were made effective April 5, 1960, by Commission order of April 26, 1960, in Docket No. G-20272 are excessive, and therefore, unjust, unreasonable and unlawful.

(6) The change in rates and charges of Atlantic Seaboard Corporation contained in Second Revised Sheets Nos. 10, 15, 16F and 17F, and Original Sheets Nos. 10A, 15A, 16G and 17G to its FPC Gas Tariff, Seventh Revised Volume No. 1, which were made effective April 5, 1960, by Commission order of January 10, 1961 are just and reasonable.

(7) The amounts by which the rates and charges found in Finding (5) to be unlawful exceed the rates and charges heretofore determined to be just and reasonable should be refunded by Atlantic Seaboard Corporation to its utility customers together with interest thereon at 7% per annum, provided, however, that there shall be deducted from the principal and interest so computed separately for each utility customer the interim refund principal and interest made to the respective utility customer under Commission order of September 14, 1962, approving agreements and granting motions to make interim refunds.

(8) There appears to be no record justification for the removal or modification of the heat content adjustment provision in the demand charge in Rate Schedules CDS-1, CDS-2, CDS-PR-2 of Atlantic Seaboard Corporation and its continued inclusion in such schedules is hereby approved.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission that:

(A) The increased rates and charges of United Fuel Gas Company contained in Second Revised Sheets Nos. 8 and 9; Fourth Revised Sheets Nos. 7, 27 and 33, and Fifth Revised Sheet No. 22 to its FPC Gas Tariff, Fifth Revised Volume No. 1, which were made effective April 5, 1960, are hereby disallowed.

(B) Within thirty days of the time when this Decision becomes the official action of the Commission, United Fuel Gas Company shall file tariff sheets in substitution for those disallowed, containing the rates and charges found to be reasonable and proper herein.

(C) Within sixty days of the time when this Decision becomes the official action of the Commission, United Fuel Gas Company shall refund to its utility customers with interest thereon at 7% per annum, the amounts by which the rates and charges found in Paragraph A to be unlawful exceed the rates and charges heretofore determined to be just and reasonable, provided, however, that there shall be deducted from the principal and interest so computed separately for each utility customer the interim refund of principal and interest made to the respective utility customers under Commission order of September 14, 1962.

(D) Within thirty days after making the refunds provided for herein, United Fuel Gas Company shall report to the Commission, in writing and under oath, the amount of the refunds made to each of its utility customers, showing separately the amount of principal and interest so paid, the billing determinants or other basis used for such determination and shall serve a copy of such report upon each of the customers receiving a refund.

(E) The depreciation accrual rates presently being booked by United Fuel Gas Company with respect to its underground storage transmission properties, and its Kenova Extraction Plant are approved for use by company.

(F) The increased rates and charges of Atlantic Seaboard Corporation contained in Third Revised Sheets Nos. 8, 9, 13, 14, 16C, 16D, 17C and 17D; Fourth Revised Sheets Nos. 7, 12, 16A, 17A, 26 and 28, and Fifth Revised Sheets Nos. 22 and 24 to its FPC Gas Tariff, Seventh Revised Volume No. 1, which were made effective April 5, 1960, are hereby disallowed.

(G) Within thirty days of the time when this Decision becomes the official action of the Commission, Atlantic Seaboard Corporation shall file tariff sheets in substitution for those disallowed, in accordance with the rates and charges found to be reasonable and proper herein.

(H) Within sixty days of the time when this Decision becomes the official action of the Commission, Atlantic Seaboard Corporation shall refund to its utility customers with interest thereon at 7% per annum, the amounts by which the rates and charges found in Paragraph (F) to be unlawful exceed the rates and charges heretofore determined to be just and reasonable, provided, however, that there shall be deducted from the principal and interest so computed separately for each utility customer the interim refund of principal and interest made to the respective utility customers under Commission order of September 14, 1962.

(I) Within thirty days after making the refunds provided for herein, Atlantic Seaboard Corporation shall report to the Commission, in writing and under oath, the amount of the refunds made to each of its utility customers, showing separately the amount of principal and interest so paid, the billing determinants and shall serve a copy of such report upon each of the customers receiving a refund.

(J) The heat content adjustment provision in the demand charge in Rate Schedules CDS-1, CDS-2, CDS-PR-2 of Atlantic Seaboard Corporation shall continue to be included in such rate schedules without modification.

Ames W. Williams,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER PERMITTING INTERVENTIONS

(Issued June 4, 1964)

Pursuant to the Commission's order instituting these proceedings, 30 FPC 1354, issued November 27, 1963, timely petitions and notices to intervene were filed on or before January 2, 1964, except where noted, by the persons named in the following intervener categories:

I. The following state commissions filed notices of intervention under Section 1.8 of our Rules of Practice and Procedure:

Public Service Commission of the State of New York.
Public Service Commission of Wisconsin.
Michigan Public Service Commission.
Iowa State Commerce Commission.

The People of the State of California and the Public Utilities Commission of the State of California.

Pennsylvania Public Utility Commission.

Georgia Public Service Commission.[1]

II. States filing petitions to intervene:

State of Texas.

State of Wisconsin.

III. Others filing petitions to intervene:

Central Illinois Public Service Company.

Iowa-Illinois Gas & Electric Company.

The Peoples Gas Light and Coke Company.

Pacific Lighting Gas Supply Company.

Southern California Gas Company.

Southern Counties Gas Company of California.

Central Hudson Gas & Electric Corporation.

Elizabethtown Consolidated Gas Company

New York State Electric & Gas Corporation.

Pennsylvania Gas and Water Company.

Piedmont Natural Gas Company, Inc.

Rochester Gas and Electric Corporation.

South Jersey Gas Company.

Trunkline Gas Company.

The East Ohio Gas Company.

Hope Natural Gas Company.

Lake Shore Pipe Line Co.

New York State Natural Gas Corporation.

The Peoples Natural Gas Company.

The River Gas Company.

The United Gas Improvement Company.

Transcontinental Gas Pipe Line Corporation.

Pacific Gas & Electric Company.

Niagara Mohawk Power Corporation.

Lone Star Gathering Company.

Central Illinois Light Company.

Iowa Power and Light Company.

Southwest Kansas Royalty Owners Association.

Consolidated Edison Company of New York, Inc.

Orange and Rockland Utilities, Inc.

Natural Gas Pipeline Company of America.

Philadelphia Electric Company.

Philadelphia Gas Works Division of The United Gas Improvement Company.

Northern Illinois Gas Company.

Public Service Electric and Gas Company.

Long Island Lighting Company.

United Gas Pipe Line Company.

Brooklyn Union Gas Company.

Texas Independent Producers and Royalty Owners Association.

Independent Petroleum Association of America.

Illinois Power Company.

Iowa Public Service Company.

United Fuel Gas Company.

---

[1] The notice of intervention was filed February 14, 1964.

American Public Gas Association consisting of gas distributors within the States of Alabama, Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Washington.

The Berkshire Gas Company.
Boston Gas Company.
The Bridgeport Gas Company.
Bristol and Warren Gas Company.
Brockton Taunton Gas Company.
Buzzards Bay Gas Company.
Cambridge Gas Company.
Central Massachusetts Gas Company.
Concord Natural Gas Corporation.
The Connecticut Gas Company.
Fall River Gas Company.
Fitchburg Gas and Electric Light Company.
Gas Service, Inc.
The Greenwich Gas Company.
The Hartford Electric Light Company.
The Hartford Gas Company.
Haverhill Gas Company.
City of Holyoke, Massachusetts Gas and Electric Department.
Lawrence Gas Company.
Lowell Gas Company.
Lynn Gas Company.
Manchester Gas Company.
Mystic Valley Gas Company.
New Bedford Gas and Edison Light Company.
The New Britain Gas Light Company.
New Haven Gas Company.
The Newport Gas Light Company.
North Attleboro Gas Company.
North Shore Gas Company.
Northampton Gas Light Company.
City of Norwich, Department of Public Utilities.
Norwood Gas Company.
The Pequot Gas Company.
Providence Gas Company.
South County Gas Company.
Springfield Gas Light Company.
Tiverton Gas Company.
Valley Gas Company.
Wachusett Gas Company.
City of Westfield Gas and Electric Light Department.
Worcester Gas Light Company.
San Diego Gas & Electric Company.[2]
Northern Indiana Public Service Company.[3]
Iowa Electric Light & Power Company.[4]

---

[2] The petition to intervene was filed on January 8, 1964.

[3] The petition to intervene was filed on January 13, 1964.

[4] The petition to intervene was filed on February 11, 1964.

On January 30, 1964, the Secretary of the Commission sent to all respondents a list of the names and addresses of those who had filed notices and petitions for intervention. Concurrently, the Commission issued an order providing for, among other things the filing of answers to the petitions to intervene. On February 26, 1964, Hunt Oil Company filed an answer opposing The United Gas Improvement Company's petition to intervene; Hunt argues that UGI failed to aver that its interests in the proceeding would not be adequately represented by existing parties. We shall grant UGI's petition to intervene.

On February 28, Hunt Oil Company also filed an answer opposing the intervention petitions of several gas distributing companies in Iowa, Illinois and California and opposing the notice of intervention of The People of the State of California and the Public Utilities Commission of the State of California. On March 2, Gulf Oil Corporation, *et al.*, filed an answer likewise opposing these interventions. On March 2, Sun Oil Company filed an answer similarly opposing the intervention of California and the California gas companies. Essentially, Hunt, Sun and Gulf, *et al.* oppose the stated interventions on the grounds that gas produced from the Texas Gulf Coast area does not reach Iowa, Illinois, or California.

We shall permit all these interventions. We are satisfied that during the developmental period of area rate making the Commission should have available to it all the relevant evidence bearing upon the evolution of principles involved in the establishment of just and reasonable rates. Without determining whether the various petitioners have a right to intervene, we shall in the exercise of our discretion under Section 15 (a) of the Natural Gas Act permit these interventions. Some may consider this disposition to be inconsistent with our denial of a petition to intervene in the *Permian Basin* case.[4] However, our further experience has now demonstrated that the denial unnecessarily deprived the Commission of the active participation of groups which, according to past performance, can be counted on to make contributions toward solving the complex problems inherent in area rate proceedings, and permitting such interventions should not delay the proceeding. See Area Rate Proceeding, *et al.*, Docket No. AR64-1, *et al.*, Order Permitting Interventions, issued April 8, 1964, 31 FPC 888.

As noted, four intervention pleadings were filed after January 2, 1964, the stated deadline for intervention filings. It does not appear that the tardiness of these pleadings will delay the proceedings or inconvenience any of the parties. In light of our decision broadly to permit intervention, no useful purpose would be achieved by delaying positive action on the late pleadings. Accordingly we now accept the late filings and permit the interventions.

The Commission orders:

Subject to the rules and regulations of the Commission, all the petitioners and State Commissions named hereinabove are permitted to intervene in these consolidated proceedings and to participate on a joint or individual basis. *Provided, however*, that the participation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth by said petitioners in their petitions and *Provided, further*, that the admission of said petitioners as interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in these proceeding.

---

[4] See Area Rate Proceeding, *et al.*, Docket No. AR61-1, *et al.*, 26 FPC 193.

OPINION NO. 424-A

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-26; WARRIOR RIVER NATURAL GAS DISTRICT, DOCKET NO. CP63-70; GULF OIL CORPORATION, DOCKET NO. CI63-123; HUMBLE OIL & REFINING COMPANY, DOCKET NO. CI63-129

MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING, REJECTING MOTION FOR ACCEPTANCE OF COMMITMENT OFFERED IN SATISFACTION OF CERTIFICATE CONDITIONS, APPROVING CONTINGENT REFUND PROCEDURE AND AMENDING CONDITIONS

(Issued June 4, 1964)

Syllabus

1. Record establishes that any burden which might result from certification of extension, will not be undue or excessively stringent and is more than outweighed by public need in area involved. P. 1388.
2. Agreement between pipeline and distributor that pipeline first construct extension, after which distributor will submit contract or make required contribution, does not meet condition of paragraph (B) of prior order. P. 1388.
3. It is neither equitable nor desirable to provide condition for protection of existing customers during construction period and then permit use of substitute method depriving them of such protection. P. 1388.
4. Commission *denies* application for rehearing; *amends* prior order as provided herein; and in all other respects *confirms* said order. P. 1389.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

On May 5, 1964, Carolina Pipeline Company filed an application for rehearing of our Opinion No. 424 and accompanying Order issued April 6, 1964, 31 FPC 789, in the captioned proceedings. No other applications for rehearing have been submitted. Carolina's objections are concerned entirely with the certificate granted to Southern Natural for the construction and operation of the southeast Georgia extension as proposed in the application. It contends that the Commission has authorized the construction of excessive and uneconomic facilities; that the record does not support the findings of a reasonable prospect of economic feasibility; that the facilities are oversized; and that further industrial contracts and/or contributions in aid of construction should be required.

The review of the application for rehearing discloses no matters with which the Commission was not fully cognizant when it issued its Opinion and Order nor which, upon reconsideration, warrant any change in or modification of such Order, except as hereinafter indicated. As stated in the Opinion, it is the policy of the Commission to encourage the extension of branch lines by pipelines for the purpose of filling in existing service areas provided that such extensions can reasonably be undertaken and on condition that no *undue* burden is thereby placed on the existing customers. The evidence clearly establishes that Southern's estimated system rate of return, after construction of the extension and the inclusion of the costs and revenues associated therewith, will be substantially in excess of the rate of return authorized in Opinion No. 379, its last major rate case. Assuming reasonable assurance that the branch line will not continue to operate in a deficit condition, then, as further stated, ". . . the fact that the authorization by initially reducing overall company return may tend to defer or diminish a possible reduction in rates by the company to its existing customers does not, standing alone, constitute grounds for denial of the certificate." The risk of deficit operation, while never completely eliminated, has been minimized in this case in the condition regarding the intended sale to Brunswick Pulp and Paper Co. In our opinion no further restrictions in the certificate are required to safeguard the interest of Southern's customers. Whether or not Carolina will sustain a "burden" from the certificate, either in the sense of a deferred or diminished rate reduction or its inability to procure the large volumes of interruptible gas it desires, is not wholly decisive. The record does establish that any burden which might result will not be undue or excessively stringent and is more than outweighed by the need of the public in the area involved.

On April 28, 1964, Southern filed a motion seeking the Commission's acceptance of an appended agreement between itself and Atlanta Gas Light Company as satisfactory compliance with paragraphs (B) and (C) of the Order accompanying Opinion No. 424. The substance of the agreement is that Southern will *first* construct the southeast Georgia extension and *then* Atlanta will either submit a contract with Brunswick or make the required contribution. Because the city of Vidalia does not have legal authority at this time to make the alternative contribution in aid of construction of $46,023, the agreement proposes that Atlanta will advance this amount on behalf of the city. The reason given by Southern for requesting that the "commitment" to perform be considered identical with performance is that Southern will be able to begin immediate construction of the extension so as to have it completed in time for the next heating season, while at the same time allowing Atlanta an opportunity to negotiate the contract with Brunswick.

In our opinion the commitment cannot be accepted as compliance with the requirements of the Order. Paragraph (B) clearly states that Southern is authorized to construct the extension sought by it provided it first obtains the contract or customer contribution. A commitment to submit a contract or make a contribution after the extension has been constructed does not accord with the terms of the condition. The contribution as an alternative to the signed contract was inserted to balance the equities between the people in southeast Georgia who desire natural gas service and Southern's existing customers whose rates could be adversely affected by Southern's construction of the extension without assurance that the Brunswick sale will be made. To provide for a condition to protect existing customers and then to permit use of a substitute method which leaves the customers without that protection while the extension is being constructed is neither equitable nor desirable. Accordingly, we shall continue to require that either the contract be submitted or contribution made before construction is undertaken. To the extent that the proffered agreement departs therefrom, the motion will be denied.

Southern's motion indicates that Atlanta desires to have the plan or refund of contributions required by paragraph (C) settled at this time. They request that the paragraph be so interpreted as to allow Southern to commence refunding the contribution on a pro rata basis at such time or times as the annual volume of sales on the southeast Georgia extension is in excess of 5,287,509 Mcf, the total 8,937,509 estimated third-year sales from the extension less the 3,650,000 third-year estimated sales to Brunswick. Although paragraph (C), as ordered, envisions that the refund would be calculated at the end of the first three years of operation, we have no objection to a proportionate refund at the end of each of the three years, as stated in the agreement, based on the sales during the preceding twelve months. Paragraph (C) of the Order will be amended to provide for this procedure.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the application of Carolina Pipeline Company present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 424 and Order or which, having now been considered, warrant any change in or modification of said Opinion and Order, except as specified below.

(2) To the extent that the motion by Southern, hereinabove referred to, would permit construction of the southeast Georgia extension prior to the submission of the contract or payment of the contribution required in paragraph (B) of the Order accompanying Opinion No. 424, such motion should be denied.

The Commission orders:

(A) The application for rehearing filed by Carolina Pipeline Company on May 5, 1964, is denied.

(B) The motion filed by Southern Natural Gas Company, to the extent that it would permit construction of the southeast Georgia extension prior to the submission of the contract or payment of the contribution required in paragraph (B) of the Order accompanying Opinion No. 424, is denied.

(C) Paragraph (C) of the Order accompanying Opinion No. 424 is amended to provide:

(C) At the end of the first 12-month period following the date of first rendering service from the southeast Georgia extension, and at the end of the next two succeeding years thereafter, Southern shall file with the Commission a statement showing the actual volumes delivered on the extension during the previous 12-month period and associated revenues compared with the estimates originally presented in this proceeding. If actual sales exceed an annual volume of 5,287,509 Mcf, Southern shall refund to Atlanta that portion of the contribution theretofore made not previously refunded in the proportion that the excess of sales above 5,287,509 Mcf bears to 3,650,000 Mcf. Southern shall not be obligated to pay interest on the contribution when refunded.

(D) In all other respects said Opinion and Order is confirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-175

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 4, 1964)

On February 3, 1964, as supplemented on March 11, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-175 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of certain facilities to enable Applicant to increase its daily sales and deliveries of natural gas from 4,500 Mcf to 20,000 Mcf to the City of Willcox, Arizona, for resale to Arizona Electric Power Cooperative, Inc. (AEPCO) for use as fuel by AEPCO at its Cochise electric generating plant, all as more fully set forth in the application, as supplemented.

Specifically, Applicant proposes to increase the capacity of its existing measuring and regulating station in Cochise County, Arizona, by the removal of two positive meters and by the installation of dual 6-5/8-inch O.D. orifice-type meter run, together with the necessary appurtenances.

The estimated cost of the proposed facilities is $12,700, which cost will be financed out of current working funds.

Applicant states that the increased power requirements prompting installation of the additional facilities are occasioned by both normal growth in the area served directly by AEPCO and large-volume electric sales proposed to be made by AEPCO to Salt River Project Agricultural Improvement and Power District which serves electricity in Maricopa, Gila and Pinal Counties, Arizona.

By letter dated May 14, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Deliveries of natural gas to the City of Willcox, Arizona, at the subject station, as hereinafter authorized, should not exceed 20,000 Mcf of gas per day.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

(D) Deliveries of natural gas to the City of Willcox, Arizona, at the subject station, as hereinabove authorized, shall not exceed 20,000 Mcf of gas per day.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-270; GEORGIA-TENNESSEE GAS CORPORATION, DOCKET NO. CP64-272

ORDER DENYING PETITION FOR WAIVER OF REGULATIONS AND CONDITIONALLY ACCEPTING CERTIFICATE APPLICATION

(Issued June 4, 1964)

Transcontinental Gas Pipe Line Corporation (Transco), on May 8, 1964, submitted for filing an application pursuant to Section 7(c) of the Natural Gas Act together with a petition pursuant to Section 1.7(b) of the Commission's Rules of Practice and Procedure requesting partial waiver of Part 157 of the Commission's Regulations under the Natural Gas Act, as amended by Order No. 280 issued March 31, 1964, 31 FPC 754. Specifically Transco requests that it be excused from complying with the requirements of Section 157.14(a) (10), Exhibit H which concerns gas reserve and deliverability data. These data, under the Regulations, as amended, are required to be submitted in conformity with the newly promulgated FPC Form No. 15,[1] Annual Report of Gas Supply as a part of any certificate application filed subsequent to May 1, 1964, and prior to July 1, 1964.

Under the terms of Order No. 279, natural-gas pipeline companies, other than applicants filing certificate applications between May 1 and July 1, 1964, must file FPC Form 15, Annual Report of Gas Supply on July 1, 1964 and annually thereafter. The filing of Form 15 each year will obviate the necessity of pipeline companies submitting complete gas supply and deliverability data with each individual certificate application filed with the Commission.

In its petition for waiver, Transco states that its application for certificate had been prepared in final form under the Commission's Regulations in effect prior to May 1, 1964, because at the time of preparation it was fully anticipated that the application would be filed prior to May 1, 1964, the effective date of Order No. 280. Due, however, to circumstances beyond its control, Transco states further, that it was not possible to file the application prior to May 1. Transco alleges that it would be unnecessarily burdensome for it to file the gas supply and deliverability data as required by the Commission's Regulations as amended. It, therefore, requests that the requirements of the new part of Part 157 of the Commission's Regulations, as promulgated by Order No. 280 issued March 31, 1964, be waived in order to permit the filing of its application.

Order Nos. 279 and 280 were adopted and issued with the purpose of aiding the pipeline companies by eliminating the necessity for their filing gas supply and deliverability data as a part of each individual certificate application. However, it is obvious that there will be a transition period during which pipeline companies who have applications in process of preparation may experience difficulty in attempting to conform to the new regulations during the period from May 1, the effective date of the new regulations, and July 1, when the first of the newly prescribed Form 15, Annual Report of Gas Supply, is to be filed by each pipeline company. We, however, do not feel that this constitutes a reasonable ground for waiving the requirements of the Regulations in situations like this one where another pipeline is contesting.

---

[1] See Order No. 279, issued March 31, 1964, 31 FPC 750.

To ameliorate the situation, however, we will accept Transco's certificate application for filing on the condition that Transco file on or before July 1, 1964, Form No. 15, Annual Report of Gas Supply, as required by the Commission's Regulations as amended by Order No. 280. This same treatment will be accorded to other pipeline companies which may file applications competitive with that filed by Transco.

Conditionally accepting the application for filing will enable the staff and others, who may become parties to the proceeding, to begin analysis and evaluation of the application and may expedite the ultimate disposition thereof.

Georgia-Tennessee Gas Corporation (Georgia-Tennessee) on May 8, 1964, filed an application interdependent upon the application of Transco. Inasmuch as Transco's application is being conditionally accepted for filing, the Georgia-Tennessee's application should be conditionally accepted for filing subject to compliance by Transco with the condition upon which its application is permitted to be filed.

The Commission orders:

(A) The petition for waiver of regulations filed by Transco on May 8, 1964, be denied.

(B) The application for a certificate of public convenience and necessity filed by Transco on May 8, 1964, be accepted for filing upon condition that on or before July 1, 1964, Transco file with the Commission Form 15, Annual Report of Gas Supply, as required by Part 157 of the Commission's Regulations under the Natural Gas Act, as amended by Order No. 280 issued March 31, 1964.

(C) The interdependent application for a certificate of public convenience and necessity filed by Georgia-Tennessee on May 8, 1964, be accepted for filing subject to compliance by Transco with the condition specified in Paragraph (B) hereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PUGET SOUND POWER & LIGHT COMPANY AND PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, PROJECT NO. 943; PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, PROJECT NO. 2114

ORDER APPROVING PROGRAM FOR FISH PASSAGE

(Issued June 4, 1964)

Paragraph (C) of the Commission's order of October 24, 1962, directing certain modifications of fishways at the Rock Island Dam requires that the licensees for Project No. 943, and for Project No. 2114, cooperate to develop, in cooperation with the Department of the Interior and the Washington State Department of Fisheries and Game, a program of study and evaluation of the further effects of encroachment of the Wanapum reservoir on fish passage at the Rock Island Dam, and that such program be submitted for Commission approval.

Public Utility District No. 1 of Chelan County, Washington by its letter of January 31, 1964, forwarded a copy of an agreement entitled "A Program To Evaluate Fish Passage Facilities At Rock Island Dam", which had been derived pursuant to Paragraph (C) of the Commission's order of October 24, 1962. This agreement which provides for procedures of study and evaluation, designation of personnel to conduct the work, reports to be prepared, and financing is executed by officials of Public Utility District No. 2 of Grant County, Washington, the Department of the Interior, Bureau of Commercial Fisheries, and the Washington State Department of Fisheries and the Department of Game.

Public Utility District No. 1 of Chelan County, Washington conditioned its acceptance of the agreement on approval by the other parties of two additional paragraphs. Approval of these additional paragraphs was received by the Commission from Public Utility District No. 2 of Grant County, Washington by letter of March 16, 1964, from Washington State Department of Game by letter of March 17, 1964, from the Department of the Interior, Bureau of Commercial Fisheries by letter of March 18, 1964, and from Washington State Department of Fisheries by letter of March 24, 1964.

The Commission finds:

The program proposed in the agreement is consistent with the purposes of Paragraph (C) of the Commission's order of October 24, 1962.

The Commission orders:

(A) The program proposed in the agreement of the parties entitled "A Program To Evaluate Fish Passage Facilities At Rock Island Dam" is approved.

(B) Nothing in this order is to be construed as full compliance with Paragraph (C) of the Commission's order of October 24, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 991

ORDER ACCEPTING SURRENDER OF LICENSE (TRANSMISSION LINE)

(Issued June 4, 1964)

Application was filed on September 23, 1963, by Southern California Edison Company, licensee for transmission line Project No. 991, for surrender of its license for the project, affecting lands of the United States in San Bernardino County, California.

The line has been relocated and is now being operated on United States lands under a permit issued by the Department of the Interior. Annual charges under the Commission license for the line have been paid through December 31, 1962, and the licensee's copy of the license has been returned to the Commission.

As described in the license, Project No. 991 consists of an 11,000-volt, woodpole line 1,950 feet long. The line is operated as a distribution facility which receives all of its power from a 33 kilovolt transmission system of Applicant.

The Commission finds:

(1) The subject line is not part of a "project" within the meaning of Section 3(11) of the Federal Power Act and, therefore, is not subject to the licensing authority of the Commission.

(2) Acceptance of surrender of the license for transmission line Project No. 991 is appropriate.

The Commission orders:

Surrender of the license for transmission line Project No. 991 is hereby accepted effective as of December 31, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

MERCED IRRIGATION DISTRICT, PROJECT NO. 2179

ORDER MODIFYING ORDER ON REHEARING

(Issued June 4, 1964)

On May 6, 1964, Merced Irrigation District (Applicant) filed application for rehearing for the purpose of clarifying two matters in the Commission's order issued April 8, 1964, issuing a license to Applicant for proposed Project No. 2179, known as the Exchequer Hydro-Electric Development, to be located on Merced River, County of Mariposa, California.

Applicant states that in Article 38 of the license order, the meaning of the word "cost" in line 17 (page 8, line 6 of the order) is not clear and urges that, for purposes of clarification, we insert the word "annual" before the word "cost". Applicant believes the word should relate to annual costs of operation and maintenance. Since the word "cost" as used in Article 38 is broad enough to include annual costs of operation and maintenance there appears to be no need to modify that Article.

Applicant advised that the text of Article 44 of the license order is almost identical with Paragraph IV of its agreement with the California Department of Fish and Game for the protection of fish and wildlife, except that the article omits the qualifying phrase "consistent with operational demands" which appears in the agreement. Applicant also urges that we insert in line 1 of the article, after the words "The Licensee shall", the phrase "make every reasonable effort to". We agree that the Applicant's duty to maintain the water surface of the Exchequer Reservoir as high as possible from April through October should be qualified to make provision for possible conflicts in operational demand during those months. Therefore, we are revising Article 44 substantially as requested.

The staff suggests that the phrase "to maintain previously recommended minimum streamflow" in Article 44 be changed to read, "to maintain minimum streamflow as required by Article 40". This change is desirable because the "previously recommended" minimum streamflow is in fact the minimum streamflow specified in Article 40 of the License order.

Upon consideration of the aforesaid application, *the Commission finds:*

It is appropriate and consistent with the public interest that our order issued April 8, 1964 in Project No. 2179 be modified as hereinafter provided.

The Commission orders:

(A) Article 44 of the April 8, 1964 order is hereby modified to read as follows:

Article 44. The Licensee shall make every reasonable effort to maintain the water surface elevation of Exchequer Reservoir as high as possible from April through October consistent with the primary purposes of the reservoir and shall maintain a minimum pool of not less than 115,000 acre-feet in Exchequer Reservoir except for a drawdown as necessary to maintain minimum streamflow as required by Article 40.

(B) The afore-mentioned Commission order issued April 8, 1964, as amended by this order, shall be accepted by the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

K-B COMPRESSION COMPANY, INC. (OPERATOR), DOCKET NO. RI60-247

ORDER DENYING OFFER OF SETTLEMENT

(Issued June 4, 1964)

K-B Compression Company, Inc. (Operator) (K-B) has filed an Offer of Settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. The proceeding in Docket No. RI60-247 relates to the jurisdictional sale of natural gas under its FPC Gas Rate Schedule No. 2 to Lone Star Gas Company in Stephens County, Oklahoma (Oklahoma "Other" area). The proposed favored-nation rate increase from 11¢ to 16.8¢ per Mcf at 14.65 psia, designated as Supplement No. 4 to K-B's FPC Gas Rate Schedule No. 2, was suspended and subsequently became effective subject to refund on April 10, 1961.

In its offer, K-B proposes a settlement rate of 12¢ per Mcf, and that it make partial refund of the monies collected subject to refund. K-B also states it is willing to accept a moratorium on rate increases until 1968, and to waive its right to invoke any indefinite pricing and take-or-pay-for provisions in the contract.

K-B assigned its interest in the sale involved herein to Pan American Petroleum Corporation (Pan American), effective on June 24, 1963. By order issued November 12, 1963, in Docket No. CI64-401, Pan American was permitted to abandon the sale because of an unitization agreement, the effect of which was to discontinue the sale under this rate schedule. Pan American has not concurred in K-B's offer for the period subsequent to June 24, 1963. Consequently, the proceeding in Docket No. RI60-247; insofar as it relates to K-B, involves a "locked-in" period from the date of the effectiveness of the rate subject to refund, to the date of assignment to Pan American.

Under the Seventh Amendment to the Policy Statement (Order No. 273 issued November 27, 1963) a producer may receive a 12.0¢ rate for sales from the area involved here if it eliminates all price escalation clauses from its rate schedule. The purpose of the Seventh Amendment is to stabilize the price of gas in the future. The end sought by the policy statement cannot be attained here because sales are no longer made from K-B's properties. K-B would thus be relinquishing nothing in exchange for the proposed 12.0¢ rate. Accordingly, it is not in the public interest to approve K-B's offer.

The Commission finds:

It is necessary and proper in carrying out the provision of the Natural Gas Act and the Regulations thereunder to deny K-B's Offer of Settlement.

The Commission orders:

The Offer of Settlement filed by K-B in this proceeding is denied.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-346

ORDER PERMITTING WITHDRAWAL OF APPLICATION AND TERMINATING PROCEEDING

(Issued June 5, 1964)

On April 29, 1964, Florida Gas Transmission Company (Applicant) filed a notice of withdrawal of its application for certificate of public convenience and necessity originally filed on June 17, 1963. Said application sought authorization for the construction and operation of unspecified facilities during a one-year period, to enable Applicant to render natural gas service to new direct industrial customers.

Following due notice, a public hearing under the Commission's shortened procedure was held on September 4, 1963. By order issued November 8, 1963, the proceeding was remanded to the Presiding Examiner for further hearing on a date to be thereafter fixed, citing the Commission's Opinion No. 409 and accompanying order, issued November 5, 1963, in Docket No. CP63-212, 30 FPC 1197, which covered an almost identical application.

Applicant has advised the Commission informally that it does not desire to prosecute its application herein as contemplated by the aforesaid order of November 8, 1963.

The Commission finds:

It is necessary and appropriate in the administration of the Natural Gas Act that Florida Gas Transmission Company be permitted to withdraw its application in Docket No. CP63-346.

The Commission orders:

(A) Florida Gas Transmission Company be and it is hereby permitted to withdraw its application filed June 17, 1963, in Docket No. CP63-346.

(B) The proceeding in Docket No. CP63-346 is hereby terminated and said docket closed.

Before Commissioner: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

LEONARD W. PHILLIPS, DOCKET NO. G-4220; LEONARD W. PHILLIPS, DOCKET NO. G-11201; J. R. BUTLER & CO. (OPERATOR), ET AL (SUCCESSOR TO BUTLER-JOHNSON SERVICE CORP., ET AL.), DOCKET NO. G-7247

ORDER GRANTING REHEARING AND MODIFYING ORDER

(Issued June 5, 1964)

On May 6, 1964, Leonard W. Phillips (Phillips) filed an application for rehearing of the Commission's order issued April 7, 1964, in the above-entitled proceedings insofar as that order provides in paragraph (E) thereof:

> * * * provided, however, that prior to the date of this order, Leonard W. Phillips shall not have been entitled to any rate effective during that time under Butler-Johnson Service Corp., *et al.*, FPC Gas Rate Schedule No. 1, as supplemented, higher than the rate of 8.6088 cents per Mcf at 14.64 psia last in effect under Leonard W. Phillips FPC Gas Rate Schedule No. 1.

By the April 7 order the Commission, among other things, amended the certificate issued in Docket No. G-7247 so as to include thereunder the interest of Phillips, heretofore covered under his own certificates in Docket Nos. G-4220 and G-11201, vacated the above certificates issued to Phillips, and accepted for filing Phillips' notice of withdrawal of its FPC Gas Rate Schedule No. 1.

In his application for rehearing Phillips points out that his interest has been covered specifically by the rate filings of the operator of his properties since January 14, 1957, when the then operator filed for a rate increase which was designated as Supplement No. 6 to Butler-Johnson Service Corp., *et al.* FPC Gas Rate Schedule No. 1 and accepted for filing to be effective as of February 14, 1957. Phillips also states that the buyer, United Gas Pipe Line Company, has in good faith paid the increased rate reflected in that filing and Phillips in good faith has been collecting the increased rate as of the effective date of the above rate filing.

Where a producer seeks coverage under the operator's rate schedule after having filed his own rate schedule, we require the producer to file a notice of withdrawal of his own rate schedule before permitting the producer to be covered by the operator. In the instant case, however, Phillips was not advised to nor did he withdraw his rate schedule, even though he was covered by the operator's rate filing and was so considered by all the parties. Under all of the circumstances presented here, we conclude that Phillips' interest was covered properly by the operator's rate filing even though he did not at that time withdraw his rate schedule. We shall therefore modify our order issued April 7, 1964 so as to delete therefrom the proviso objected to by Phillips.

The Commission orders:

For the reasons set forth above, the portion of paragraph (E) of the order issued April 7, 1964, in the above-entitled proceedings commencing with "provided, however" is hereby deleted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. IT-5029

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued June 5, 1964)

Arizona Public Service Company (Applicant), incorporated under the laws of the State of Arizona with its principal place of business at Phoenix, Arizona, filed an application on March 31, 1964, for a supplemental order granting authorization, pursuant to Section 202(e) of the Federal Power Act, to transmit energy from the United States to Mexico in an amount not to exceed 2,400,000 kwh per year at a maximum transmission rate of 700 kw. The requested authorization would supersede that previously granted by the Commission's order issued June 30, 1954 (13 FPC 1157) in the above docket.

The application states that the energy will be sold to Junta Federal de Mejoras Materiales (Junta Federal) an agency of the Republic of Mexico pursuant to the terms and provisions of a written contract dated June 1, 1939, between Applicant's corporate predecessor, Arizona Edison Company, Inc. and J. M. Franco of the town of Naco, Sonora, Mexico and his successor the Junta Federal de Mejoras Materiales. The amounts of energy which Applicant proposes to export will be transmitted over facilities located on the international boundary line adjacent to Naco, Sonora, Mexico and authorized by Presidential Permit therefor signed by the President of the United States on July 30, 1941, released to Applicant's predecessor by order of the Commission entered July 28, 1942 and transferred to the Applicant by an Amendatory Presidential Permit (in the above docket) signed by the President of the United States on August 28, 1952, and accepted by the Applicant on October 1, 1952.

By the previously mentioned order, Applicant was authorized to transmit from the United States to Mexico up to 1,000,000 kwh of electric energy per annum at a rate not to exceed 300 kw. The application states that the increased amount of electric energy requested is needed to meet the additional electric energy requirements of Naco and its environs. The application further states that Junta Federal has no generating capacity to supply such additional requirements.

Applicant represents that it has sufficient energy available to transmit the additional electric energy at the increased rate of transmission without impairing the sufficiency of the electric supply within the United States.

Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice of the application has also been given by publication in the Federal Register on April 18, 1964 (29 F.R. 5327), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before May 1, 1964, file with the Federal Power Commission, Washington, D. C. 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The proposed transmission of electric energy from the United States to Mexico as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to

impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Applicant is hereby authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Applicant is hereby authorized to transmit from the United States to Mexico shall be in an amount not in excess of 2,400,000 kwh per year at a transmission rate not to exceed 700 kw; the energy to be transmitted over facilities specified in a Presidential Permit released to Applicant's predecessor by order of the Commission entered July 28, 1942 and transferred to the Applicant by Amendatory Presidential Permit (in the above docket) signed by the President of the United States on August 28, 1952, and accepted by the Applicant on October 1, 1952.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, in Docket No. IT-5029, referred to in Paragraph (B) above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Applicant shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate, to the Commission, with respect to such transmission of electric energy, reports annually on or before February 15, showing the kw hours delivered, the maximum kw of transmission, and the consideration received therefor during each month of the preceding year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by the afore-mentioned order of the Commission issued June 30, 1954 (11 FPC 1157), in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. IT-5331

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued June 5, 1964)

Arizona Public Service Company (Applicant), incorporated under the laws of the State of Arizona, with its principal place of business at Phoenix, Arizona, filed an application on March 31, 1964, for a supplemental order granting authorization, pursuant to Section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Mexico in an amount not to exceed 8,000,000 kwh per annum at a maximum transmission rate of 1,900 kw. The requested authorization would supersede that previously granted by the Commission's order issued April 6, 1960 (23 FPC 576) in the above docket.

The application states that the energy will be sold to Compania de Servicios Publicos de Agua Prieta, S. A. (Mexican Company), incorporated under the laws of the Republic of Mexico, pursuant to the terms of a contract dated December 1, 1945, between Applicant's predecessor, Arizona Edison Company, Inc., and Mexican Company. The amounts of energy which Applicant proposes to export will be transmitted over facilities located on the international boundary line adjacent to Agua Prieta, Sonora, Mexico, and authorized by a Presidential Permit therefor signed by the President of the United States on July 30, 1941, which was released to Arizona Edison Company, Inc., and subsequently transferred to Applicant by an Amendatory Presidential Permit signed by the President of the United States on August 28, 1952, both in Docket No. IT-5331.

By the previously mentioned order, Applicant was authorized to transmit from the United States to Mexico up to 6,000,000 kwh of electric energy per year at a rate of not to exceed 1,500 kw. The application states that the increased amount of electric energy requested is needed to meet the additional electric energy requirements of Mexican Company for its rendition of electric service to the community of Agua Prieta and its environs. The application further states that Mexican Company has no generating capacity to supply such additional requirements.

Applicant represents that it has sufficient energy available to transmit the additional electric energy at the increased rate of transmission without impairing the sufficiency of the electric supply with the United States.

Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice of the application has also been given by publication in the Federal Register on April 18, 1964 (29 F.R. 5327), stating that any person desiring to be heard or to make any protest with reference to the application, should, on or before May 1, 1964, file with the Federal Power Commission, Washington, D. C. 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The proposed transmission of electric energy from the United States to Mexico as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend

to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Applicant is hereby authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Applicant is hereby authorized to transmit from the United States to Mexico shall be in an amount not in excess of 8,000,000 kwh per year at a transmission rate not to exceed 1,900 kw; the energy to be transmitted over facilities specified in a Presidential Permit signed by the President of the United States on July 30, 1941, which was released to Arizona Edison Company, Inc., and later transferred to Applicant by an Amendatory Presidential Permit signed by the President of the United States on August 28, 1952, both in Docket No. IT-5331.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, in Docket No. IT-5331, referred to in Paragraph (B) above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Applicant shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate, to the Commission, with respect to such transmission of electric energy, reports annually on or before February 15, showing the kw hours delivered, the maximum kw of transmission, and the consideration received therefor during each month of the preceding year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by the aforementioned order of the Commission issued April 6, 1960 (23 FPC 576), in the above docket.

OPINION NO. 431

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. RP61-3; COASTAL TRANSMISSION CORPORATION, DOCKET NO. RP61-4

OPINION AND ORDER ON ACCOUNTING FOR CONSTRUCTION PROFITS AND CONSOLIDATED TAX, ADOPTING EXAMINER'S DECISION WITH MODIFICATION

(Issued June 8, 1964)

Syllabus*

1. **Question of affiliation must be determined on basis of entire history of pipeline and corporations involved. P. 1404.**
2. **By no sensible interpretation can transactions of December 8, 1954, properly be characterized as arm's-length bargain between the controlling group and the minority construction and engineering group. P. 1407.**
3. **Commission *holds* that as of time construction and engineering group occupied a position where they were able to control company actions in awarding contracts, they exercised this control in favor of their own firms. P. 1407.**
4. **No profits to affiliates rule precludes allowing profits in plant accounts of Houston Texas- -basis of such rule is that profit made by an enterprise dealing with itself does not represent cost. P. 1407.**
5. **Rule against profits to affiliates must be sufficiently broad to cover fact as well as form to prevent evils which have been the subject of past proceedings. P. 1408.**
6. **Purpose of no profits to affiliates rule is to prevent insiders taking advantage of their position and creating costs which are not subject to check of ordinary business relationships. P. 1408.**
7. **Where control exists sufficiently to dominate execution of contracts in face of united opposition, no-profits-to-affiliates rule is automatically applicable. P. 1408.**
8. **Rule requiring disallowance of profits to affiliates would be seriously weakened if it could be circumvented by resignation of insider (or his sale of stock) after he entered employment agreement, but prior to its conversion into formal contract. P. 1408.**
9. **Objection here is to the engineering and contracting promotors profiting a second time on contracts between themselves and the organizations they are promoting at expense of gas consumers. P. 1409.**
10. **Language regarding economic feasibility in prior certificate order cannot be converted into assurance that contract prices would be accepted- -if not accepted because of affiliation, the only course is disallowance of insider profits. P. 1409.**
11. **Since Coastal did not pay Federal income taxes or become liable to pay them, such amounts should not be accrued on its books. P. 1410.**
12. **Commission *finds* that amounts recorded in plant accounts of Houston Texas over cost to engineering and construction firms is a write-up, and together with related interest during construction should be transferred to other gas plant adjustment accounts on books of Florida Gas. P. 1411.**
13. **In proceeding under Section 4, of the Natural Gas Act, Commission *prescribes* accounting for construction profits and *disallows* Federal Income tax accruals.**

***Initial Decision appears on P. 1425. Rehearing denied by Opinion 431-A, 32 FPC 518. Reversed, *Florida Gas Transmission Co. v. F.P.C.*, 362 F. 2d 331 (CA5-1966).**

Commissioner O'CONNOR *dissenting.*

Commissioner WOODWARD *dissenting.*

Leon M. Payne, Robert M. Scott, and *R. Y. Patterson, Jr.* for Florida Gas Transmission Company.

Harry A. Poth, Jr., Richard M. Merriman, Peyton G. Bowman, III for Florida Power Corporation and Florida Power & Light Company.

Christopher T. Boland, Thomas F. Brosnan, George J. Meiburger for Florida Public Utilities Company.

Lewis W. Petteway for Florida Railroad and Public Utilities Commission.

Cyril S. Wofsy for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SWIDLER, *Chairman:*

This proceeding concerns (1) the proper accounting for Florida Gas Transmission Company's pipeline construction costs representing profits of allegedly affiliated engineering and construction companies and (2) the accrual of Federal income taxes on the books of Coastal Transmission Corporation. These issues were reserved in the Commission's order of June 8, 1962 (27 FPC 1123), accepting a proposed settlement of rate proceedings.

The corporations here involved were organized to transport natural gas from Texas to Florida. Houston Texas Gas and Oil Corporation (Houston Texas) and Coastal were granted a certificate for the pipeline by Opinion No. 301 (16 FPC 118) issued December 28, 1956,[1] and have completed the construction. Since that time the companies have merged and are now known as Florida Gas Transmission Company; and the name of their parent, The Houston Corporation, has been changed to Florida Gas Company.

On the first question there is an issue as to whether there was an affiliation between Houston Texas and the engineering and construction firms, and, if so, whether that part of the pipeline costs representing profits to these firms should be eliminated from the company's plant accounts. There is also a subsidiary question as to whether the profits should not be reduced by certain overhead costs of the construction firms. On the second question the issue is whether Coastal should be able to accrue a tax although it was included in a consolidated income tax return on which no taxes were payable.

I. The Costs Resulting from Profits of the Construction and Engineering Group

As a result of the Commission's order of June 8, 1962, a hearing was held in which it was developed that total cash outlays for the pipeline amounted to $112,439,325 for Houston Texas and $60,091,410 for Coastal, and these were recorded in the plant accounts of the companies. A part of the amount spent by Houston Texas was paid to four engineering and construction firms, Barnard & Burk, Midwestern Constructors, Inc., Walco Engineering and Construction Co., and Harbert Construction Corporation. The staff found that the total payments to these firms included $9,659,183 in excess of their actual costs.[2] The staff recommended that this amount with corresponding interest during construction of $304,950, amounting in all to $9,964,133, should be eliminated from the plant accounts. On the basis of the record the examiner found in his decision dated

---

[1] Affirmed as *Florida Economic Advisory Council* v. *F.P.C.,* 251 F. 2d 643 (CADC), certiorari denied 356 U.S. 959.

[2] $5,919,065 applicable to the joint venture composed of Midwestern and Walco; $3,082,810 applicable to Harbert and $657,306 applicable to Barnard & Burk.

September 23, 1963, that the firms became part of an affiliated group in the promotion of Houston Texas and that the construction profit should be eliminated from its plant accounts. We agree with the examiner's conclusion but modify it below with respect to overhead costs of the construction firms.

The question of affiliation must be determined on the basis of the entire history of the pipeline and of the corporations involved. Originally, for the purpose of building a pipeline to New York or Chicago a Texas corporation known as Houston Texas Gas and Oil Company (Houston Texas Company) was organized May 12, 1952, by one J. O. Mack, a successful oil producer, and he was joined by his wife, H. S. Mack, and his son-in-law, A. R. Kleinkauf. Later O. Paul Herzig became chief engineer and a director, and F. R. Smith became associated with the enterprise. The capital structure of this company consisted of 1,000 shares at a par value of $1.00 per share, and this was never increased. Because Mr. Mack did not have available the necessary financial resources or experienced personnel he made efforts to interest other firms in the project.

Mr. Charles C. Barnard was the first such investor to join the group. Mr. Barnard, who met Mr. Mack on his own initiative early in 1954, was a partner in the consulting engineering firm of Barnard & Burk. After a series of conversations it was orally agreed that Barnard & Burk would prepare a survey of the Florida market at their expense, that they would be reimbursed for costs when funds were available, that they would do the engineering for the project at the going fee for the type of work involved, and that out of cash or services they would be permitted to purchase a certain amount of founders' stock.

Later Mr. John M. Harbert, president of Harbert Construction Corporation, Mr. Paul C. Wallack, president of Walco, and Mr. F. E. Stanley, president of Midwestern Constructors, Inc., also heard about Mr. Mack's plans, met Mr. Mack and eventually joined the enterprise. Through oral agreements with Mr. Mack each of these individuals agreed to advance risk capital and to contribute their knowledge and experience; in turn they were to be given the right to construct a portion of the pipeline and to acquire stock participation in the project.

On July 22, 1954, Houston Texas was incorporated in Delaware for the purpose of acquiring the assets of Houston Texas Company and constructing a natural gas pipeline, and Mr. and Mrs. Mack and Mr. Kleinkauf became the first directors. Later Mr. Mack's associates Herzig and Smith became directors and numerous meetings were held at which plans for constructing the project were developed. By September 16, 1954, Messrs. Harbert, Wallack and Stanley were advancing small amounts of risk capital, and on October 27, 1954, along with Mr. James Roddy of the financial firm of Scharff and Jones in New Orleans and Mr. Barnard, met with officials of Blyth & Company in New York to work out arrangements for that firm to act as underwriters and investment advisers for the project.

On December 8, 1954, the board of directors of the new company approved the oral agreements that Mr. Mack had made, now reduced to writing in the form of stock subscription agreements with respect to providing funds, and in the form of letter agreements with respect to the performance of the work. The board then consisted of Mr. Mack, Mrs. Mack, and Messrs. Kleinkauf, Herzig, and Smith. The board also approved the acquisition of the assets of The Houston Texas Company. After this and at the same meeting it voted to increase its membership to include Messrs. Barnard, Harbert, Wallack, and Stanley, and Mr. Stanley was elected Chairman. Mr. T. Rinehart, Mr. Stanley's legal counsel, was appointed general counsel and was granted an option to purchase stock. On the same day Midwestern and Walco, Harbert, and Barnard & Burk subscribed in all to 37.5 percent of the stock in Houston Texas.

The letter agreement with Barnard & Burk provided that if Houston Texas acquired a certificate it agreed to employ Barnard & Burk as engineers under a contract "incorporating a cost or fees no higher than an arm's-length contract for similar services under similar circumstances." The agreement specifically provided that "the amount of the fees and compensation set forth herein are not, and shall not be deemed to have been, agreed to at this time." Attached to the letter agreement, which was accepted by Barnard, was a form of contract to be executed later.

The letter agreements with Harbert Construction Corporation, and with Midwestern and Walco acting jointly, both provided for a "cost no higher than an arm's-length contract for similar work under similar circumstances." In the Harbert agreement Houston Texas agreed to employ the firm to construct the 18-inch main line from Haines City, Florida, to Miami, Florida, including all laterals. In the Midwestern-Walco agreement Houston Texas agreed to employ the firm to construct all main line facilities from a point near Bay St. Louis, Mississippi, to Haines City, Florida.

In February of 1955 Houston Texas made arrangements to obtain a gas supply from Coastal, then a wholly owned subsidiary of Delhi-Taylor Oil Corporation, and it became necessary for the investors in Houston Texas to divest themselves of part of their interest to permit Delhi-Taylor to purchase an interest. On August 26, 1955, Houston Texas filed its application with the Commission for a certificate. At the time the application was heard the Houston Texas stock was owned as follows: Barnard & Burk, 10.2 percent; Harbert, 5.1 percent; Midwestern group, 9.6 percent; Walco group, 10.0 percent; Mack group, 35.7 percent; Delhi-Taylor, 14.3 percent; investment bankers, 11.4 percent, and others, 3.7 percent. The board of directors then was composed of Barnard, Bashore (vice president of Blyth and Co.), Harbert, Herzig, Kleinkauf, Rinehart, Roddy, Stanley, Wallack, and Mrs. Mack.

In March 1957 The Houston Corporation was formed, and all stockholders of Houston Texas exchanged their stock for shares in The Houston Corporation of which Houston Texas was now the 100 percent subsidiary. In June 1958 The Houston Corporation obtained by exchange of stock all of the stock of Coastal, and Delhi-Taylor became owner of 48.3 percent of the stock of The Houston Corporation.[3] Changes were also made in the board of The Houston Corporation which thereafter consisted of W. J. Bowen, president of Coastal; Harold A. Martin, vice president of a bank in Jacksonville, Florida; Carl M. Mueller, vice president, Bankers Trust Company, New York City; Leon M. Payne, a Houston lawyer; Rinehart; Barnard; and Stanley, who was Chairman of the Board and President. At the same time the board of Houston Texas was revised to consist of Bowen, Herzig, Kleinkauf, Payne, Rinehart, Stanley, and Mrs. Mack.

In August of 1958 The Houston Corporation carried out the necessary public financing. Definitive contracts containing prices at which the work was to be performed were negotiated and were approved by the board of Houston Texas on October 23, 1958.[4] At that time the composition of the boards of directors of The Houston Corporation and Houston Texas were the same as those listed above for June of 1958. The testimony shows that regardless of their legal import, all of the new directors of The Houston Corporation and Houston Texas assumed that the letter agreements were to be honored as at least a "moral obligation," and no consideration was ever given to adopting a different mode for determining who would do the work involved.

---

[3] Delhi Taylor's ownership consists only of Class A stock which had one tenth of a vote per share until 30 days after the public financing in August of 1958 when it had one fourth of a vote per share.

[4] The contracts had been previously submitted to the board of The Houston Corporation and in effect approved.

At this time in addition to being a director of each company, Mr. Stanley was chairman of the board and president of The Houston Corporation and president of Houston Texas. The maximum percentages of stock owned by the engineering and construction representatives in The Houston Corporation at any time subsequent to the public financing up until December 1960 were as follows: Mr. Barnard, 0.9 percent; Mr. Harbert, 3.3 percent; Mr. and Mrs. Stanley, 2.4 percent, and Mr. and Mrs. Wallack, 3.0 percent, or 9.6 percent in all. Because of the large offering of common stock to the public (1,809,400 shares or 52%) the shares held by the engineering and construction representatives are not insignificant.

While the relative stock interest of the engineering and construction group in the pipeline enterprise declined in the period between the approval of the letter agreements in December 1954 and the ratification of the definitive contracts in October 1958, the influence on company policy exerted by the original group of promoters persisted. After the execution of the letter agreements the record shows that Messrs. Stanley, Wallack, Harbert, and Barnard devoted a great deal of time and effort to the problems of getting the pipeline built and the enterprise established on a business basis. Their entrenched position is shown by the fact that several inquiries by other firms about constructing the pipeline or performing engineering services were answered by the statement that the work had already been awarded to the four firms involved here. Even the negotiation of definitive contracts could not be separated from the same group. At the meeting of the board of directors of Houston Texas on March 19, 1957, the president, Mr. Stanley, appointed separate committees to negotiate contracts wth Barnard & Burk and the three construction companies. Mr. Stanley appointed Messrs. Herzig and Rinehart and himself to deal with Barnard & Burk,[5] and Messrs. Herzig, Barnard and Rinehart to deal with the construction companies. Thus members of both committees were on the same board of directors, had common interests[6] and were appointed by the president who was a representative of one of the construction contractors. Mr. Stanley testified, that "the persons negotiating the Midwestern-Walco contracts were under strict and absolute instructions to negotiate those contracts in accordance with the provisions of the letter agreements." All of the work was offered to the construction firms and awarded to them except for certain river crossings, laterals, and meter regulator stations for which the committee thought the proposals of the construction firms were too high after checking with other contractors.

The evolution of this enterprise, which must be traced through the complicated details of stock ownership, agreements, financial needs and personal relationships, is plain enough in general pattern. A group of promoters combined their talents and resources, and representatives of the engineering and construction firms were members of this original group. As the enterprise expanded other persons and other resources were brought in, but representatives of the engineering and construction firms remained at the center of the operation where they were in a position to protect their rights to perform the services, the cost of which is involved here.

---

[5] The agreement with Barnard & Burk was never brought to a definite contract, but the record shows that the parties acted within the terms of the appendix to the letter agreement. Under these terms Barnard & Burk would receive a percentage of the pipeline costs, but this was limited later by oral agreement. Competitive bids were not sought from other firms.

[6] While Rinehart, who owned 9.8% of the common stock of The Houston Corporation before the public offering, was not personally interested in the construction contractors, he was or had been Mr. Stanley's lawyer and had been brought into the company through Stanley.

There may never have been any formal agreement between the members of the engineering and construction group and the Mack interests to control jointly the several companies through which they operated. However, it is clear that the Mack group was dependent upon the construction and engineering group and could not have repudiated the oral agreements with the construction and engineering group (or its individual members) when on December 8, 1954, the Mack interests had Houston Texas (in which they momentarily owned all the stock and made up the entire board of directors) approve the agreements in written form. Absent the participation by the construction and engineering group which was consummated immediately thereafter Houston Texas was a mere shell.

By no sensible interpretation can the transactions of December 8, 1954, properly be characterized as an arm's-length bargain between a controlling Mack group and a minority construction and engineering group. They were, instead, a series of agreements between a corporation and contractors who were an integral and essential element of the corporate management, and who could destroy the corporation unless it agreed to their prearranged transactions. We hold that as of the time the construction and engineering group occupied a position where they were able to control the actions of the company in the awarding of construction and engineering contracts, that they exercised this control in favor of their own firms, and that the contracts in issue reflect this relationship.

It is arguable that during the subsequent four years the construction and engineering group lost the absolute power to impress their will upon the pipeline company, parent or subsidiary. It is unquestionable, however, that throughout this period the group or its representatives remained as active participants in the company management, and that the new members of the board of directors of the parent company made no effort to reconsider the 1954 determinations but treated them as binding. Under these circumstances we do not believe that it can properly be concluded that the original affiliation taint has been purged, or that the October 1958 ratification of the earlier agreement represented an independent judgment by the parent company to employ the construction and engineering group because they could perform the work as well and as cheaply as any other group.[7]

We think that our rule against profits to affiliates precludes allowing their profits in the plant accounts of Houston Texas. The no-profits-to-affiliates rule goes far back in Commission history. See for example *Alabama Power Co.*, 1 FPC 25, 39, aff'd *Alabama Power Co. v. McNinch*, 94 F. 2d 601 (CADC 1937); *Louisville Hydro-Electric Company*, 1 FPC 130, 133, aff'd *Louisville Gas & Electric Co. v. F.P.C.*, 129 F. 2d 126 (CA6 1942), cert. den. 318 U.S. 761. The basis of this rule is that a profit made by an enterprise dealing with itself does not represent cost. As we indicated in *St. Croix Falls Minnesota Improvement Company, et al.*, 3 FPC 13, 21, "it is impossible and unrealistic to determine whether profits paid to an affiliated construction company are 'reasonable profits'" and "comparison with over-all cost, including the affiliated company's profit, with what might have been cost if actual competition for the work had existed and if the work had been done by a non-affiliated construction company is sheer speculation."[8]

---

[7] We do not hold that an affiliation condition which would call for application of the rule can never be eliminated once created, but only that it was not here.

To prevent the evils which have been the subject of past proceedings the rule against profits to affiliates must be sufficiently broad to cover fact as well as form. The dissent suggests the rule should apply only where there is a situation of complete control and, further, complete control at the point in time when the formal contracts were executed on October 23, 1958. We do not agree. The purpose of the rule is to prevent insiders taking advantage of their position and creating costs which are not subject to the check of ordinary business relationships. *Cf.*, Section 10 of the Clayton Act, 15 U.S.C. § 20.[9] We do not think that some particular percentage of stock or of common officers or directors can be allowed to be determinative of whether the rule should apply, although these factors are relevant to determine when a relationship exists that calls for application of the exclusionary rule. That the contractors or promoters could not have dictated policies or ordered the execution of contracts if all other interests had chosen to oppose them cannot validate a relationship which by its very nature and history precludes unhampered bargaining, especially if the contractors or promotors were, as here, clearly dominant when the original contracts were agreed upon. If control exists, sufficient to dominate the execution of the contracts in the face of united opposition, that makes the rule automatically applicable; but our inquiry is not at an end if we conclude that the insider's influence resulting in the contract is or became somewhat less than this degree of control.

The dissenting opinion, citing *Florida Power Corp.*, 1 FPC 390 (1937), argues that affiliation must be determined solely with reference to the situation prevailing as of the date the formal employment contracts were executed, and that indicia of control or influence at earlier periods are irrelevant. The *Florida Power* case, however, presented a situation where there never were any dealings between company insiders and construction or engineering firms under their control: the employment contracts in issue resulted from the arm's-length bargaining between the original promoters of a company and a completely unrelated concern, which as part of the consideration for purchasing the promoters' stock agreed to employ them subsequently to build the project involved. It was this fact, rather than the corporate situation when the employment agreements were subsequently ratified (by which time the original promoters had long since ceased to have any relationship to the company), which led the Commission to allow reasonable profits on the work done. If the rule requiring disallowance of profits to affiliates could be circumvented by the resignation of the insider (or his sale of stock) after he enters into an employment agreement, but prior to its being converted into a formal contract, it would be seriously weakened as an effective sanction against such activities.

We also need not consider whether, as the dissent suggests, there may be other situations involving less than arm's-length bargaining in which the public interest can be adequately protected by approaches not calling for exclusion of a supplier's or contractor's profits from company costs. The rule that profits from contracts of a supplier or contractor affiliated with the regulated company should be excluded from its cost of service has proved its worth and is fully applicable here upon any realistic test of what occurred.

---

[8] In the *St. Croix* case the Commission by way of footnote indicated that it was using the term "affiliated company" there in the sense of the definition of this term in our Uniform System of Accounts. For the reasons set forth in this opinion we do not believe there is any basis for limiting the so-called "no-profits-to-affiliates" rule to such situations.

[9] This section makes it a crime for any common carrier to make any contracts for construction in an amount more than $50,000 with another firm when the carrier shall have upon its board of directors or as its president, manager, or purchasing officer any person who is at the same time a director or manager or who has a substantial interest in the firm, except under competitive bidding.

It has been suggested by the dissent that the effect of our decision here will discourage the promotion of pipeline projects by promoters pooling their interests. Of course, we have no such intention. We do not object to promoters making a profit on their investment of time, effort and financial resources in a developing pipeline enterprise. They will presumably realize this profit on the enhanced value of the shares of stock distributed to them. What we do object to is the engineering and contracting promoters profiting a second time on contracts between themselves and the organization they are promoting at the expense of the gas consumers.

Houston Texas points out that full disclosure of the relation of the pipeline enterprise with the engineering and construction companies was made in the certificate proceeding and that the Commission's opinion shows that the engineering and construction costs would be allowed if reasonable. Houston Texas also contends that the examiner erred in refusing to admit and consider evidence of their reasonableness. The arguments rest on the following language of the Commission in its certificate opinion (16 FPC at p. 142):

> Finally, it appears that the labor necessary for construction of the facilities of Houston Gas will be furnished by three construction companies, the president of each of which is an official and director of Houston Gas and that two of these construction companies own blocks of Houston Gas stock. Furthermore, a member of the firm of engineers which will supervise the construction and operation of the pipeline is also a vice president and director of Houston Gas. While as we have already stated, the cost of the proposed facilities appears to be reasonable, in view of this fact, this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates of Houston Gas.

We agree with the examiner that Houston Texas misconstrues the purpose of the language in the certificate opinion. There the Commission was making a determination on the feasibility of the project. In its opinion the cost appeared to be reasonable from this standpoint, but it specifically deferred consideration of the costs in relation to the affiliation question. On its face the language is a warning that because of the affiliation problem contract costs would not be accepted at face value but would be subject to scrutiny. We do not see how it can be converted into assurance that the contract prices would be accepted. If they are not accepted because of affiliation, there can be only one course, disallowance of insider profits.

Houston Texas' interpretation assumes that the Commission would abandon its long-standing rule against profits between affiliates with no discussion or consideration. Such an interpretation does not seem warranted, and it is therefore not relevant to inquire into the reasonableness of the profits. There is no reason in the record to doubt that the engineering and construction costs, apart from the profits, were reasonable.

In computing the profit arising from the engineering and construction contracts the staff did not include certain costs representing company overhead and arising largely before commencement of construction of the pipeline project. Houston Texas contends that these overhead charges, amounting to $312,809 for Harbert Construction Corp., $953,243 for Midwestern and $456,586 for Walco, should reduce the profits earned by the construction companies. The staff contends with respect to Midwestern and Walco that it properly allowed only the costs of their joint venture and disallowed any costs attributable to the separate corporate entities inasmuch as the costs incurred by the separate entities were not associated directly with the construction of the pipeline. The staff also objects to allocating a portion of the general and administrative expenses of Harbert for the period 1955 through 1958 to reduce the profits of Harbert on the grounds that these costs arose prior to the actual construction, were incurred through efforts to obtain gas sales contracts for the pipeline and represent pre-operational expenses. In our opinion the overhead costs of all three construction companies claimed by them were shown by the record to be associated with the pipeline construction and went to reduce the actual profit they obtained from their contracts with Houston Texas. Therefore the profits disallowed by the staff in the amount of $9,659,183 should be reduced by $1,722,638 to $7,936,545. Interest on the reduced amount would be $250,565, making $8,187,110 in all.

II. Accrual of Taxes on Books of Coastal

The second issue reserved for consideration in these proceedings arises because Coastal accrued on its books $1,737,000 in Federal income taxes for May 1961 through August 1962 when it was merged with Florida Gas Transmission Company, but did not owe or pay such taxes because the consolidated returns filed by the parent company, The Houston Corporation, for the years 1958 through 1961 showed net losses, and it was expected that such losses would occur until 1965. We agree with the examiner that since Coastal did not pay such taxes or become liable to pay them, these amounts should not be accrued on its books, and we adopt the examiner's discussion on this point. We may point out further that in our opinion Coastal's argument in its exceptions that the *Northern* case,[10] cited by the examiner, is distinguishable has no merit. Coastal points out that the *Northern* case involves the special treatment given intangible well drilling costs and percentage depletion. It makes no difference whether no tax is paid because there are tax losses resulting from the use of these statutory deductions or whether the losses are operating losses. The point is that where there is no tax liability on a consolidated basis, none should be accrued on Coastal's books and, of course, no taxes would be allowed in a rate case in accordance with our *Cities Service* opinion.[11]

Coastal seeks to interpret the Commission's Uniform System of Accounts as permitting accrual of taxes in that Section 7, Current and Accrued Liabilities, under "Balance Sheet Accounts" provided that accrued taxes shall be classified "as accrued liabilities even though payable more than one year from date." Coastal says that the taxes accrued on its books will be offset by the first payment of taxes by the consolidated group and therefore will be paid. The statement in the Uniform System of Accounts, however, has reference to taxes payable; that is, taxes for which Coastal is liable, but Coastal was not shown to be liable for taxes except on the contingency that in some later year a tax would be payable on the basis of the consolidated return. Therefore Coastal has no taxes payable and should not accrue them. Any other result would be inconsistent with *Cities Service*, where we determined that the tax allowance in a rate case should be a proportional part of the taxes payable on a consolidated basis, while here no tax was shown to be payable on the consolidated returns for the period in question.

---

[10] *Northern Natural Gas Company*, 26 FPC 841.

[11] *Cities Service Gas Co.*, 30 FPC 158, Opinion No. 396, Docket No. G–18799, July 15, 1963.

Coastal contends further that the decision reached by the examiner and by us here would result in rate decreases to nonjurisdictional customers who are not subject to our jurisdiction. This is because they pay for gas on a cost-of-service basis. Contrary to Coastal's contentions, we are not indirectly trying to regulate the nonjurisdictional sales of the system. We are merely determining an accounting matter that was excluded from the settlement of a rate case. The computation of Florida Gas' rates to its nonjurisdictional customers is a matter for private contracts, and we are in no way attempting to fix these rates. Whether the treatment of the consolidated tax required here will have an effect on jurisdictional rates is not before us for determination.

The Commission further finds:

(1) The $7,936,545 recorded in the plant accounts of Houston Texas over the cost to the above-named engineering and construction firms is a write-up and together with the related amount of $250,565 of interest during construction should be transferred from Account 101, Gas plant in service, to Account 116, Other gas plant adjustments, on the books of Florida Gas Transmission Company.

(2) It is reasonable and appropriate that the write-ups and other improper charges in the plant accounts of Florida Gas Transmission Company of $7,936,545 and $250,565 to be transferred to Account 116, Other gas plant adjustments, be disposed of by a charge to earned surplus, except to the extent of any accrued depreciation applicable to the amounts, which depreciation amounts are chargeable to Account 108, Accumulated provisions for depreciation of gas plant in service.

(3) The accruals for income tax purposes by Coastal now reflected on the books of Florida Gas Transmission Company are in violation of the Commission's Uniform System of Accounts.

The Commission orders:

(A) Florida Gas Transmission Company shall classify the amounts of $7,936,545 and $250,565 included in its plant accounts and referred to in Finding (1) above, in Account No. 116, Other gas plant adjustments, of the Commission's Uniform System of Accounts prescribed for natural-gas companies.

(B) Florida Gas Transmission Company shall dispose of the amounts classified in Account 116, Other plant adjustments, referred to in Paragraph (A) above, as set forth in Finding (2) above.

(C) Florida Gas Transmission Company shall eliminate the accruals by Coastal of the amounts accrued for income tax purposes included in its Accounts 236 and 409, above referred to in Finding (3).

(D) Florida Gas Transmission Company shall submit within 90 days from the date on which this decision becomes final certified copies of accounting entries effecting compliance with the requirements of Paragraphs (A), (B), and (C) above.

(E) The decision of the presiding examiner is hereby adopted as the decision of the Commission to the extent not inconsistent herewith.

(F) Exceptions not specifically granted are hereby denied.

Commissioner O'Connor *dissenting.*

Commissioner WOODWARD *dissenting* on the issue of consolidated taxes, consistent with the views expressed in his dissenting statement accompanying Opinion No. 396, issued July 15, 1963 in Cities Service Gas Company, Docket No. G–18799, 30 FPC 158.

O'CONNOR, Commissioner, *dissenting:*

A primary issue before the Commission is whether four contracts dated October 23, 1958, were executed between affiliated companies. I respectfully dissent from the majority's conclusion that they were.

At the threshold of this issue lies two subsidiary issues: First, the appropriate date as of which affiliation is to be tested, and secondly, the proper test to be employed at this date.

It is Staff's contention that the test date should be December 8, 1954, when Houston Texas authorized its Board of Directors to enter into Letters of Agreement with the contracting companies. Florida Gas, however, contends that the legally significant date is October 23, 1958, when the definitive contracts were finally executed. Fortunately, this issue was raised, argued, and decided twenty-seven years ago.

In *Florida Power Corporation*,[1] two contractors (Hardaway), two engineers (Mees) and a fifth party (Winthrop) organized West Florida Power Company to build a hydro-electric project. They later transferred their West Florida capital stock to Central Florida Power & Light in consideration of $175,000 and an agreement ". . . to employ the Hardaways as contractors and the Mees Brothers as construction engineers, provided the purchasers erected a hydro-electric plant on the Ocklocknee River within 3 years."[2] The agreement and stock were subsequently transferred to the Florida Power Corporation, which controlled West Florida at the time the license was granted.

The Commission was then faced with rendering an "actual legitimate original cost" determination for the project. In reaching this determination, it discussed the propriety of including various cost elements. Only two are pertinent here. The first involved $109,903.61 paid by the licensee to its parent for construction supervision. The Commission reaffirmed its conviction, earlier enunciated in the *Alabama Power Co.* case[3] and *Louisville Hydro-Electric Co.*,[4] that inter-affiliate transactions are to be recorded at cost, and summarily disallowed the supervision fee. The second element, however, involved the fees paid to the Hardaways and the Mees Brothers pursuant to the earlier executed service agreements. Here the Commission refused to invoke the exclusionary rule noting that ". . . whatever financial interest Mees & Mees had in the license terminated *at the time the contract of July 8, 1925 was executed.*"[5]

It then concluded:

> It is obvious that the terms of the sales contract precluded competitive bidding, ... A careful study of the record, nevertheless, results in the conviction that, notwithstanding the absence of competitive bidders, the fee paid by the licensee is reasonable.[6]

The obvious holding of *Florida Power* is that affiliation is to be tested at the time definitive contracts are executed, and, absent a showing of affiliation the extent of inclusion will depend upon the reasonableness of the fees. Inasmuch as the Commission had previously decided four litigated Section 4(b) cases involving the "no profits" rule,[7] and invoked the rule in this case, *Florida Power* can hardly be dismissed as a decisional oversight.

---

[1] 1 FPC 390 (1937).

[2] *Id.* at 392.

[3] 1 FPC 25 (1932).

[4] 1 FPC 130 (1933).

[5] 1 FPC at 406. Emphasis supplied throughout this statement unless otherwise stated.

[6] *Ibid.*

Further, the decision is eminently sound. The existence of control is relevant, and should be tested, only at the moment legal obligations to pay become vested, for only at this moment do the interests of ratepayers became involved. These interests had not become involved on December 9, 1954. The Letters of Agreement, signed the day before, obligated Houston Texas to do nothing more than negotiate.[8] Enforceable contracts did not come into being, and the interests of ratepayers did not become involved, until October 23, 1958, when the "affiliates" were no longer in control of either The Houston Corporation or Houston Texas. Consequently, testing for control prior to this date is inappropriate.

Equally inappropriate is the majority's contention that to follow Florida Power would allow those in control of a company to negotiate agreements with their own service firms, leave the company, then later have their firms execute a formal agreement with the company along the identical lines set forth in the initial agreement. Surely if the initial agreement legally bound the company to pay specific fees, affiliation should be tested as of that date. This, however, is not the fact in the instant case.

The second subsidiary issue involves the appropriate test for affiliation. Since the *St. Croix Falls Minnesota Improvement Co.* case,[9] this test has been undisputed. It requires a finding that the reporting company controls, is controlled by, or is under common control with other companies or persons.

The core determination in this case thus becomes: Did the four companies on October 23, 1958, control Houston Texas.[10] In order to adequately answer this question, the structure of The Houston Corporation, as of this date the sole parent of Houston Texas, must be examined.

The Houston Corporation was formed in 1957 with 600,000 authorized shares. At inception, its capital structure was as follows: the Mack group[11] controlled 23.8 percent of the stock; the engineering and construction group[12] controlled 30 percent; Delhi-Taylor, pursuant to a previous agreement, controlled 13 percent; various investment bankers controlled 10.6 percent; and other interests controlled 14 percent. The Board of Directors was comprised of the following: Mr. F. E. Stanley, Mr. Theodore Rinehart, Mr. C. C. Barnard, Mr. O. Paul Herzig, Mr. Paul C. Wallack, Mr. John M. Harbert, III, Mr. Allen R. Kleinkauf and Mrs. H. S. Mack.[13]

---

[7] *Louisville Hydro-Electric Co.*, 1 FPC 130 (1933), *aff'd. sub. nom. Louisville Gas & Electric Co.* v *F.P.C.*, 129 F. 2d 126 (CA6, 1942), cert. denied, 348 U.S. 761 (1942); *Chelan Electric Co.*, 1 FPC 102 (1933); *Safe Harbor Water Power Corp.*, 1 FPC 230 (1935); *Clarion River Power Co.*, 1 FPC 269 (1935). Although these cases were decided under the Federal Power Act, Section 6(a) of the Natural Gas Act likewise empowers the Commission to determine "actual legitimate cost." 52 Stat. 824 (1938).

[8] The Letters of Agreement typify the "incomplete" and thus unenforceable contract to which Page refers in his definitive study of contract law. 1 PAGE, CONTRACTS §§ 87–89 (2d ed. 1920). As an example, he cites offers "which leave the amount of compensation to be determined by subsequent negotiation, fixing only the extreme limits within which the negotiations are to range." *Ibid.* at 122. See generally, 1 WILLISTON CONTRACTS, *Making of Offers*, §§ 41, 42 (3d ed. 1957) and 1963 supplement citing similar illustrations of agreements too indefinite for enforcement.

[9] 3 FPC 13 (1942).

[10] There is no claim that these companies were controlled by, or under common control with, Houston Texas.

[11] Estate of J. O. Mack, Helen S. Mack, Allen R. Kleinkauf, B. M. Kleinkauf, O. P. Herzig and family.

[12] Barnard & Burk, John M. Harbert, III, Midwestern Constructors, Walco Engineering & Construction Company, and Midwestern-Walco.

[13] Mr. Harold A. Martin was elected to the Board at the special meeting on December 14, 1957.

In June of 1958, however, the acquisition of Coastal Transmission Company from Delhi-Taylor, as well as the consummation of the public financing, caused a structural alteration in The Houston Corporation. Delhi-Taylor now held 48.3 percent of the Houston Corporation stock. The interest of Mr. Barnard, who as of June 1957 held 2.55 percent, fell to .9 percent. The interest of Mr. Harbert, previously 4.7 percent, fell to 3.3 percent. Likewise, the interest of Mr. Wallack and family, previously 4.8 percent, decreased to but 3 percent. The same dimunition was true in the case of Mr. Stanley and family, whose interest went from 6.18 percent to 2.4 percent. Changes in control were reflected in changes in management. At the June 1958 annual meeting, the Board of Directors became composed of Mr. W. J. Bowen, Mr. Leon M. Payne, Mr. Carl M. Mueller,[14] Mr. Harold A. Martin, Mr. Rinehart, Mr. Stanley, and Mr. Barnard.[15] The Board of Houston Texas was likewise reconstituted. As of this date it was comprised of Messrs. Bowen, Herzig, Kleinkauf, Payne, Rinehart, Stanley, and Mrs. Mack.

Consequently, the gist of the majority's opinion is that four companies dominated Houston Texas at a time when: First, six of its seven directors and five of the seven directors of The Houston Corporation were admittedly beyond their control,[16] and second, the sum total of all their interest was 9.6 percent. I cannot subscribe to this conclusion.

The majority's error lies in its confusion of "lack of arm's length bargaining," which may have existed in this case, with "affiliation," which surely did not. "Lack of arm's-length bargaining" may include "affiliation" but it does not necessarily include it. "Lack of arm's length bargaining" is a general term; all it requires is that a contract be executed under conditions of collusion, fraud, gross neglect or undue influence. In such event, the reporting party then has the burden of justifying the reasonableness of its claimed costs. Any costs in excess of what is determined to be reasonable are disallowed. "Affiliation," however, is a word of art. If affiliation is found, any profit paid is summarily disallowed and the reasonableness of the profits is irrelevant. Affiliation, however, requires a very specific finding; namely, that as of the date of the execution of a contract, one of the parties controlled, was controlled by, or was under the common control with, the other party. As applied to the instant case: it means that the four parties not only had the power to execute the October 23 contracts under any terms they desired, but that they also, at this date, possessed the power ". . . to direct or cause the direction of the management and policies of [The Houston Corporation] . . ." [17] This requirement demands by its very terms that these four companies have complete control over every phase of corporate management as of October 23, 1958. Not even Staff has asserted that control existed to this extent, but without it the whole claim of affiliation must fall.[18]

The majority's contention that *St. Croix* can be satisfied with less than this, and that the "no-profits" rule was designed to preclude all insider profits, is an overstatement. Its principle was not "no profits to insiders: but "no profits to *controlling* insiders," and it was developed to prevent holding companies from compounding profits in intercorporate transactions. The rule recognized the fiction of treating corporations, dominated by a common parent, as separate. It also recognized that only with this dominance could they be said to be but one corporate entity. This is revealed by examining the corporate relationship to which the rule was applied. It is also revealed by comparing the rule, as enunciated in *St. Croix*, with true "no profits to insiders" rules such as Section 12 of the Natural Gas Act, Section 305(a) of the Federal Power Act, and Section 2(a)(11)(A)-(D) of the Public Utility Holding Company Act of 1935.[19]

---

[14] Mr. Mueller subsequently resigned and was replaced by Mr. Felix A. Mulgrew, a Vice President of The Bankers Trust Company on February 15, 1959.

[15] At this time the principal officers of The Houston Corporation were: Mr. Stanley, Chairman of the Board and President; Mr. Bowen, Director and Senior Vice President; Mr. Rinehart, Director, Senior Vice President and Secretary; Mr. Herzig, Vice President-Engineering, and Mr. Kleinkauf, Assistant Treasurer.

[16] Tr. 1598. Staff Witness Heim admitted that no control existed as to Messrs. Bowen, Payne, and Rinehart. Three other directors, Messrs. Herzig and Kleinkauf and Mrs. Mack were never considered to be controlled by the service firms.

[17] Section 5(b) of the Uniform System of Accounts, defining "control."

[18] *Cf., Detroit Edison Co.* v. *S.E.C.*, 119 F. 2d 730, 738–39 (CA6, (1941)), cert. denied, 314 U.S. 618 (1941), defining "control" under a less stringent statute than Section 5(b).

The distinction between "affiliation" and "lack of arm's length bargaining" is not an exercise in academic hair-splitting. It is both substantive and significant, and is supported by the legal history of the "no-profits" rule.

The inception of the rule is often recognized as *Smith* v. *Illinois Bell Tel. Co.*,[20] where litigation arose over rates set for Illinois Bell Telephone by the Illinois Commerce Commission. In dispute were several cost items including payments made to the Western Electric Company for equipment. Ninety-nine percent of the stock in Western Electric, as was 99 percent of the stock in Illinois Bell, was owned by American Telephone & Telegraph. Thus, American Telephone & Telegraph was in a position to exercise complete control over every phase of the Illinois Bell and the Western Electric operations. In reversing and remanding for additional findings, the Supreme Court noted:

> . . . Western Electric Company, through the organization and control of the American Company, occupied a special position with particular advantages in relation to the manufacture and sale of equipment to the licensees of the Bell System, including the Illinois Company, that is, that *it was virtually the manufacturing department for that system, . . .*[21]

The Smith case was relied on two years later in *Western Distrib. Co.* v. *Pub. Serv. Comm'n of Kansas.*[22] Here Cities Service Gas Company was selling gas to Western Distributing Company at the city gate of El Dorado, Kansas. The two companies were under the common control of Cities Service Company, a once removed holding enterprise. Western Distributing Company had filed for a rate increase, and a question arose over the reasonableness of the 40¢ per Mcf paid to Cities Service Gas Company. Western argued that inasmuch as the rate was charged in interstate commerce its reasonableness was beyond the scope of inquiry of the Kansas Commission. The Supreme Court rejected the contention saying:

> Having in mind the affiliation of buyer and seller and the *unity of control* thus engendered, we think the position of the [Commission] is sound, . . . Those in control of the situation have combined the interstate carriage of the commodity with its local distribution in *what is in practical effect one organization.*[23]
>
> * * * * * * *
>
> All of these facts so averred in the pleadings would be far more persuasive with respect to the propriety of the rate if the parties were independent of each other and dealing at arm's length. *Where, however, they constitute but*

---

[19] 49 Stat. 804 (1935).

[20] 282 U.S. 133 (1930).

[21] *Id.* at 153.

[22] 285 U.S. 119 (1932).

[23] 285 U.S. 124.

a single interest and involve the embarkation of the total capital in what is in effect one enterprise, the element of double profit and the reasonableness of inter-company charges must necessarily be the subject of inquiry and scrutiny before the question of the lawfulness of the retail rate based thereon can be satisfactorily answered.[34]

Thus, in both *Smith* and *Western*, the inter-corporate relationships were entirely different from those currently before us, for in both cases corporate control vested elsewhere than in the managerial discretion of the reporting company. Consequently, a finding of affiliation was unquestionably correct.

The following year the Commission rendered its decision in the *Louisville Hydro-Electric Co.*[35] case, clearly the most expositive and well-reasoned of all Commission opinions dealing with the rule.[36] The question presented was whether a 7-1/2 percent fee paid to the Byllesby Service Company, affiliated to the licensee through the intricate H. M. Byllesby Company corporate lacework, was properly includable in the "actual legitimate original cost" of the project. A brief discussion will sufficiently portray the circumstances in which the rule was meant to apply, and distinguish those circumstances from the ones presently before us.

The Byllesby Service Company was the managing, directing, constructing and servicing agency of the entire system, and officers and directors were completely intertwined into every branch. Thus, the vice president who signed the contract for Byllesby was at the same time director, assistant secretary and assistant treasurer of the licensee. He was, further, vice president and assistant secretary of the licensee's immediate owner, the Louisville Gas & Electric Company of Delaware, as well as a director, secretary and treasurer of the Standard Company, which controlled Louisville Gas & Electric. Further, the signator for the licensee was, while being its vice president, also a director in both Louisville Gas & Electric and the Standard Company. The contract's attestor was an assistant secretary in all four companies.

The control exercised by Byllesby was not limited to the execution of contracts. It drafted the licensee's articles of incorporation. It prepared, filed, and ramrodded the application before this Commission for a license. After the license was granted, Byllesby then negotiated and consummated the financing, purchasing, construction, and inspection. It also did most of the accounting and legal work, for all of which it made extraordinary profits.[37] The Commission noted, however, that for these profits Byllesby made no investment and it took no risk. It purchased materials and supplies for the licensee's account, and it received a cost-plus return. Further, as the finances of the licensee were under system control, it had no losses due to bad debts, delays in collecting, lawsuits or disputes.

---

[34] *Id.* at 126.

[35] 1 FPC 130 (1933), *supra* note 7.

[36] Prior to *Louisville,* the Commission had rendered two decisions dealing with the no-profits rule. The first was *Alabama Power Co.,* 1 FPC 25 (1932), which involved the propriety of including a 3 percent fee paid to the Dixie Construction Company, an affiliate of the licensee. Affiliation existed at the time construction commenced because Alabama Power solely controlled Dixie. Five months later, however, Alabama Power transferred Dixie to Winona Coal Company. Winona was under the sole control of the Traction Company, which also solely controlled Alabama Power. Further, Alabama Power and Dixie shared common officers and directors. Thus, affiliation was properly found and the fee disallowed. The second case was *Chelan Electric Co.,* 1 FPC 102 (1933). There American Power & Light had lent money to the licensee, its wholly owned subsidiary, at 7 percent, the legal rate in the state wherein the project was located. The Commission properly held that due to the degree of control, affiliation existed and the cost of the money to the parent, and not the legal rate, should control the amount included in the licensee's rate base.

[37] A Federal Trade Commission audit, entered into the record, revealed that for the years 1922–27, Byllesby's net income was $10,794,953.17, representing a profit of 98.5 percent.

With these facts before it the Commission began its total denunciation of the H. M. Byllesby Company system in general, and of the fee contract where involved in particular.

The Commission pointedly commented on the licensee's freedom of action:

> Upon these admitted facts there is no room for quibble or doubt that licensee has no independence of action, but that decisions made by licensee operating company and the Byllesby Service Co. were made by the same group of men, acting in dual, triple, and quadruple capacities, responsive primarily to the holding and controlling interests. This corporate 'family' control was so complete in fact and limited in personnel as to require but 1 room, 1 table, 1 small group of men at 1 point of time to dictate on behalf of the *pater familias* an offer by 1 member and an acceptance by another.[28]

Of the contract there in issue, the Commission said:

> The service contract in question is monopolistic, requiring the exclusive employment by the operating company of the Byllesby Service Co. for a term of 10 years, and provided for a profit to be paid by licensee, a public utility, for the benefit of a private holding company, into whose treasury every dollar of the profits extorted from the operating company is siphoned through the holding company's wholly owned service company. So complete was the reliance on this control, the contract for the construction service, running into several millions of dollars was not entered into until April 15, 1926, prior to which time a large amount of the work for which this fee is claimed had already been done. Contrary to business custom, the officers and directors of the licensee, acting in their capacity, for that company found it unnecessary to have the contract in advance of beginning work to guard against misunderstanding or unreasonable and arbitrary charges, since they were dealing with themselves under the guise of another corporation. To ask the Commission to find that in the making of this fee contract there was any arm's length bargaining, or real independence of action on the part of the licensee, assaults the credulity of the Commission beyond reason.[29]

Numerous other Commission decisions have held the no-profits rule to be applicable,[30] but their detailed discussion would be both repetitive and anticlimatic. It is sufficient merely to note that in every instance the affiliate possessed the power, although that power was not always fully exercised, to totally dominate the managerial policies and decisions of the reporting company. In no instance was a contention of affiliation successfully asserted where the claimed affiliate possessed less than this power. Nor should it have been, not only because a lesser showing would have violated the *St. Croix* test, but also because it would not have equitably supported the drastic consequences necessarily flowing from a finding of affiliation: complete deletion from plant accounts, and, if the finding is made at certification proceedings, disallowance to the companies of any profit.

---

[28] 1 FPC at 135.

[29] *Id.* at 135–6.

[30] *Colorado Interstate Co.* v. *F.P.C.*, 324 U.S. 581 (1945); *California Oregon Power Co.* v. *F.P.C.*, 150 F. 2d 25 (CA9, 1945) cert. denied, 326 U.S. 781 (1946); *Pennsylvania Power & Light* v. *F.P.C.*, 139 F. 2d 445 (CA3 1943), cert. denied, 321 U.S. 789 (1944); *Louisville Gas & Elec.* v. *F.P.C.*, 129 F. 2d 126 (CA 6, 1942), cert, denied, 318 U.S. 761 (1942); *Alabama Power Co.* v. *McNinch*, 94 F. 2d 601 (CADC 1937), cert. denied, 317 U.S. 652 (1942); *Pacific Power & Light* v. *F.P.C.*, 184 F. 2d 602 (CA 5, 1943); *Minnesota Power & Light*, 3 FPC 388 (1943); *Puget Sound Power & Light*, 3 FPC 231 (1942); *Northwestern Electric Co.*, 3 FPC 83 (1942), affirming 2 FPC 327 (1940).

Reaching the conclusion that no affiliation, either as defined in *St. Croix* or as found in any previous case, existed between Houston Texas and the four interested parties is not determinative of the question of how much profit is properly includable in Houston's plant accounts. As clearly stated in *Pennsylvania Power & Light Co.*, we have a regulatory obligation to test the reasonableness of all claimed costs:

> The word 'legitimate' does involve an element of reasonableness. A claimed cost may be so in excess of the cost of comparable construction or purchase that it raised a question of collusion, fraud or gross neglect which would cast on the licensee the burden of proving the circumstances which would justify the claimed cost, and in the absence of such proof the claim in excess of what is reasonable should be disallowed.[31]

Such questions are, admittedly, raised by the instant facts and thus the last question becomes: Were the profits paid by Houston Texas reasonable?

In answering this, two analyses must be made: First, did the contracts, under which the profits were made, contain standard industry compensatory provisions; and secondly, as a check reference, how did the final costs compare with relevent industry costs?

Industry compensatory clauses are of two varieties. One is a cost-plus provision, which repays the contractor his total construction costs plus either a fixed percentage return on those costs or a lump sum. These provisions insulate the contractor from substantially all risks. In every Commission case applying the no-profits rule, the cost-plus, no-risk method of compensation was employed.

The second method is the fixed-unit method. Here a construction project is either quantitatively or qualitatively categorized into work units which are then prescribed standards of construction and bases of payment. Under this method, the entire risk attendant to bad weather, labor disputes, geological difficulties and rising construction costs fall on the contractor. Assuming no outrageously high unit payments, he is assured of no profit. Contractors can minimize this risk by the inclusion of escalation clauses whereby increased costs are absorbed by the builder. There were no such clauses in any Houston Texas contract. Specifically, Section 7.2 provided:

> It is understood that the unit prices enumerated in the Contract cover and include all of the compensation to be received by Contractor from Company for furnishing necessary materials, labor, tools and equipment, and for performing all work contemplated and embraced under the contract; all overhead, superintendence, labor, use of equipment; all loss or damage arising from the nature of the work or from action of the elements or from any unforseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the Engineer; all risks of every description connected with the prosecution of the work; and all expenses incurred in consequence of the suspensions or discontinuance of the work as herein specified and for completing the work according to the Plans and Specifications.

---

[31] 3 FPC 89, 119 (1942). Although the Commission was here defining the word "legitimate" as used in the Federal Power Act, their interpretation would apply equally to Sec. 6(b) of the Natural Gas Act. See note 7 *supra*.

The contracts entered into by Houston Texas all included this type of compensation provision.[32] Consequently the contracts were, on their face, clearly reasonable.

Although the ambiguous language of Opinion 301 is open to various and conflicting interpretations, one fact is clear: At the time the opinion was rendered, the cost estimates were reasonable.

> Houston Texas has likewise presented evidence pertaining to the engineering feasibility and cost estimates of the project. As to the latter, the evidence supports a finding that its cost estimates for materials and construction compare favorably with present-day costs experienced by other pipeline companies and are reasonable. 16 FPC at 129.

The final prices resulting from these contracts likewise appear to be reasonable. The Coastal Transmission Corporation mainline, a suitable check reference, supports this conclusion.

Concurrent with Houston Texas beginning its construction of the 24-inch Baton Rouge, Louisiana-Florida mainline, Coastal began construction of a similar mainline from Mission, Texas, to Baton Rouge. For the most part, it traversed terrain substantially more amenable to excavation and pipe laying than that crossed by Houston Texas. Consequently, if the unit costs of Florida Gas approximate those of Coastal, which have already been reviewed and approved by the Commission staff, they must be allowed to stand.

Evidence reveals that Houston Texas' unit prices not only approximated Coastal's they were uniformly cheaper. Thus, the unit cost per foot for the 24-inch mainline (which represented 63 percent of Coastal's total facility cost and 74 percent of Houston Texas') was $4.391 for Coastal and $4.363 for Houston Texas. Houston Texas' installation cost per horsepower of $69.39 was likewise cheaper by $3.49.[33] This same relationship was true for rural laterals; Coastal's cost per diameter inch per lineal foot ran 22 cents, while Houston Texas' was only 20.1 cents. Although substantial expert testimony pertinent to the reasonableness of Houston Texas' costs was unfortunately excluded by the Presiding Examiner, and although close scrutiny may have revealed that the Houston Texas mainline could have been more economically constructed,[34] I am persuaded that these costs are not unreasonable. Consequently, I would allow the totality of the profits to remain, as they are now, in the Houston Texas plant accounts.

I conclude by noting that the majority's error of law is compounded by their error of judgment. I have serious apprehension that their decision, which negates

---

[32] Except for Barnard & Burk who were to receive 1 percent of the cost of all pipeline work up to and including $60,000,000 and 3/4 percent of the cost in excess of $60,000,000. They were also to receive 2 percent of the cost of compressor stations, meters, regulator stations, and employee housing facilities. A subsequent agreement set the maximum fee at $865,000.

[33] The completed compressor station cost for Houston Texas ($309.00) ran slightly higher, however, than that for Coastal ($293.00).

[34] The fact that a project could have been more cheaply constructed does not, *per se*, make its costs unreasonable.

> The Commission has carefully reviewed the testimony of all the witnesses with reference to the cost of cutting trees in the pond area, and piling and burning same, *and while there is evidence in the record that this work might have been more economically accomplished, the record shows that the money was* actually spent and paid, and the work done by local contractors or labor employed in the locality of the project on the best terms that licensee secure. Upon these facts shown by the record, the Commission approves the total expenditures. . . . *Florida Power Corp.*, 1 FPC 390, 398 (1937).

the previous definition of affiliation and extends the no-profits rule into an undelineated area, will only have a deleterious effect on the public interest.

This interest has often been served by projects which were the creative progeny of but a few promoters. These promoters, lacking the vertical integration of large companies, were forced to incorporate with scattered interests in order to metamorphose idea into actuality. As was only logical, representatives for these interests often became officers or members of the board of the infant corporation.

Their financial insignificance, however, when coupled with the uncertain prospects for remuneration, made investments of time and capital a substantial risk. As compensation, they were ofttimes given stock options, and, in addition, the right to the construction contracts, at reasonable prices, in the event the project was ultimately certificated. These were the only terms upon which they would consent to invest, and consequently, the only terms under which these valuable projects could have been built.

The day of the pooled-interest project is thus over. This decision will insure projects either being constructed by organizations sufficiently large to absorb the potential loss, or else remaining unconstructed. Neither alternative, I submit, is either dictated by or commensurate with the public interest.

* * * * * * *

Completely aside from my belief that no affiliation within the definition of *St. Croix* exists in this case, there is still another equally persuasive reason why the plant accounts should remain untouched.

Since passage of the Natural Gas Act in 1938, this Commission has repeatedly appeared before Congress for remedial legislation. Although in every instance the plea was made that without congressional assistance we would be ill-equipped to discharge our entrusted responsibilities, the most significant request ever made, or granted, was that which led to the 1942 amendment of Section 7. As originally enacted, Section 7 gave the Federal Power Commission certificate jurisdiction only over facilities used to transport interstate gas to a market already being served by another natural gas company. It was immediately apparent that this was a severe jurisdictional limitation.[illegible] In order to remedy it, Congress was requested to amend Section 7(c) so as to give us certificate jurisdiction over all interstate facilities and, as a concomitant power in a proposed Section 7(e), the power to condition those certificates as the circumstances required.

Thus, in June of 1941, Chairman Olds wrote a letter to Representative Clarence F. Lea, Chairman of the Committee on Interstate and Foreign Commerce on H. R. 4819, the proposed amendment to Section 7. In his letter, Chairman Olds stated:

> **Adequate regulation is obviously not provided unless the Commission has jurisdiction to regulate the construction of the pipeline and control its initial financing as well as to regulate its operation after construction. By the unregulated construction of the pipeline, the public interest may be so disregarded that proper regulation of operation thereafter may prove a difficult matter or may be practically impossible because the construction of the line is uneconomic or costs are inflated. *Regulation should begin with construction of the line, not with operation after construction.***

[illegible] ***E.g., Western Natural Gas Company,*** **Docket No. G–168, and *Independent Natural Gas Company,* Docket No. G–178. (Consolidated into order issued 2 FPC 910 (1941) which dismissed, for want of jurisdiction, applications for certificates of public convenience and necessity to serve the Wisconsin market.)**

H.R. 4819 ultimately became H.R. 5249 which was discussed before the House Committee in July of 1941. At this time, Commissioner Manly further supplemented the above statement of Chairman Olds.

> Commissioner MANLY . . .
>
> Now, what the Commission does under ordinary conditions is to require those conditions to be set forth in the authorization for a certificate that is accepted by the company as a condition precedent to the actual issuance of the certificate, so that in all intents and purposes the company has a right to reject a certificate containing any conditions which are unreasonable, onerous, or have no relevancy to the issue.
>
> Mr. SOUTH. That is what I have in mind. If they are too burdensome, then the application could be withdrawn.
>
> Commissioner MANLY. They could come back before the Commission and ask for a rehearing if they regard the terms and conditions as being onerous.
>
> Mr. SOUTH. As a general proposition, you would say that this is exercised in the public interest for the purpose of broadening the service sought to be rendered; would you go that far?
>
> Commissioner MANLY. I would not quite agree with the latter. *It would be primarily for the purpose of making explicit the conditions under which the certificate is being issued.*[36]

Some three months later, the bill favorably reported out of committee with the following introduction:

> The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial set-up, the adequacy of the gas reserves, the feasibility and adequacy of the proposed services, and the characteristics of the rate structure in connection with the proposed construction or extension *at a time when such vital matters can readily be modified as the public interest may demand.* Without such authority, the Commission may find itself confronted with a situation where it must either accept conditions which appear undesirable in the public interest, *or require, subsequent to construction, changes which may have much more serious practical consequences than they would have had if they had been made before the public was asked to finance the enterprise.*[37]

The amendment was passed the next year.[38]

Given this congressional sanction, the Commission enacted Part 157 of its Regulations. This specifies, in detail, the information required to be filed with certificate applications and is designed to fully apprise the Commission as to whether a project will, in fact, be in the public interest. The filing is recognized as a "forthright obligation of the applicant,"[39] and, as section 157.5(c) makes clear, the Part will be strictly applied in all applications.

---

[36] *Hearing Before the House Committee on Interstate and Foreign Commerce*, 77th Cong., 1st Sess. (1941).

[37] *House Committee on Interstate and Foreign Commerce Report No. 1290 on Amendments to Section 7 of the Natural Gas Act*, 77th Cong., 1st Sess., pp. 2–3 (1941).

[38] Our facility jurisdiction under the Federal Power Act is decidedly narrower. There our certification authority is limited to generating facilities which occupy Government lands, navigable streams, or streams which affect interstate commerce. Consequently, we have neither the opportunity nor the obligation to examine, prior to construction the costs of projects to be located elsewhere even though the resulting energy is to flow in interstate commerce.

[39] Part 157.5(b).

One of the most significant of the Part 157 requirements involves the filing under sections 157.14(a)(4)[40] and 157.14(a)(15)[41], of detailed information concerning any corporate or financial relationships that may exist between the applicant and other persons. The relevance of this information to a section where certificates are granted only if they are in the public interest is clear: such relationships can detrimentally affect this interest and thus, before a certificate should be issued, these relationships should be analyzed in a detail commensurate with that imposed upon the applicant. Following this analysis, a clear, concise decision should be rendered as to whether a relationship existed which would bring any fee payments within the no-profits rule. This is the bare minimum to which applicants are entitled.

There is no doubt that the applicants in G-9262 complied with sub-sections 157.14(a) and 157.14(a)(15). They fully disclosed all financial and corporate relationships existing between the "affiliate" companies and Houston Texas, the proposed contractual arrangements, and the project's estimated cost. Moreover, the applicants explained this information in detail at the hearing.[42] In the event this mass of testimony was overlooked, Green's Fuel, intervenors in Docket No. G-9262, placed the Commission on notice to a possible affiliation issue with the following statement:

> The evidence is clear and undisputed that Houston proposes to let contracts to insiders without competitive bidding for the construction of the line and compressor stations, as well as a supervision and engineering contract.[43]

If this were not enough, a statement of the relevant relationships, as well as concise statements of Houston Texas' intent to enter into contracts with the construction and engineering groups, appeared in their plan of financing, submitted on July 1, 1958, and approved on August 7, 1958. Thus, at three stages of the certification proceedings—pre-hearing, hearing, and post-certification—the Commission had full knowledge of every fact which it now relies upon to substantially alter its original order of December 28, 1956.

What response did the Commission make to this voluminous evidence? Just this: Out of a 29-page opinion, it devoted *one sentence* to an issue that inevitably became, eight years later, the subject of intense, expensive litigation involving almost 6 percent of a company's plant account. This minuscule consideration read:

---

[40] Exhibit D—Subsidiaries and affiliation. If applicant or any of its officers or directors, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of any other person or organized group of persons engaged in production, transportation, distribution, or sale of natural gas, or of any person or organized group of persons engaged in the construction or financing of such enterprises or operations, *a detailed explanation of each such relationship,* including explanation of each such relationship, including the percentage of voting strength represented by such ownership of securities. If any person or organized group of persons, directly or indirectly, owns, controls or holds with power to vote, 10 percent or more of the outstanding voting securities of applicant—*a detailed explanation of each such relationship.*

[41] (15) Exhibit M—Construction, operation, and management. A concise statement setting forth arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of applicant, including reference to any existing or contemplated agreements therefor, together with:

(i) A statement showing affiliation between applicant and any parties to such agreements or arrangements. See Exhibit D, paragraph (a)(4) of this section.

(ii) Conformed copies of all construction, engineering, management, and other similar service agreements or contracts in any way operative with respect to construction, operation, or financing of facilities which are the subject of the application or will be applicable under system operations.

[42] *E.g.*, pp. 7363, 7369, 7592–93, 7596–98, 7600, 7602–4, 7608.

[43] Brief for Intervenor, Docket No. G-9262.

> While as we have already stated, the cost of the proposed facilities appears to be reasonable, in view of [the proposed contractual arrangements], this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates of Houston Gas.[44]

The sentence is classically vague. What does it say? Does it say that the disclosed costs were acceptable and only future additions would be scrutinized? Does it say that the *total* project cost would be later scrutinized? What does "scrutinized" mean? Examined again for "reasonableness," which was already found to exist as to the then-known costs, or examined to delete affiliate profits, when all the facts relevant to this issue were then known? Whatever this sentence says, it does *not* say that "we have carefully reviewed the relevant corporate relationships existing between Houston Gas and the construction and engineering firms and find that the fees, proposed to be paid to these firms, will (or will not) come within the 'no profits to affiliates rule.'"

It seems incredible that a Commission, which fought so hard for the power to condition certificates, should have then paid it such lip service. Forgotten were the words of Commissioner Manly, whose advocacy over considerable opposition led to the passage of Section 7(e), that the conditioning power "would be primarily for the purpose of making explicit the conditions under which the certificate is being issued."[45] Discarded was the principle that jurisdiction—here to impose conditions—must carry a commensurate obligation—to impose them at the earliest times. There is little doubt that the obligation exists. Recognizing it, the Supreme Court recently noted that the significance of Section 7(e) is that it gave the Commission conditioning power ". . . *at a time when such vital matters can be readily modified as the public interest may demand.*" (Emphasis in original.) The Court went on to state:

> Clearly, the Commission was given the power to lay down conditions precedent to the entry of natural gas in interstate commerce. Moreover, the Commission has long recognized this *obligation* and has required modification of many tariff and contract provisions as a condition to the granting of a certificate.[46]

By failing to state an affirmative position on the affiliate fee issue, the Commission undoubtedly lulled both the applicants and subsequent investors into the mistaken belief that the fees, thrice disclosed, were legitimate plant account inclusions. Without this belief, this valuable line could never have been financed: the rate base reductions resulting in decreased returns—form an already marginal project—would have made it too assuredly speculative to attract prospective investors.[47] It is the investors, specifically, the holders of the

---

[44] 16 FPC 118, 142 (1956).

[45] *Supra*, note 36.

[46] *F.P.C. v. H. L. Hunt*, 84 Sup. Ct. 861, 868 (1964), quoting the *House Committee Report on Interstate and Foreign Commerce No. 1290.* This principle was reiterated in *F.P.C. v. Texaco*, 84 Sup Ct. 1105 (1964).

[47] There is no controversy over the public benefits derived by the line. First, the Florida Railroad & Public Utilities Commission supported the company's position. It noted ". . . Florida Gas has contributed tremendously to the economy and welfare of the State." Exceptions of Intervenors, p. 15. The Florida Commission exercises jurisdiction over the twelve distributor customers of Florida Gas which, in turn, serve 230,000 customers, and the two electric company customers which serve 1,202,000 customers. Secondly, the customers of Florida Gas all supported its position (Record, Intervenor, Appendix B.

5,323,672 outstanding common shares comprising a total equity of $48,724,432, which today's order detrimentally affects. These shareholders, currently saddled with a retained earnings deficit of $5,265,673, will now suffer an increase in this figure to almost $13,500,000 and a decrease in their total equity of almost 16.5 percent. The total result will be to postpone needed expansions, lower Florida Gas' bond rating, further decrease the attractiveness of its common stock, and increase the cost of its money. All of this, of course, will be reflected in higher gas rates.

We have repeatedly stated that our certification implies no guarantee that a project will operate profitably. This disclaimer does not diminish our responsibilities to the general public, including the investing public, to completely dispose of any legal issue raised at the time of certification. We certificate with full knowledge that anything less than complete disposition will be interpreted as tacit approval. This obligation was undiminished in the present case by the presence of a *caveat*, if it can be so graced, obscured deep in the confines of The Houston Corporation stock prospectus issued a year and a half subsequent. Page 22 of that prospectus contained the statement that "[t]he Federal Power Commission has made no determination as to the proper rate base for Coastal or Houston Texas or allowable rate of return thereon (except during the development period to the extent stated under 'Agreements Between Coastal and Houston Texas')." The following sentence said "[t]he Federal Power Commission has determined the rate base of other natural gas companies to be the original cost of the property used or useful in the transportation of natural gas for resale . . ., less depreciation plus a reasonable allowance for working capital." Inasmuch as there was no indication that the rate base properties were not "useful in the transportation of natural gas in interstate commerce," nor any mention of the "no-profits rule as a principle of exclusion from rate bases, the utility of the *caveat* was substantially diminished. This obligation is also undiminished by the recitation of any legal touchstone concerning an overall obligation to consumers. Our moral and legal duty to fully apprise industry applicants of the grounds upon which they are offered a Section 7 certificate, prior to their detrimental reliance thereon, must remain inviolate.

In my view, this case falls squarely within that envisioned by the Oregon Supreme Court when it said:

> The doctrine of "equitable estoppel" or "estoppel in pais" is that a person may be precluded by his . . . silence, when it is his duty to speak, from asserting a right which he otherwise would have had.[illegible]

Consequently, I would hold that this Commission is estopped to expunge now, eight years after the issue was appropriately raised by the applicants but deferred by an either indifferent or indecisive Commission, the questioned fees from the applicant's plant accounts.

Consistent with my dissent in the previous *Cities Service* case, I also dissent to the majority's treatment of the consolidated tax issue.

[illegible] *Marshall* v. *Wilson*, 154 P. 2d 547, 551–52 (1945). For cases holding the doctrine of equitable estoppel applicable against governmental agencies see 2 Davis, Administrative Law, § 17.03 (1958) and 1963 Supplement.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON RECLASSIFICATION OF GAS PLANT ACCOUNTS AND INCOME TAX ACCRUALS

(Issued September 23, 1963)

KURTZ, *Presiding Examiner:* This proceeding arises under the Natural Gas Act and relates to accounting entries required by the uniform system of accounts for natural-gas companies as prescribed by the Federal Power Commission. The issues as to the accounting entries result from the Commission's order of June 8, 1962, accepting a proposed settlement of rate proceedings in which two accounting matters were reserved by the parties for further determination by the Commission. These reserved issues as stated are: (1) the proper cost for accounting purposes under the uniform system of accounts of constructing the facilities of Florida Gas Transmission Company, and (2) the accrual for Federal income taxes on the books of Coastal Transmission Corporation for accounting purposes under the uniform system of accounts.

The first issue involves the Commission staff's determination that the plant accounts of Florida Gas Transmission Company include: (1) a $9,659,183 profit paid to affiliate engineering and construction companies and its classification under the uniform system of accounts, and (2) interest in the amount of $304,950 attributable to this profit. As to the second issue, the staff opposes the recording of these accruals for income tax by Coastal. Intervener Florida Power & Light Company participated in the hearing and also opposed the recording of the accruals by Coastal of the income tax. No position was taken on the first issue. Intervener Florida Railroad and Public Utilities Commission filed a brief, taking the position "that the inclusion of the amounts questioned by the staff in the pipeline company's rate base is proper if the construction costs to the pipeline were reasonable and compare favorably with similar contemporaneous costs to other companies." No position was taken on the second issue.

Florida Gas Transmission Company, including its predecessor companies, is a natural-gas company within the meaning of the Natural Gas Act and, as such, is subject to the jurisdiction of the Federal Power Commission and its accounting requirements. The authority of the Commission to prescribe a system of accounts for natural-gas companies is set out in Section 8(a) of the Natural Gas Act and is a necessary incident of effective regulation. Neither jurisdiction nor the obligation to comply with the prescribed uniform system of accounts is an issue in this proceeding.

Houston Texas Gas and Oil Corporation

On December 28, 1956, the Commission issued to Houston Texas Gas and Oil Corporation (Houston Texas) and Coastal Transmission Corporation (Coastal) certificates of public convenience and necessity[1] authorizing the sale of natural gas and the construction of transmission facilities by Houston Texas extending from Louisiana into Florida at an estimated cost of $94,285,000, and by Coastal from southern Texas to a point of connection with the Houston Texas pipeline in Louisiana at an estimated cost of $54,279,000.

Houston Texas, since March 1957, and Coastal, since June 1958, have been wholly-owned subsidiaries of the Houston Corporation. Houston Texas changed its name to Florida Gas Transmission Company in March 1962. The Houston Corporation changed its name to Florida Gas Company in June 1962. In August 1962 Coastal was merged into Florida Gas Transmission Company. All the events which have given rise to the accounting questions in this proceeding transpired prior to the name change and merger, and reference to the original names are used for clarity and simplicity.

---

[1] 16 FPC 118; *affirmed*, 251 F. 2d 643 (Dec. 4, 1958); cert. denied, 356 U.S. 959 (May 19, 1957).

The Houston Texas project came into being as a result of the combined efforts of Messrs. J. O. Mack, C. C. Barnard, F. E. Stanley, Paul C. Wallack, and John M. Harbert, III, hereinafter sometimes referred to as the promoters. Mr. Mack, of Houston, Texas, desired to promote a pipeline from Louisiana to New York or Chicago and sought to interest others to invest risk capital in such promotion as he lacked experience and financial resources to accomplish such a project. To carry out this promotion he organized in May 1952 the Houston Texas Gas and Oil Company, a Texas corporation with a capitalization of $1,000, and gave publicity to this proposal in trade magazines. Prior to bringing together the above persons he had interested at least two other engineering firms which later withdrew, namely, Fulghrum Contracting Corporation and Petrol-Structors, Inc. Mack was also interested in oil production and several other ventures and his office force consisted of his wife, H. S. Mack, his son-in-law Allen R. Kleinkauf, O. Paul Herzig,[2] and clerical help.

Mr. Barnard of the engineering partnership of Barnard & Burk of Baton Rouge, Louisiana, contacted Mack, whom he had not previously known, in the early spring of 1954. The need for others to join in the promotional venture was recognized by Barnard, who testified:

> When I entered the picture, Houston Texas Gas and Oil Company had no staff of engineers, no lawyers, no construction people, and no labor force. Although Mr. Mack had to that time spent considerable money of his own on this project in the preliminary work, his staff was limited to engineer, Mr. Herzig, and two or three others, including a secretary, and was not able to go further by itself. Mr. Mack had to call on a firm such as ours to provide the engineering resources necessary to develop the project, just as it was necessary that he call on other established companies for the benefits of their particular talents.

In their discussions Barnard suggested the building of a pipeline from Louisiana to the Florida market instead of New York or Chicago, and agreed to make the required market study. If found feasible, it was agreed that he would participate in the promotional stock and perform the necessary consulting and engineering services connected with the construction of the project at a fee comparable to that charged by other engineering firms. Compensation for the above work was dependent upon the financing of the project. It was through Barnard that Mack was placed in contact with Harbert, President of Harbert Construction Company of Birmingham, Alabama.

Mr. Harbert went to Houston, Texas, to discuss with Mack the possibility of getting together a group of persons who would be interested in providing money and talent necessary to design and construct a natural gas pipeline to Florida. This led to an understanding that he would become a part of a group to provide funds to defray the expenses of the preliminary work on the project, have the right to participate in the promotional stock and in the construction of a portion of the line at no more than the going rate for similar work.

Mr. Wallack, President of Walco Engineering & Construction Company of Tulsa, Oklahoma, read in a trade magazine of Mack's plan to construct a pipeline, and in June 1954 he went to Houston to discuss with Mack the possibility of constructing compressor stations on the line. On the plane with Wallack was Stanley, President of Midwestern Constructors, Inc., also of Tulsa, Oklahoma. Wallack met with Mack and was informed of the interest of both Barnard and Harbert in constructing a line to Florida and was given a copy of a market survey prepared by Barnard & Burk. The next day both Wallack and Stanley met with Mack and after discussing the Florida project were asked, and they indicated their willingness, to advance a portion of the preliminary funds together with their experience and time, subject to their confirmation of the Barnard & Burk report, conditioned on the right to participate in the promotional stock and construct a portion of the facilities at the going rate.

---

[2] Formerly President of Petrol-Structors, Inc.

On July 22, 1954, Mack organized the Houston Texas Gas and Oil Corporation of Delaware to become the corporation for carrying out the proposed pipeline project from Louisiana to Florida. The new corporation provided for 2,000,000 authorized shares at a par value of $1.00 each and the right to do business with a paid in capital of $1,000. On August 4, 1954, the certificate of incorporation was amended to provide for 8,000,000 shares at a par value of 25 cents each, and later, on December 8, 1954, it was again amended to provide for a total of 500,000 shares at a par value of $1.00 each, which was increased prior to public financing by 100,000 shares on August 2, 1956.

On August 26, 1955, Houston Texas having created a feasible project, including the obtaining of a gas supply from Coastal, filed its application for a certificate of public convenience and necessity with the Commission. Coastal filed its application on February 8, 1956. The certificates issued to Houston Texas and Coastal on December 28, 1956, did not become final until after certiorari was denied by the United States Supreme Court on May 19, 1958.

The Houston Corporation of Florida was incorporated on March 19, 1957. All of the stock of Houston Texas was exchanged for shares of The Houston Corporation on a share-for-share basis, and after the denial of certiorari, the outstanding common stock of Coastal was exchanged in June 1958 for a new series of common stock of The Houston Corporation, designated as Class A stock. Coastal was 95 percent owned by Delhi-Taylor Oil Company, and the voting rights of the 515,123 shares of Class A stock issued in this exchange were restricted to one-tenth of a vote per share and then to one-fourth of a vote per share 30-days after the public financing.[3] Conversion rights of this Class A stock to common stock were also restricted to prohibit the conversion if it would (a) cause The Houston Corporation, in the opinion of counsel for the corporation, to become a subsidiary of a holding company or subject to a controlling influence within the meaning of the Public Utility Holding Company Act of 1935, or (b) result in any person either directly or indirectly owning, controlling, or holding with power to vote 10 percent or more of the outstanding securities of The Houston Corporation. At the time of the exchange Delhi-Taylor and those persons associated with it, holding 593,385 shares of the stock of The Houston Corporation, were accorded only 20.2 percent of the voting rights of The Houston Corporation. This left the promoters of Houston Texas with voting rights of 57.2 per cent in The Houston Corporation, with the remaining shares held by the bankers and others having voting rights of 22.6 percent.

---

[3] The public financing included the sale of an additional 1,809,400 shares of common stock. The Houston Corporation at the time of public financing also offered 818,333 shares of common stock and 575,869 shares of Class A stock to certain holders of its outstanding common stock and to the holders of its outstanding Class A stock, respectively.

After the public financing had occurred (common stock at $10 per share and the debentures at $100 each)[4] the final contracts for the construction of the Houston Texas pipeline were entered into and approved by Houston Texas.

Construction Profit of $9,659,183: The Commission's staff takes the position that the capitalized profit of $9,659,183[5] realized by the construction and engineering firms of Barnard & Burk, Harbert Construction Company, Walco Engineering & Construction Company, and Midwestern Constructors, Inc. in constructing the Houston Texas pipeline from Louisiana to Florida should be transferred from the gas plant accounts under Account 101, Gas plant in service, to Account 116, Other gas plant adjustments,[6] as not being a proper item of cost to be recorded in the plant accounts of Houston Texas, but rather representing nothing more than affiliated company profits. Houston Texas objects to this classification, contending that no affiliation existed between it and the construction and engineering companies here involved; that even though affiliation did exist the rule of no profits to affiliates should not be invoked as the relationship between Houston Texas and these companies was made known to the Commission at the time of the issuance of the certificate of public convenience and necessity, thus precluding the elimination of the construction profits from the plant accounts. Further, that the payments were reasonable and this standard should be applied to the cost incurred. In addition, Houston Texas contended during the hearing that the profits were not properly computed.

Houston Texas points out that the proper guide for the findings of the relationship of affiliation is control, which is defined as "the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another," quoting the case of *St. Croix Falls Minnesota Improvement Company*, 3 FPC 13, in which the Commission defined an affiliated company as follows:

> We use the term "affiliated company" as synonymous with the term "associated company" as defined in our system of accounts. The pertinent definitions are contained in definition 5 of the Uniform System of Accounts:
>
> A. "Associated companies" means companies or persons that, directly or indirectly, through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company.
>
> B. "Control" (including the term "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more inter-

---

[4] The Prospectus is dated August 19, 1958. The promotional stock was at a subscription price of $1.30 a share.

[5] The item of $9,659.183 represents an adjustment of $5,919,065, which is 30.66% of the payment of $19,305,373 by Houston Texas to the joint venture created by Midwestern and Walco to perform their construction for the period February 1958 through April 1960; an adjustment of $3,082,810, which is 19.82% of the payment of $15,551,123 by Houston Texas to Harbert for the construction period from September 1958 through March 1960; and an adjustment of $657,306, which is 20.55% of the payment of $3,198,239 by Houston Texas to Barnard & Burk for the period from April 1954 through February 1960.

[6] The text of Account 116 provides:

> A. This account shall include the difference between the original cost, estimated if not known, and the book cost of gas plant to the extent that such difference is not properly includible in account 114, Gas Plant Acquisition Adjustments.
>
> B. Amounts included in this account shall be classified in such manner as to show the origin of each amount shall be disposed of as the Commission may approve or direct.

mediary companies, or alone, or in conjunction with, or pursuant to, an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract, or any other direct or indirect means.

The above definitions of "Associated companies" and "Control" are the same as set forth in the Commission's first uniform system of accounts prescribed for natural-gas companies effective January 1, 1940, and in the subsequent revisions. Likewise, the same definitions are to be found in the Commission's uniform system of accounts prescribed for public utilities and licenses effective January 1, 1937, and in subsequent revisions.[7]

Control is factual and can arise from any means or device whatsoever. In *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, 145–46, the Supreme Court sustained an order of the Federal Communications Commission holding that the Rochester Telephone Company was under control of the New York Telephone Company and not within the exemption of Section 2(b) of the Communications Act of 1934, which provided that jurisdiction should not extend over any carrier "engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier." In that case, the Court pointed out the organization and financing of Rochester, the dominating circumstances touching voting rights, and that the Executive Committee and Board of Directors were elected by cumulative voting of the common stock, thereby assuring New York five out of 15 members of the Board of Directors and two members in an Executive Committee of five. It went on to state:

> Investing the Commission with the duty of ascertaining "control" of one company by another, Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand. The suggestion that the refusal to regard the New York ownership of only one third of the common stock of the Rochester as conclusive of the former's lack of control of the latter should invalidate the Commission's finding, disregards actualities in such intercorporate relations.

Houston Texas contends that control of the corporation rested with Mack at the time of the meeting of the Board of Directors on December 8, 1954, when the stock subscription agreements and the letters of intent for the engineering and construction of the pipeline were approved, and that neither Stanley, Wallack, Barnard, nor Harbert were in a position to control the corporation. It is also claimed that these persons were not in control at the time of approval of the construction contracts on October 23, 1958. The position of the staff that these persons, together with their firms, were engaged in a point venture to carry the pipeline project through to completion is also rejected by Houston Texas.

The Houston Texas project is the result of a pooling of interests among the promoters for profit to themselves. Mack and members of his firm received money and also profits from promotional stock. The engineering and construction companies received promotional stock and also profits from construction of the project here involved. Each of the promoters took an active part in bringing about the project as Mack had no organization nor the required capital to carry it out. In addition to the advancement of the funds, the promoters contributed their time and money, including that of their firms, in an effort to develop the project from Louisiana to Florida. Barnard, who had done business with the investment firm of Scharff & Jones, in New Orleans, was responsible for bringing them into the venture and they in turn interested Blyth & Company. The formation of a new corporation, the Houston Texas Gas and Oil Corporation, was the suggestion of Stanley on advice of his counsel and concurred in by the others which Mack carried out. Mack had kept incomplete records as to the Houston Texas Gas and Oil Company and the other promoters wanted to start with a "clean slate" as well as having a determination of the value of Mack's services claimed in connection with the Florida market. Stanley testified:

---

[7] As in the *St. Croix* case the term affiliated company is here used as synonymous with the term associated company.

> We suggested to him that a new corporation should be organized, and in doing that with the risk capital coming in we should know from him how much money that he had spent on the development to date, and we should come to some understanding on the value of that work, and he had Mr. Herzig to develop what he thought was the worth of the work they had done, the money that they had spent. As I remember it, that was on the basis that we accepted the value of what had been done by the other company.

Prior thereto Roddy of Scharff & Jones had suggested a new corporation which was not formed until the suggestion by the other promoters. The amendment to the capital structure of Houston Texas on December 8, 1954, was also the result of Mack carrying out the suggestion of the other promoters. In the words of Stanley, "It was suggestions that we made to him and he followed them." The contemplated source of gas supply in Louisiana did not materialize and through Stanley's efforts Coastal expressed an interest in meeting the gas requirements. Thereafter, on September 16, 1954, Stanley, Wallack, and Herbert made their first advancement of funds, being $1,667 each. They also advanced additional funds from time to time to meet the out-of-pocket expenses of the corporation. To secure control over the funds a budget committee was organized and reports were sent to all of the promoters. It was in August 1954 that Mack, as the result of failing health, suggested to Stanley that he assume the responsibility of seeing the venture through to completion.[8] Stanley spent practically all of his time on the project along with Barnard, Harbert, and Wallack. They were acting jointly along with Mack and his employees to make the venture a success. During this time the amount of risk capital to be advanced and the stock participation of the promoters was determined as well as the stock to be set aside for the investment bankers. There was also reached an agreement as to the extent of the participation in the construction of the project. Stanley, having assumed the responsibility of managing the project, brought in his attorney, Theodore Rinehart, of Tulsa, Oklahoma, who was to be named General Counsel and employed to represent Houston Texas before the Commission in its application for a certificate of public convenience and necessity. Rinehart was also to be given a stock option. Rinehart drafted the required minutes including letters of intent covering construction and presented them for adoption at the December 8, 1954, meeting of the Board of Directors of Houston Texas. The promoters knew that this meeting was to carry out through corporate action the oral agreements theretofore reached, and Rinehart acted as Secretary of the meeting. Up to this time no capital had been paid in and no stock had been issued by Houston Texas.

---

[8] J. O. Mack died on May 9, 1955, at the age of 72 years.

The minutes of the December 8, 1954, meeting set forth the participation and interest of the promoters in the venture, as follows: the construction companies of Stanley and Wallack were to be employed to construct the mainline facilities near Bay St. Louis, Mississippi, to Haines City, Florida, together with the compressor stations and other structures; Harbert Construction Company was to be employed to construct the mainline facilities from Haines City to Miami, Florida, including laterals, a compressor station, and other facilities; Barnard & Burk were to be employed as engineers on the overall project; the capital stock of the corporation, as heretofore mentioned, was changed to 500,000 shares at a par value of $1.00 each, and 37-1/2 percent, being 187,500 shares, was issued for the assets of the Houston Texas Gas and Oil Company (Texas), representing claimed advances and services performed by Mack in connection with the Florida venture, and provision was also made for the payment in cash to Mack of an additional sum of $56,250; 21.43 percent, being 107,150 shares, was set aside for the construction companies of Stanley and Wallack; 5.36 percent, being 26,800 shares, for Harbert; and 10.71 percent, being 53,550 shares, for Barnard & Burk. There also was set aside 15 percent, being 75,000 shares, for the investment bankers, and an option to purchase 10 percent, being 50,000 shares, was given to Rinehart, who was named General Counsel. These shares were to be subscribed for at $1.30 each. The Board of Directors of the corporation, consisting of J. O. Mack, Allen R. Kleinkauf, O. Paul Herzig, Frank Roder Smith,[9] and H. S. Mack, who was absent from this meeting, was enlarged to permit the election thereto of Stanley, Wallack, Harbert, and Barnard. Stanley was named Chairman of the company, its chief executive officer charged with the active management of the corporation. Thus, the corporate action, being the approval of the drafted written agreements under like date of December 8, 1954, covered the construction, engineering, and stock subscriptions. The agreement with Mack was not reduced to writing until February 25, 1955.

At the time of this meeting on December 8, 1954, Mack was not in a position to control the group who were acting in common to develop the project. Houston Texas, as such, was not essential but rather the venture depended upon the individuals, who referred to themselves as the founders, promoters, and entrepreneurs. This meeting as mentioned was nothing more than the finalization of the agreements theretofore reached between Stanley, Wallack, Harbert, Barnard, and Mack. Mrs. H. S. Mack, Herzig, and Kleinkauf owed their participation to Mack, and Rinehart to Stanley. Further, Mack's activities in the promotion were being transferred to his wife, Herzig, and Kleinkauf due to his failing health, as evidenced by his failure to attend a meeting in New York on October 27, 1954. Neither did Mrs. Mack attend as she wanted to be home with him. This meeting was an important one and described by Wallack as follows:[10]

> Scharff and Jones, represented by James Roddy, New Orleans, had made arrangements with Mr. Mack to handle the underwriting of this project before Midwestern and Walco came into it. This was apparently larger than Scharff and Jones wished to handle alone. They, therefore, brought Blyth and Company into the project.

---

[9] An old acquaintance of Mack, who had sought to obtain a supply of gas in Louisiana.

[10] Herzig in his testimony stated that he also was present along with Kleinkauff and Rhinehart.

> On October 27, 1954, Messrs. Roddy, Stanley, Barnard, Harbert, and I, representing Houston Texas Gas and Oil Company, met with Paul Conley and Eugene Bashore, with Blyth and Company in New York, to work out arrangements for Blyth and Company to act as underwriters and investment advisers for the project.
>
> Final arrangements were made at this time for each of the participating parties to provide the risk capital by the purchase of stock under stock subscription agreements, and it was agreed that Houston Texas would operate on a budget supervised by those who were investing their money therein. Pursuant to the stock subscription agreement, Midwestern Constructors, Inc., and Walco agreed to purchase, between them, a total of 21.43 percent of the stock of Houston Texas. The balance of the stock to be issued pursuant to the stock subscription agreements was to be purchased by others who did not at that time, or at any other time, have any interest whatsoever in either Midwestern Constructors, Inc., or in Walco.

After the December 8, 1954, meeting, there remained the securing of commitments for the gas supply, markets, financing, and other matters necessary for a feasible project to be presented to the Commission for a certificate of public convenience and necessity. To secure the gas supply from Coastal, a wholly-owned subsidiary of Delhi-Taylor Oil Company, the latter was granted on February 26, 1955, an option to purchase promotional stock on the same basis as offered to the investment bankers. The option of Delhi-Taylor called for 65,218 shares or 13.04 percent of the common stock to be purchased at $1.30 a share. To meet this agreement the stock interest of all the promoters was reduced by a percentage in relation to total subscription, *to-wit:* 24,456 shares from the Mack interests and the remaining 40,762 shares from the other promoters and from the investment houses. In anticipation of Mack's death, a special meeting of the directors of Houston Texas Gas and Oil Company was held on May 1, 1955, and adopted the drafting of minutes prepared by Rinehart, which provided for the distribution of the 187,500 shares of Houston Texas Gas and Oil Corporation's stock held in the name of the company, and to carrying out the dissolution of the company. The 187,500 shares were distributed as follows: 24,456 shares to H. S. Mack as Trustee for release and sale to Coastal; 16,304.4 shares to H. S. Mack; 16,304.4 shares to Allen R. Kleinkauf; 5,077 shares to O. Paul Herzig, 23,076 shares to Barbara Mack Kleinkauf; and 102,282.2 shares to J. O. Mack.

The efforts of the promoters following the December 8, 1954, meeting were described by Stanley as follows:

> I devoted practically my full time during 1955 and 1956 to this project. I devoted all of my efforts in 1957, 1958, 1959, and 1960 to this company.
>
> In 1955, we were faced with the myriad problems attendant upon getting a new pipeline project under way. Although the Phillips decision had made the securing of an adequate gas supply most difficult, we were able to make an agreement with Coastal Transmission Corporation, a company that was 95 percent owned by Delhi-Taylor Oil Corporation, to secure a gas supply. I spent considerable time in this effort.
>
> We had to have additional market surveys made. We had to negotiate with potential buyers of gas. We had to visit municipalities and talk with their Councils. We had to prepare our Application for a Certificate of Public Convenience and Necessity. We had to formulate a plan of financing, and this involved a great amount of negotiation with investment houses. We had to prepare for, and participate in, the hearing on our Application.

> The years 1955 and 1956 required tremendous effort on the part of each of the founders in order to move the project toward a successful conclusion.
>
> In 1957, the company was faced with an appeal from the order granting it its Certificate. As a result of this appeal, a great amount of effort had to be expended to hold the project together. We had problems of keeping the market together, problems of keeping the gas supply together, problems of keeping our suppliers of pipe and other equipment satisfied that ultimately we would be successful, problems of keeping the insurance companies who had committed to purchase our first mortgage pipeline bonds together. These areas that I have mentioned encompass thousands of man hours of work.
>
> The Court appeal also necessitated the generating of more risk capital in order to keep the project alive. Each of the founders invested additional money in the project.

The directors of the Houston Corporation at the time of its organization on March 19, 1957, were the same as the directors of Houston Texas, being Stanley, Wallack, Barnard, Harbert, Rinehart, Herzig, Kleinkauf, and Mrs. Mack. On this same date a meeting of the Board of Directors of Houston Texas was held and the certificate of public convenience and necessity issued to it was accepted, and as to the letter commitments, the following action occurred:

> WHEREAS, letter commitments for engineering of the proposed pipeline of the corporation are held by Barnard & Burk, and letter commitments for the construction work thereon are held by Harbert Construction Company, Midwestern Constructors, Inc., and Walco Engineering and Construction Company, subject to the negotiations of arm's-length contracts therefor,
>
> Upon motion duly made, seconded and carried, it was
>
> RESOLVED, that the president be, and he hereby is authorized to appoint a committee or committees of three members from the board of directors (other than members having interest in such contracts) to carry on the negotiations for such contracts, respectively, subject to submission to and approved by this board of directors, exclusive, in each case, of a director or directors having an interest in any such contract.
>
> Thereupon, the president appointed as the committee to negotiate such contracts with Harbert Construction Company, Midwestern Constructors, Inc. and Walco Engineering and Construction Company, the following members of the board, to-wit: O. Paul Herzig, C. C. Barnard and Theodore Rinehart.
>
> Thereupon, the president appointed as the committee to negotiate such contract with Barnard & Burk, the following members of the board, to-wit: O. Paul Herzig, F. E. Stanley, and Theodore Rinehart.

On October 23, 1958, Stanley reported to the board of The Houston Corporation[11] as to the contracts entered into by its subsidiaries Houston Texas and Coastal for the construction of their respective pipelines. No action was taken on the report nor was any action required. On this same day the Board of Directors of Houston Texas ratified and approved the construction contracts dated October 3, 1958, with Midwestern-Walco Contractors[12] and Harbert Construction

---

[11] Board of Directors of The Houston Corporation in addition to Stanley, the President, consisted of Rhinehart, Barnard, Bowen, Payne, Muller and Martin.

[12] Midwestern Constructors, Inc. and Walco Engineering & Construction Company entered into a joint venture agreement on July 26, 1957, carrying out the letter of intent of December 8, 1954.

Corporation. The minutes of the meeting disclose that Stanley was present but refrained from voting on the resolution. The other members were Rinehart, Herzig, Kleinkauf, Mrs. Mack, Bowen,[13] and Payne.[14] After the adoption of this resolution Sprow[15] and Bennett[16] were elected to the board and became executive vice president and vice president of sales and supply, respectively. All parties to this venture, including Bowen and Payne, knew of the participation of the contractors in forming Houston Texas and of the letters of intent prior to the merger of Coastal into The Houston Corporation. The October 23, 1958, meeting was merely a formality in carrying out such arrangements. At that time the board members who participated in the promotion of Houston Texas were still in control of that corporation.[17]

Houston Texas here contends that the letters of intent were not binding obligations. The short answer to this is that all parties, including the management of The Houston Corporation, considered them as an obligation of Houston Texas and so honored them. The outside construction and engineering firms that contacted Stanley in 1955 and 1956 were advised that Houston Texas had a complete organization of engineers, investment advisers and management personnel, as well as the entire footage of the pipeline being contracted for by Midwestern Constructors, Inc., Walco Engineering and Construction Company and Harbert Construction Corporation, and such firms would do all the work. As to the engineering, they were advised that such work had been awarded to Barnard & Burk. The *Prospectus* of The Houston Corporation of August 19, 1958, recited:

> Barnard and Burk Pipeline Engineering Company, Inc., through assignment from Barnard & Burk, has a letter commitment from Houston Texas dated December 8, 1954, by the terms of which Houston Texas has agreed to employ it as engineers for the construction of its portion of the Initial Pipeline System under a contract to be negotiated and to contain terms analogous to, and providing engineering fees no higher than in, and arm's-length contract for similar engineering services under similar circumstances.
>
> * * * * * *
>
> Houston Texas has also agreed, by letter commitments dated December 8, 1954, to employ Midwestern Constructors, Inc. and Walco Engineering & Construction Company to construct its portion of the Initial Pipeline System from the point of origin to Kissimee, Florida, and the Harbert Construction Corporation to construct the remaining portion. Each of these contracts, to be negotiated, is to be on terms analogous to, and providing a maximum

---

[13] W. J. Bowen participated in the development of Coastal and at this time was a director and senior vice president of The Houston Corporation, and a vice president of Houston Texas since June 1958, at which time the Coastal stock, including the shares held by Bowen, was transferred to The Houston Corporation. He was also president of Coastal since August 1956, therefore serving as vice-president since its organization in 1954. Prior thereto he was employed by Delhi-Taylor Oil Company.

[14] Leon M. Payne, a partner in the law firm of Andrews, Kurth, Campbell & Bradley, participated in the development of Coastal and at the time was a director of The Houston Corporation, a director and officer of Coastal, and a director of Houston Texas since June 1958, the time of transfer by Coastal of its stock to The Houston Corporation, including the stock held by Payne.

[15] Dwight B. Sprow prior to being employed on October 1, 1958, by Houston Texas was vice president in charge of operations for Natural Gas Pipeline Company of America, having first considered employment by Houston Texas in January 1957 and final arrangements for such employment were completed in June 1958.

[16] G. B. Bennett, formerly with Sun Oil Company.

[17] Barnard and Harbert who went off the Board of Directors of both Houston Texas and The Houston Corporation in 1958 returned to the board in 1960.

cost no higher than in, an arms length contract for similar work under similar circumstances.

The extent to which the agreements between the promoters of Houston Texas were honored and the letters of intent considered binding is shown by arrangements that were agreed to with Barnard & Burk. Stanley testified:

Q. You served on the committee that negotiated the definitive contracts with Barnard and Burk, is that correct, Mr. Stanley?

A. That is right. That contract was never brought to a complete definitive contract. There were certain minor variations that were never agreed on and we operated on the structure of the letter of intent.

The obligation between Barnard & Burk and Houston Texas relating to the engineering was described by Barnard as follows:

Q. During the period 1954 through 1959, how much time did you personally spend on work for the Houston Texas project?

A. I spent practically all of my time during this period.

Q. Did your company ever receive a definitive contract as called for by your Letter Agreement, dated December 8, 1954?

A. No.

Q. How, then, were your obligations and those of Houston Texas governed?

A. Both of us acted within the terms of the Appendix to the Letter Agreement, except as to the amount of fee my company was to receive from Houston Texas.

Q. Please explain what you mean.

A. The arrangements with respect to the fee to be paid my organization had been arrived at in the late summer of 1954, and were set forth in the Appendix to the Letter Agreement. The rates set out therein were reasonable and in line with the going rate for this type of service; in fact, they were less than we charged on other projects and were less than the fees which other engineering firms were charging at the time. As is shown on the Appendix to the Letter Agreement, Barnard and Burk was to receive one per cent on the first $60 million of pipeline work and 3/4 of one per cent on pipeline work in excess of $60 million. These fees were testified to in the Certificate hearing. Because of the delay in getting the project started, which delay had been occasioned by the appeal from the Commission's order granting the Certificate, costs of pipe and other material and of labor had gone up. While Barnard and Burk was to get 3/4 of one per cent on pipeline work in excess of $60 million, I orally agreed with Houston Texas, either in 1957 or early 1958, that Barnard and Burk's fee would be computed upon, and limited by, the estimates of cost given in the hearing.

Houston Texas claims that the manner in which the negotiations relating to the contracts were conducted between it and the construction engineering companies showed that neither the persons nor the companies involved, individually or acting together, controlled Houston Texas. The contract negotiations carried out the letters of intent dated December 8, 1954, in which the relationship between the promoters here involved and Houston Texas was recognized. Such letters of intent recited that the contracts were to be on "terms analagous to but incorporating a cost no higher than an arm's-length contract for similar work under similar circumstances." In the *Prospectus* of The Houston Corporation, under the *Management and Control Section*, reference was made to this recital and that the work was to be performed by these companies.

Stanley defined an arm's-length contract as follows:

> As I understand an arm's-length contract, it is one that is negotiated by two parties or two companies on a fair approach as to costs for doing that work, and in our interpretation of an arm's-length contract it was to be negotiated by staff and members of the board of directors that had no connection with the construction companies.

This definition does not take into account the need for independent parties to the contract, nor can it be said that the members of the negotiating committee were not associated together with the construction companies in this joint venture. As to the construction contracts, the forms including specifications were prepared by Herzig, Rinehart and Sprow and then passed in by Stanley, who in turn forwarded such contracts to the other directors. The pricing of the work in the construction contracts was at a negotiated price between the committee and the construction firms which in turn was submitted to the Board of Directors of Houston Texas for ratification. Herzig claimed to have received bids from outside firms relating to the construction work for the purpose of substantiating the price. The work to be performed was not advertized for bids nor were final bids called for by which the work would be awarded, except for the river crossings and three lateral lines. No attempt was made by the holders of the letters of intent to perform work under contract with Houston Texas outside that called for by such letters. Giving consideration to the restrictions placed on the negotiators and their relationship to the contractors as heretofore referred to, it is apparent that the above contracts were not entered into at arm's-length. The condition that the contracts be on terms analogous to but incorporating a cost no higher than an arm's-length contract for similar work under similar circumstances in the letters of intent were only a guide to keep one promoter from being favored over another. This proviso, together with other above-mentioned acts by the promoters, discloses an awareness of the affiliation and an attempt to distort its significance.

The promoters had to keep the costs within the estimates on which the feasibility of the project depended.[18] It was recognized from the beginning that the feasibility of the project depended upon the delivery of gas at a certain price to the Florida markets in order to meet the competition from other fuels. Other proposals to build a natural gas pipeline to the Florida markets had been abandoned by reason of a failure to meet the competitive fuel costs. The bond purchasers required a certificate from an independent engineering firm that in such firm's opinion the pipeline could be constructed and placed in operation by June 1, 1959, and within such cost estimate. If any increase in cost did occur it had to be met by additional shares of stock or additional interim subordinated notes at least equal to such cost increase. The evidence offered as to the award of certain limited construction to outside firms is far from persuasive, especially with the contractors faced with a severe completion schedule.

Houston Texas raises two additional issues. It contends that the rule of no profits to affiliates should not be applied but rather validity of the amounts should rest on a standard of reasonableness and that such standard should be applied as full disclosure of the relationship between the contractors was made to the Commission at the time of the certificate application.

In certificate proceedings the Commission does not necessarily pass on each issue raised which is not essential to the issuance thereof if a delay would jeopardize a feasible project. Even in the rate cases, as here, issues are reserved for further proceedings. Houston Texas at the time of the certificate proceeding urged that a decision be rendered prior to December 31, 1956,"[19] as its gas supply thereafter would be placed in jeopardy. The determination of cost issues required time to carefully review the facts surrounding the transactions as evidenced by this proceeding in which the issue was raised by stipulation on June 8, 1962, and the hearing commenced on December 17, 1962, and was concluded on March 1, 1963, after specified recesses requested by the parties. The final briefs were filed on June 12, 1963. The extent of the Staff's review and purpose in cost cases was testified to in this proceeding by a Commission accountant, as follows:

---

[18] Houston Texas estimated its construction cost at the time of the certificate hearing to be $94,285,000, and at the time of financing to be $102,586,000. The reported cost was $112,439,325.

> Q. Did you participate in a field study of Houston Texas Gas and Oil Corporation's books of accounts?
>
> A. Yes, as part of my duties as Washington Supervisor of the Original Cost Section of the Division of Accounts I made several trips to St. Petersburg, Florida, and as late as last October, I made a trip to Winter Park, Florida."
>
> * * * * * *
>
> Q. Mr. Heim, what was the purpose of this original cost investigation?
>
> A. Among other things, the purpose of the investigation was to obtain the facts to the relationship of the construction and engineering firms that constructed the pipeline facilities for the Corporation. In other words, we attempted to ascertain whether or not this relationship was one that prevented the Corporation from exercising its independence in choosing the contractors and engineers for constructing its facilities and, further, we wanted to ascertain whether or not the contracts entered into by the Corporation for constructing its facilities were the result of arm's-length bargaining. To achieve this purpose, we examined all of the available books and records of the Corporation pertaining to its history, including the history of the Company. I might add here that our information on the Company is minimal inasmuch as the full set of minutes of the Company were not available to the staff.
>
> * * * * * *
>
> Q. What did the facts of this original cost investigation disclose as to the relationship of certain engineering and construction firms with the corporation in relation to its plant accounts as recorded under this Commission Uniform System of Accounts?
>
> A. The investigation disclosed that a relationship existed between the Corporation and Barnard & Burk, partnership, and Barnard & Burk Pipeline Engineering, Inc. (hereinafter jointly designated as 'Barnard & Burk'), Harbert Construction Corporation (hereinafter designated as 'Harbert'), and Midwestern Contractors, Inc., and Walco Engineering and Construction Company (hereinafter designated jointly as 'Midwestern-Walco'), which relationship warrants, in my opinion, an adjustment of the Corporation's plant accounts under the Uniform System of Accounts. The basis for my opinion will be discussed after I present the relevant facts disclosed by this investigation.

---

[19] Oral argument was held in the certificate proceeding before the Commission on December 21, 1956 and Opinion issued on December 28, 1956, designated as No. 301, 16 FPC 118.

Houston Texas was placed on notice that the Commission was not passing on its claimed cost of plant in its Opinion No. 301 relating to the certificate proceeding, which provided (16 FPC 118, 142):

> Finally, it appears that the labor necessary for construction of the facilities of Houston Gas will be furnished by three construction companies, the president of each of which is an official and director of Houston Gas and that two of these construction companies own blocks of Houston Gas stock. Furthermore, a member of the firm of engineers which will supervise the construction and operation of the pipeline is also a vice president and director of Houston Gas. While as we have already stated, the cost of the proposed facilities appears to be reasonable, in view of this fact, this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates of Houston Gas.

In recognition of the above provision, Houston Texas, in its Prospectus of August 19, 1958, stated:

> The Federal Power Commission has made no determination as to the proper rate base for Coastal or Houston Texas or allowable rate of return thereon (except during the development period to the extent stated under 'Agreements Between Coastal and Houston Texas'). The Federal Power Commission has determined the rate base or other natural gas companies to be the original cost of the property used or useful in the transportation of natural gas for resale to the person first devoting such property to that service, less depreciation plus a reasonable allowance for working capital.

Even if the Commission had not placed Houston Texas on notice, it can at any time determine the proper accounting and require compliance with its orders. Accounting control is a continuous process and is basic to regulation under the Natural Gas Act, as evidenced by Sections 8, 10, and 16 thereof.

The Commission's accounting orders as an aid to its functions under the Natural Gas Act are not *res judicata*. By Section 16 of the Natural Gas Act the Commission is given power to issue such orders as are necessary or appropriate to carrying out its functions. In *Niagara Mohawk Power Corporation* v. *F.P.C.*, 202 F. 2d 190, 198, *aff'd.* 347 U.S. 239, the Court of Appeals for the District of Columbia stated:

> This court, speaking through Chief Justice Groner in *Churchill Tabernacle* v. *Federal Communications Commission*, 1947, 81 U.S. App. D.C. 411, 160 F. 2d 244, 246, described as well settled the doctrine that *res judicata* and equitable estoppel do not ordinarily apply to decisions of administrative tribunals.

The distinction between this proceeding and those to which the doctrine of *res judicata* is applicable is set forth in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 289, 292, wherein the Court quoted from Judge Learned Hand's decision in *United States Feldspar Corporation* v. *United States*, D.C.N.Y. 1930, 38 F. 2d 91, 95, and pointed out as follows:

> "No estoppel is relevant upon that inquiry, no inconsistency important, except as it helps to ascertain the very truth; the inquiry is not to be assimilated to the ordinary suit inter partes, where no more is at stake than the settlement of a private dispute." In a situation such as this the Commission is exercising delegated legislative power to make a rule to guide the conduct of the parties in the future. It is not exercising quasi-

judicial power to determine past or present rights or liabilities, as was done in the case of In re *Federal Water & Gas Corp.*, 3 Cir., 1951, 188 F. 2d 100, certiorari denied *Cherney Corp.* v. *Securities & Exchange Comm.*, 341 U.S. 953, 71 S.Ct. 1018, 95 L.Ed. 1375, in which this court did apply the doctrine of res judicata. That case, upon which Panhandle relies, has no relevance here.

In *National Labor Relations Board* v. *Baltimore T. Co.*, 140 F. 2d 51, 54, cert. denied, 321 U.S. 795, the Court of Appeals for the Fourth Circuit, on the question of estoppel, stated:

> Whatever may be the effect of quasi-judicial determinations of administrative agencies (*Cf. Arizona Grocery Co.* v. *Atchison, etc., R. Co.*, 284 U.S. 370, 389, 52 S.Ct. 183, 76 L.Ed. 348), it is well settled that the principle of res judicata has no application to their exercise of other powers, 30 Am.Jur. p. 930; *Pearson* v. *Williams*, 202 U.S. 281, 26 S.Ct. 608, 50 L.Ed. 1029; *Tagg Bros. & Moorehead* v. *United States*, 280 U.S. 420, 445, 50 S.Ct. 220, 74 L.Ed. 524; *State Corp. Comm.* v. *Wichita Gas Co.*, 290 U.S. 561, 569, 54 S.Ct. 321, 78 L.Ed. 500; *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, 64, 56 S.Ct. 720, 80 L.Ed. 1033. An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past *Cf. Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145, 60 S.Ct. 437, 84 L.Ed. 656; *Houghton* v. *Payne*, 194 U.S. 88, 100, 24 S.Ct. 590, 48 L.Ed. 888. Nor can the principles of equitable estoppel be applied to deprive the public of the protection of a statute because of mistaken action or lack of action on the part of public officials. *United States* v. *San Francisco*, 310 U.S. 16, 32, 60 S.Ct. 749, 84 L.Ed. 1050; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409, 37 S.Ct. 387, 61 L.Ed. 791; *United States* v. *City of Greenville*, 4 Cir., 118 F.2d 963, 966.

The argument that the Commission, in its Opinion No. 301, *supra*, stated that the cost of the proposed facilities appears reasonable and thus decided that the standard of reasonableness for accounting purposes applies to the accounts of Houston Texas misconstrues the purpose of such determination in that opinion. The Commission was there faced with a determination as to the feasibility of the proposed project as presented by Houston Texas. This proceeding is to determine the proper accounting for expenditures on which future regulation by the Commission rests. To follow the Houston Texas argument would require the Commission to forsake its long-established cost standard for accounting control, and accept the contention of Houston Texas' witness Dr. W. A. Paton,[30] that the standard in transactions between affiliated companies should be the market value of the services performed.

The reasonableness of the value of services as a standard for affiliated company payments has heretofore been advanced by Paton before this Commission and rejected in *St. Croix Falls, Minnesota Improvement Company*, 3 FPC 13 (1942); *The California Oregon Power Company*, 3 FPC 368 (1943), aff'd. 150 F. 2d 25, cert. den. 326 U.S. 781; *The Montana Power Company*, 4 FPC 213 (1945); and *Arkansas Power and Light Company*, 8 FPC 106 (1949), aff'd. 185 F. 2d 751, cert. den. 341 U.S. 909.

In further support of its claim that the Commission's uniform system of accounts does not support the disallowance of profits to affiliates as not being actual legitimate costs since they did not arise in an arm's-length transaction, Houston Texas refers to an article by Randall LeBoeuf appearing in The George Washington Law Review, Volume 14, pages 174 190, under date of December 1945. Mr. LeBoeuf appeared in several proceedings before the Commission, including the *Niagara Falls Power Company, Licensee,* 3 FPC 207, aff'd. 137 F. 2d 787, cert. den. 320 U.S. 792, in which intercompany construction profits were disallowed, and it was held therein that a pooling of interests did not represent an arm's-length transaction. He was also counsel in the accounting case of *Public Service Electric & Gas Company,* in which an order to show cause was entered on November 2, 1943 (4 FPC 400) and an order issued approving and directing disposition of amounts classified as plant acquisition adjustments and plant adjustments was entered on October 5, 1945 (4 FPC 1058). In this proceeding the company, after hearing and oral argument, filed journal entries further revising its reclassification and original cost studies under the uniform system of accounts, which resulted in the above order disposing of $57,926,685 from its Plant Accounts.

---

[30] A controversial figure, see "The Accounting Emphasis in Public Utility Control" by Will-A. Clader, Public Utilities Fortnightly October 26, 1944.

A more informative article appears in the same publication of The George Washington Law Review by Eric L. Kohler, at page 152, entitled "Development of Accounting for Regulatory Purposes By the Federal Power Commission." This author points out, which might well apply to both Paton and LeBoeuf that accounting as it has been practiced by the Commission in recent years has inspired a good deal of angry rhetoric. This article briefly covers the Commission's accounting policies and its functions thereunder. It also refers to the above-mentioned *Montana Power Company* case and to Houston Texas' witness Paton, as follows (p. 170):

> In the *Montana* case* a number of professional accountants testifying for the company brought out clearly the lack of principles and standards among accountants in interpreting the meaning of 'value' at the time of an exchange of assets for stock. The witnesses indicated their approval of recorded amounts at the time of the transfer, with but superficial evidence in support of figures in excess of original cost. They indicated no distinctions between the judgments that should be applied to the paid-in values of utilities, particularly in transactions between affiliates,** and those of competitive commercial enterprises. To one familiar with the subject-matter developed during the investigation of the Federal Trade Commission, it seems all too obvious that, prior to the enactment of the 1935 legislation, the appearance of arm's-length transactions either between affiliates or unrelated companies more often than not gave no clue to their real meaning, and that to accept them unquestioningly at their face value would surely defeat the purpose for which the Federal Power Commission was established—that purpose being to rid the industry of its existing write-ups and to see to it that no more of them occurred. If at times the remedy adopted has seemed a bit too drastic, especially where the significance of transactions has been dimmed by age, it should be recalled that the evils which the 1935 legislation sought to correct were so widespread as to be almost universal, and that, at the same time, the practical effects of applying the remedy will not be found to be as severe as at first supposed.

---

*In the Matter of Montana Power Co., F.P.C. Op. No. 120 (1945).

**Professor Paton would put the transactions of affiliates on the same basis as those of independent parties. Paton, *Transactions Between Affiliates* (1945) 20 THE ACCOUNTING REVIEW 256. He gives no weight to consumer interest in such transactions.

The above-mentioned *Montana Power Company* decision, 4 FPC 213, involved a reclassification under the Commission's uniform system of accounts in which it was held that evidence of value was wholly immaterial in the determination of costs in transactions between affiliates which arose out of a pooling of interests. In *Pennsylvania Water & Power Co.*, 8 FPC 1, 27, 28, *aff'd.* 193 F. 2d 230, 343, U.S. 414, a rate proceeding in which the Commission had before it the question of plant costs arising from a pooling of interests, it was held that the fair market value of properties had no relation to cost and was entitled to no weight. Further pointing out that under its no-profit-to-affiliates ruled profits resulting to a person in control or sharing control are not actual legitimate original cost since they did not arise in an arm's-length transaction.

The standard of costs as set forth in the Commission's uniform system of accounts, which determines the propriety of payments distinguishes between contracts with affiliated interests and those entered into with independent organizations on the basis of arm's-length bargaining. Its determination rests on costs to the affiliated company and offers a reasonable basis for eliminating abuses. As heretofore pointed out, it is not enough to show that the prices charged by such companies are no higher than those which would have been incurred had the work been done otherwise under the Commission's standard of costs in which the value of reasonableness of the service is not accepted as a measure of actual costs. The Commission as far back as 1933 has held that the "reasonableness" of such affiliated payments is immaterial. *Louisville Hydro-Electric Company, Licensee*, 1 FPC 130, 139.

The allowable cost to Houston Texas for construction work must be limited to the expenses actually incurred by the engineering and construction affiliates. This is in line with the Commission's consistent exclusion of profits to affiliates from plant accounts and an unbroken line of court decisions upholding such Commission action.

Interest on Construction, $304,950: The interest on construction relating to the affiliated profit of $9,659,183 was computed by the Commission's accountant to be $304,950. This computation is not questioned.

Disposition of Amounts in Account 116, Other gas plant adjustments: The construction profit of $9,659,183 and interest on construction of $304,950 attributable thereto are classifiable in the above-referred to Account 116, Other gas plant adjustments, and as such are subject to disposition pursuant to the provisions of this account. The Commission's accountant recommends that the amounts be disposed of by a charge to earned surplus. Florida Gas Transmission Company did not submit a plan of disposition.

Claim For Additional Allowance:

During the hearing Houston Texas introduced exhibits and testimony claiming an additional allowance for general and administrative expenses incurred on its behalf by Harbert Construction Corporation in the amount of $312,809 for the years 1954 through 1957; by Midwestern Constructors, Inc. in an amount of $953,243 for the years 1954 through 1960; and by Walco Engineering & Construction Company in an amount of $456,586 for the years 1954 through 1960. While this claim for additional allowances has not been referred to in Houston Texas' briefs filed in this proceeding, it should be noted that these amounts are not reflected on the books of Houston Texas. The Commission's accountant dealt with only the recorded amounts in his reclassification.

The Commission's uniform system of accounts provides that each natural-gas company shall classify its gas plant in accordance with the gas plant accounts prescribed therein, and reflect in its books of account the original cost to the natural-gas company of its gas plant thus determined. This proceeding, as far as the system of accounts is concerned, is a reclassification of the amounts already recorded in the natural-gas company's plant accounts. The cost on the books is regrouped in the interest of obtaining more and better information, thus paving the way for better regulatory action. The uniform system of accounts does not provide for reaccounting. No claim is advanced that the failure to record these amounts on the books of Houston Texas was the result of an accounting error. Genuine accounting errors should always be corrected, but once costs have been recorded on the books in the exercise of allowable discretions and no accounting error is involved, that cost is not to be recomputed.

The Commission has heretofore passed on this same question in *Northwestern Electric Company*, 2 FPC 327, 333, and denied the right of the company to reaccount for expenses not appearing on its books. On appeal, *Northwestern Electric Co.* v. *Federal Power Commission*, 125 F. 2d 882, 887, the Court on this question stated:

> There is no contention that the interest item could not have been properly included in the accounts at the time when they were born. Respondent's view is that the system it prescribed contemplated reclassification of old accounts in order that those items which did not represent 'original cost' could be eliminated or corrected, and that the system did not, does not, and should not contemplate the inclusion of items which had never appeared on the old accounts. The Commission, having power to prescribe a system, likewise has power to determine the extent of the system. In determining the extent of the system, the Commission reached the conclusion that "retroactive accounting for indefinite periods in the past" would lead to chaos in accounting rather than to a desired end of finality. We think a reasonable man could take that view, and therefore the order, with respect to that item must be sustained.

Coastal—Income Tax Accruals

The second issue in this proceeding, set forth in the Commission's order of June 8, 1962, involves the accrual for Federal income taxes on the books of Coastal for accounting purposes under the uniform system of accounts. This issue arose from the stipulation attached to said order, which in part provides:

> RESERVED ACCOUNTING QUESTIONS
>
> During the pendency of these proceedings, two accounting questions arose; one, an original cost question relating to Florida Gas; and two, the accrual by Coastal of Federal income taxes. The parties hereto agree that such accounting questions shall be considered as reserved issues to be settled or determined in accordance with the procedure set forth below. All rights of any party to these proceedings to participate in the disposition of these questions shall be fully preserved.

Coastal began to accrue on its books amounts of Federal income taxes in 1961, and for the months of May 1961 through August 1962 it had accrued $1,737,000. Coastal did not pay or owe to the Federal government the taxes so accrued on its books. The entries were recorded under the uniform system of accounts for natural-gas companies, effective January 1, 1961, as an operating expense in Account 409, Income taxes, and in the Balance Sheet Account 236, Taxes accrued. Insofar as material here, the Accounts 236 and 409 provide:

> 409. Income taxes.
>
> A. This account shall include the amount of state and federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted accordingly so that this account ,as nearly as can be ascertained shall include the actual taxes payable which are chargeable to utility operations.
>
> B. The accruals for income taxes shall be apportioned among utility departments and nonutility operations so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or nonutility operation, the income from which gave rise to the tax.
>
> 236. Taxes accrued.
>
> A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, shall be shown under account 165, Prepayments.

Coastal began operations in 1959 and was merged into Florida Gas Transmission Company (formerly Houston Texas) on August 31, 1962, pursuant to a Commission order permitting the acquisition by merger, issued August 3, 1962. (28 FPC 279.) The Houston Corporation, as permitted by the Internal Revenue Code, filed a consolidated income tax return which included the above wholly-owned subsidiaries for each of the years 1959 through 1961, and as a result of offsetting losses no income taxes were due or payable. The above accounts limit the accruals to taxes that are actually payable. The tax liability for a group of corporations filing a consolidated tax return is computed solely on the basis of the net taxable income of the consolidated group as a whole. Inasmuch as the consolidated tax returns filed by The Houston Corporation have always reflected a tax loss for the consolidated group no tax liability has been incurred by the consolidated group. Therefore, the accruals on Coastal's books beginning in May 1961 were a violation of the uniform system of accounts. This question has been directly passed on by the Commission on December 12, 1961, in *Northern Natural Gas Company*, 26 FPC 841. The *Northern* case dealt with the limited question of interpretation for accounting purposes of the instructions for reporting monthly accruals of Federal income taxes, which is the issue here. During 1957 and 1958 Northern accrued on its books Federal income taxes calculated on the basis of its filing separate income tax returns, which is the procedure followed by Coastal to justify its accurals. In 1958 Northern elected to file a consolidated income tax return with its subsidiary Northern Natural Producing Company for the year 1957 and subsequent years. Through the filing of a consolidated return Northern utilized currently the tax losses experienced by its subsidiary, and therefore paid substantially less taxes than it had debited to Account 507 and credited to Account 228.[21] The Commission concluded that Northern's accrual of taxes on the basis of separate income tax filing was improper and ordered Northern to file corrected memorandum entries of these accounts reflecting accrued taxes paid.

Florida Gas seeks to enlarge the scope of this hearing to include considerations as to rates charged for certain direct sales over which the Commission has no jurisdiction, claiming that if the entries here in question are allowed it will secure a better price for such gas sold.[22] Thus the company seeks to have destroyed the validity of the cost concept of the Commission's uniform system of accounts which are a necessary incident of effective regulation, for its own convenience. The issue as to charges for such direct sales is not here involved and is outside the Commission's jurisdiction. Further, there is no evidence in this record that such direct sales are not profitable for Florida Gas no matter how the uniform system of accounts is interpreted.[23]

The Commission's Deputy Chief Accountant, taking exception to the contentions of the Company's witnesses, pointed out that only actual taxes payable are properly recorded under the uniform system of accounts and as Coastal's tax liability is determined from the consolidated return, which discloses no taxes due or owing, the accrual is nothing more than a misstated income and a type of write-up which violates the cost concept of the uniform system of accounts, and stated:

> I do not believe the integrity of the uniform system of accounts should be violated to accommodate a transaction admittedly outside the Commission's jurisdiction. The agreements referred to by Mr. Shanahan [Respondent's witness] apparently were entered into voluntarily and not responsive to a Commission requirement. Since nonjurisdictional transactions are involved these would be a poor base for change of a basic concept under the Commission's uniform system of accounts even were there merit to the suggested change.

Additional Findings and Conclusions

Upon consideration of the record and the briefs filed in this proceeding, it is further found and concluded, that:

(1) The engineering and construction firms of Barnard & Burk, Harbert Construction Company, Midwestern Constructors, Inc., and Walco Engineering & Construction Company, by the pooling of their interests in the promotion of Houston Texas, became a part of an affiliated group under common control as to their participation therein, and as such were associated companies as defined in the Commission's uniform system of accounts.

(2) By reason of the transactions between Houston Texas and the firms of Barnard & Burk, Harbert Construction Company, Midwestern Constructors,

---

[21] Comparable operating expense and balance sheet accounts to Accounts 409, Income taxes, and 236, Taxes accrued, before revision of the uniform system of accounts effective January 1, 1961.

[22] Florida Gas makes a number of direct sales to utilities and others for their own use and consumption for which the charges are related to its record accounting.

[23] In the recent decision in *Cities Service Gas Company*, Opinion No. 396, issued July 15, 1963, 30 FPC 158, involving the consolidated tax issue in a rate proceeding, the Commission stated: The starting point in resolving the consolidated tax issue is the amount of the consolidated tax payment. This is the only real cost which was incurred by Gas Company in conjunction with the other Cities Service affiliates.

Inc., and Walco Engineering and Construction Company being at less than arm's-length, the construction profit heretofore found to be $9,659,183 did not become actual legitimate cost to Houston Texas.

(3) The $9,659,183 recorded in the plant accounts of Houston Texas over the cost to the above-named engineering and construction firms is a write-up and together with the related amount of $304,950 of interest during construction should be transferred from Account 101, Gas plant in service, to Account 116, Other gas plant adjustments, on the books of Florida Gas Transmission Company.

(4) It is reasonable and appropriate that the write-ups and other improper charges in the plant account of Florida Gas Transmission Company of $9,659,183 and $304,950 to be transferred to Account 116, Other gas plant adjustments, be disposed of by a charge to earned surplus, except to the extent of any accrued depreciation applicable to the amounts, which depreciation amounts are chargeable to Account 108, Accumulated provisions for depreciation of gas plant in service.

(5) The accruals for income tax purposes by Coastal now reflected on the books of Florida Gas Transmission Company are in violation of the Commission's uniform system of accounts.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) Florida Gas Transmission Company classify the amounts of $9,659,183 and $304,950, included in this plant accounts and referred to in Finding (3) above, in Account No. 116, Other gas plant adjustments, of the Commission's uniform system of accounts prescribed for natural-gas companies.

(B) Florida Gas Transmission Company dispose of the amounts classified in Account 116, Other plant adjustments, referred to in Paragraph (A) above, as set forth in Finding (4) above.

(C) Florida Gas Transmission Company shall eliminate the accruals by Coastal of the amounts accrued for income tax purposes included in its Accounts 236 and 409, above referred to in Finding (5).

(D) Florida Gas Transmission Company submit within 90-days from the date on which this decision becomes final certified copies of accounting entries effecting compliance with the requirements of Paragraphs (A), (B), and (C) above.

Alvin A. Kurtz,
Presiding Examiner

OPINION NO. 432

WISCONSIN MICHIGAN POWER COMPANY, DOCKET NO. E-7026

OPINION AND ORDER DETERMINING A JUST AND REASONABLE RATE AND PRESCRIBING THE FILING OF SUPPLEMENTAL RATE SCHEDULE

(Issued June 9, 1964)

*Syllabus**

1. Subject agreements are not fixed rate contracts, since they plainly contemplate escalation arrangement to maintain parity between large retail users rates and wholesale rates. P. 1449.
2. Contracts as construed by Commission provide for automatic contractual

---

*Initial decision appears on P. 1466.

acceptance of a rate change, subject to filing requirements of Section 205 of Power Act. P. 1449.

3. Commission purpose is not to reject rate increase filings by hyper-technical interpretation of contract provisions which clearly contemplate rate adjustment procedure. P. 1449.
4. Proper practice and the avoidance of undue discrimination under Section 205 requires, except in unusual cases, [as stated in Gulf States] that once a new rate is adopted by a company it be made available and applied uniformly to all customers of the same class at the same time. P. 1450.
5. Section 205 does not prohibit all rate distinctions but only rate discrimination as between customers of same class, and then only undue discrimination – – that not justified by differences in cost of service, operating conditions, or other considerations. PP. 1450, 1451.
6. Section 205(e) makes clear that the utility filing rate increase carries burden of justifying such increase. P. 1451.
7. Company's claim that Municipalities are estopped to pursue discrimination issue is not persuasive in view of Examiner's warning that difference in treatment must be justified – – nor could waiver by Municipalities relieve Commission of its responsibilities under Section 205(b). P. 1451.
8. Commission *rejects* argument that it lacks jurisdiction to determine discrimination as between jurisdictional rates to Municipalities and allegedly non-jurisdictional rates to co-ops, at least until it has decided question of its rate-making jurisdiction over cooperatives. P. 1451.
9. Under Section 205(e), whenever Commission finds a rate to be unduly discriminatory it may determine the just and reasonable rate to be thereafter observed. P. 1452.
10. There are three stages to a reasonable and proper apportionment of costs – – functionalization, classification and allocation. P. 1452.
11. It is entirely appropriate to roll together in power pool all costs associated with supplying service at wholesale, especially where as here, a parent-subsidiary relationship exists furnishing a basis for piercing corporate veil – – however, under instant circumstances, power pool should be limited to costs of wholesale supplier. P. 1453.
12. In regulation of electric rates it has been custom to classify "fixed" costs as demand-related and "variable" costs as energy-related. P. 1453.
13. It is proper in classifying costs to include in energy component certain steam production and hydro costs normally considered fixed. P. 1454.
14. Classification of cost of purchased power on a per-billed basis, resulting in larger classification of costs to energy component than under modified fixed-variable classification, is proper. P. 1454.
15. Allocation factors applicable to energy-related costs are generally determined on basis of annual kwh use. P. 1454.
16. Commission is not prepared to endorse for general application any single method of cost allocation – – peak responsibility was used as point of departure here because it was only method for which data could be obtained. P. 1455.
17. Under non-coincident demand method capacity costs are allocated in accordance with maximum demands of various loads on system – – effect is to assign some costs to all customer groups in accordance with their individual demands regardless of relationship of such demands to system peak. P. 1455.

18. Effect of average-excess demand method is to emphasize extent of use of capacity, resulting in allocation of increasing proportion of capacity costs to a customer as his load factor increases. P. 1455.

19. To be reasonable, cost allocation must recognize relative energy use either in classification of costs, or in allocation of demand costs, or combination of the two. P. 1455.

20. On this record, Commission *finds* reasonable result would be reached if demand costs are allocated to wholesale sales on basis of average of relative use by wholesale customers at times of the 12 monthly system peaks. P. 1455.

21. In utilizing 12-month demands coupled with cost classification adopted, resulting demand allocation factor provides wholesale cost which falls between results that would follow under *Seaboard* principle (low) and those ordinarily obtained from rigid application of fixed-variable, peak responsibility principle (high) — such result fairly allocates costs between wholesale customers and retail customers on Wisconsin Michigan's systems and gives proper recognition to system operations. PP. 1455, 1456.

22. Rates of return should be generally equal to that on investments in other businesses with corresponding risk, must be sufficient to insure financial soundness of utility and adequate to maintain credit and enable raising of money. P. 1456.

23. A determination which does not represent a judgment based on rate of return evidence in case, but on contrary assumes correctness of Company's rates as filed, cannot be accepted. PP. 1456, 1457.

24. Where affiliation is present, in applying recognized criteria for proper rate of return, need for parent rather than subsidiary should be given primary consideration since parent obtains capital from open market. P. 1456.

25. 6 percent overall rate of return, providing 9.3 percent return on equity, found reasonable. P. 1456.

26. In light of 1964 Revenue Act amendments, Commission's alternatives regarding investment tax credit for public utilities eligible for 3 percent credit are limited to accepting treatment chosen by company, or requiring annual flow-through of benefits of tax credit to rate-payers to extent only of fraction of credit proportionate to average useful life of property. P. 1457.

27. Commission *approves* flow-through of 48 percent of investment tax credit and normalization of remaining 52 percent. P. 1457.

28. Commission *rejects* contention that it set rates of regulated utility as if it voluntarily used liberalized depreciation (as well as guideline service lives), even though, in fact, utility chose to employ straight-line depreciation as has Wisconsin Michigan. P. 1457.

29. Tax laws give management option to take-or not take-liberalized depreciation; on this record Commission does not believe it should in effect deprive Company of such option. P. 1458.

30. In proceeding under Section 205 of the Federal Power Act, Commission determines just and reasonable rate; *prescribes* filing of supplemental rate schedule; and *orders* refunds.

Commissioner Black *concurring*.

John G. Quale and *Van B. Wake* for Wisconsin Michigan Power Company.

C. Emerson Duncan, II and *Jerome C. Muys* for the Cities of Clintonville, Florence, Kaukauna, New London, Oconto Falls, and Shawano, Wisconsin.

Drexel D. Journey and *Watt N. Martin* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

SWIDLER, *Chairman:*

This is a proceeding under section 205 of the Federal Power Act.[1] The case originated with the filing of wholesale rate increases on January 19, 1962, by Wisconsin Michigan Power Company (hereafter "Company" or "Wis-Mich"), to become effective March 30, 1962. On March 29, we suspended the increased rates for five months, until August 30, 1962, and ordered a hearing concerning their lawfulness, acting in the exercise of our authority under section 205(e). After extensive but unsuccessful efforts for a negotiated settlement between the Company and its affected customers, hearings were held before Presiding Examiner Ellis for a total of 16 days concluding June 11, 1963. The Examiner's decision was issued January 7, 1964. Oral argument before the Commission, on exceptions to the Examiner's decision, was held on March 24, 1964.

Wis-Mich sells electric energy at wholesale and at retail in about a dozen counties of northeast Wisconsin in two widely separated divisions joined by a 138-kv transmission line. It also serves a small section of northern Michigan, including two distributors affected by this increase. The Company's wholesale business accounted for approximately 8.2 percent of total system revenues in the test year 1961. Wis-Mich derives about one-third of its power supply from its own generation, largely hydroelectric, and purchases most of the remainder from its parent, Wisconsin Electric Power Company ("Wis-Elec"). The wholesale service involved in this case was held to be jurisdictional more than ten years ago, *Wisconsin Michigan Power Company* v. *Federal Power Commission*, 197 F. 2d 472 (CA 7, 1952), cert. den. 345 U.S. 935 (1953).

Wis-Mich has 12 wholesale customers—7 cities, 2 private companies, 2 small co-ops serving rural areas, and one larger co-op with a mixed rural-suburban clientele. The rate increase applies only to the 7 municipal and 2 private distributors, and six of the municipalities—Clintonville, Florence, Kaukauna, New London, Oconto Falls and Shawano—("Cities") intervened and actively opposed the increase. The other affected distributors have not registered objections. The larger co-op, Oconto Falls Electric Cooperative ("Oconto Co-op"), was served at the same rate as Intervenors until the rate increase which is the subject of this proceeding was filed.

Annual revenues of Wis-Mich would increase by 14.7 per-cent or $233,000 under the proposed rates, but the increased cost to the individual cities would range from 3.7 percent to 31 percent.

The Presiding Examiner rejected the rate increase on the sole ground that it unjustly discriminates against the municipal distributors in favor of the Oconto Co-op. The other two co-ops were not shown to be comparable to the municipal distributors, and thus no finding of unjustifiable discrimination was made as to them. After the Examiner's decision and because of the grounds of the decision, the Oconto Co-op moved to intervene and to reopen the proceeding for further evidence on the issue of discrimination. The Commission denied the Oconto petition without prejudice to the filing of a petition for leave to file an *amicus* brief by Oconto, but Oconto did not avail itself of this opportunity.

The Issue of Contractual Authority

At the outset we must consider the question of contractual authorization for the increased rates filed by Wis-Mich, for unless the company prevails on this issue the rate increase filing must be rejected.

With minor variations the wholesale contracts between Wis-Mich and the Intervenors provide that the distributors agree to pay for power and energy at the rates set forth in the Company's large-user retail rate schedule (Rate VII)on file with the Wisconsin PSC, and the distributor agrees automatically to accept any change in the rate approved by the Wisconsin Commission.[2] The Examiner interpreted the contracts to mean that Wis-Mich agreed to serve Cities at the rates for large retail users, subject to change with FPC approval as the large-user rates are changed from time to time with State approval. On this basis he concluded that the contracts authorized the filing of the proposed wholesale rate increases since State-approved retail rate increases went into effect in 1961.

---

[1] See Appendix C for pertinent provisions of the Federal Power Act.

Two of the Cities' contracts (Clintonville and Oconto Falls) were cancelled as of May 1 and December 6, 1962, respectively, and these distributors are now receiving service without contracts. This does not affect the question of contractual authorization, however, since these contracts were operative on January 19, 1962, when Wis-Mich filed its rate increases with this Commission.

Staff argues that the contract terms do not provide for a change in rates and that the filing should be rejected under the *Mobile-Sierra* doctrine.[3] The Cities take the position that the savings clauses are invalid and therefore cannot supply the necessary contractual support for a unilateral rate increase.

We are in accord with the Examiner's view that these agreements are not fixed rate contracts, since they plainly contemplate an escalation arrangement to maintain parity between the rates of the retail users and the wholesale rates. Moreover we agree with the Examiner that the triggering event for the increase is not an invalid or prohibited State commission regulation of interstate wholesale rates but rather a validly approved rate for retail service. The contracts as we construe them thus provide for an automatic contractual acceptance of a rate change, subject to the requirements of filing under section 205 with FPC.

In interpreting these contracts it should be remembered that many changes have intervened in the law and in the power economy since the execution of these contracts in the 1930's. It is not our purpose to reject rate increase filings by hyper-technical interpretation of contract provisions which clearly contemplated a procedure for rate adjustments. On the contrary, the effective exercise of the rate-making powers of this Commission will insure that contractual provisions for rate adjustments can be utilized by the seller in a manner fair to the purchaser.

The Issue of Discrimination

Next we turn to the issue of discrimination which is the fulcrum of the Examiner's recommended order.

---

[2] The New London contract provisions, for example, read as follows:

Section 1: The Power Company shall deliver, and the Distributor shall receive, electric energy from the Power Company's transmission system, and the Distributor shall pay to the Power Company, on or before the 20th of each month for electric energy received during the preceding monthly billing period, an amount computed on the rates and charges set forth in Wisconsin Michigan Power Company's Large Users' Power Service Rate VII now on file and approved by the Wisconsin Public Service Commission, to-wit: (Exh. No. C-12, p.4).

Section 2: It is hereby agreed and understood that should there be any revision and/or change in said Rate VII approved by the Wisconsin Public Service Commission, at any time during the life of this contract, then the Distributor shall under this contract automatically receive and accept such revised rates (Ibid, p. 6).

[3] *United Gas Pipe Line* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956). In *Sierra* it was held that the Federal Power Act does not by its terms authorize a public utility regulated under Title II of the Act to impose unilateral contract changes on its wholesale customers without their consent simply by filing a new rate schedule with the Commission. *Mobile* reached an analogous result under parallel provisions of the Natural Gas Act.

The Examiner rejected the proposed rate increases to the municipalities on the sole ground that they created an unjustifiable discrimination contrary to section 205(b) of the Federal Power Act as between the affected Cities and the one wholesale customer not covered by the increase, the Oconto Co-op. For that reason he directed that further billings be made at the old contract rates until a new non-discriminatory rate is established, and that collections in excess of the old rates be refunded without interest.

Oconto's rate from the date it was first filed in 1947 has been the same as the rate for Wis-Mich's municipal wholesale customers—that is, until the rate differential created in 1962 by this filing. The precise legal issue to be resolved is whether the effect of the rate increase for the municipalities and not the cooperative was to "make or grant any undue preference or advantage" or to "subject any person to any undue prejudice or disadvantage," within the meaning of section 205(b).[4]

The discrimination issue was included in the Commission's notice of hearing, having been first raised by Cities when they responded to the rate filing but the Oconto Co-op did not seek to intervene at this stage of the case. On the opening day of the hearing Company counsel announced that its board of directors had adopted a resolution authorizing a proceeding to establish new and reasonable rates for the co-op customers to be commenced as soon as this case is completed. The following day in a colloquy among counsel, counsel for Cities stated that he thought this would satisfy his clients and, "we do not intend to raise it further in view of this development." Staff counsel stated that the issue was primarily of concern to Cities, although only the Commission could finally decide it. A week later when the case was apparently well on its way to being tried without further reference to this issue, Examiner Ellis warned counsel that a finding of undue discrimination would be entered unless the Company proved either lack of discrimination or justification. Wis-Mich then produced one witness, its commercial manager, who testified concerning the Company's co-op loads. His testimony showed that the loads of the two smaller co-ops are submarginal, scattered and seasonal, and that these co-ops have been served under a "load factor rate," a different class of rate than the municipal customers, although no one disputes that the rates to the Cities and Oconto were on the same level before the instant rate increase was filed. However, the testimony indicated that the Oconto Co-op has been a faster growing co-op more comparable to the municipal customers, with higher 1961 sales than 5 of the Company's wholesale customers.

The anti-discrimination provisions of the Power Act have been applied only twice in the history of the Commission. In *Gulf States Utilities Company*[5] the basic test to be used in construing § 205(b) was stated as follows:

> Proper practice and the avoidance of undue discrimination requires, except in unusual cases, that once a new rate is adopted by a company it be made available and applied uniformly to all customers of the same class at the same time.[6]

We elaborated upon this test in *Otter Tail Power Company*[7] by indicating that the proper scope of inquiry under § 205(b) would take into account whether "the same kind of service under substantially similar conditions is rendered" to each of the wholesale customers, and whether differences in rates might be justified by "substantial lawful differences in cost of service or operating conditions." § 205(b) thus does not prohibit all rate distinctions but only discrimination as between customers of the same class, and then only undue discrimination—that which is not justified by differences in cost of service, operating conditions or other such considerations.

---

[4] See Appendix C for pertinent provisions of the Federal Power Act.

[5] 1 FPC 522 (1938).

[6] *Id.* at p. 524.

[7] 2 FPC 134 (1940).

These early opinions were rendered more than two decades ago before REA co-ops became major purchasers of power at wholesale. They would therefore, not be dispositive of the contention that the cooperatives constitute a separate class of customers for rate-making purposes or other related contentions on which a full record is being made in another proceeding pending before an examiner of this Commission.[8] Moreover Oconto Co-op chose not to intervene in this proceeding until the record had been closed and the Examiner had rendered his initial decision. While in these circumstances the Commission denied that Oconto petition to reopen the record, the fact remains that the record contains little evidence to aid this Commission in reaching a decision on the issue whether REA cooperatives constitute a separate class of customers, which is of such broad importance. We make clear, therefore, that our decision here is based on the narrow record in this proceeding and is not to be treated as a precedent on the broad question of the proper rate level for sales to cooperatives.

The determinative considerations in this case may be simply stated. For a 15-year period prior to the filing of the rate increase in this proceeding, the Company sold power to municipalities and Oconto on the same rate schedule. The rate increase which is the subject of this proceeding altered the status quo by increasing the rates to the municipalities while not increasing the rates to the co-ops. Section 205(e) makes clear that the utility filing a rate increase carries the burden of justifying it. The Commission's initial order in this proceeding raised the discrimination issue and, while Intervenors may have suggested that they were not pressing the issue, the Examiner made it abundantly clear that the issue was still in the case. Company recognized this fact and offered a witness but his testimony does not afford a basis for justifying a differential between the municipal rates and the rates for the cooperative, and Company in its briefs does not rely on it to justify the discrimination. Company's claim that Cities are estopped to pursue the discrimination issue is not persuasive in view of the Examiner's warning to the Company that they must justify the difference in treatment. Moreover a waiver by the Cities could not in any event relieve the Commission of its responsibilities under section 205(b). *Transcontinental Gas Pipe Line Corp.*, 28 FPC 979 (1962). We conclude that the Company has failed to carry its burden of justifying the rate increase for the Cities alone.

The Company also seeks to defend the existing difference in rates by a challenge to our jurisdiction, which is plainly without merit. In substance Wis-Mich argues that the Commission lacks jurisdiction to determine discrimination as between jurisdictional rates to the Cities and allegedly non-jurisdictional rates to the co-ops, at least until the Commission has decided in a pending case whether electric cooperatives are subject to its rate-making jurisdiction.[9] The short answer is that we regulate sales of power at wholesale in interstate commerce and not purchases. It is Wis-Mich that we are here regulating and not the cooperative.

We therefore conclude that the Company has not justified a higher rate for the municipalities than for its cooperative customers. As previously noted, we recognize that the cooperative did not participate in this proceeding and we therefore make no findings in this case which would in any way prejudice Oconto's rights.

---

[8] *Southwestern Public Service Company* (FPC Docket No. E-7038).

[9] *Dairyland Power Cooperative, et al.*, (FPC Docket No. E-7113).

Cost-of-Service Issues

Our finding that the increased rates that are the subject of this proceeding are discriminatory does not end our adjudicatory responsibilities. Under the terms of section 205(e), whenever we find a rate to be unduly discriminatory we may determine the just and reasonable rate to be thereafter observed.[20]

In this case we cannot prescribe the exact level of rates for all of Wis-Mich's customers because Oconto is not before us and we have reserved judgment on what, if any, differential in the rates to the cooperatives may be justified. Wis-Mich may choose to eliminate the discrimination by maintaining the rates previously in effect which were at the same level for both its municipal and cooperative customers. However, a full hearing has been held on all of the cost of service issues which are necessary to determine just and reasonable rates for the municipal wholesale customers. If we ended our decision at this point, the time and money invested by all of the parties and the Commission staff in trying these issues would go for nought and, more important, Wis-Mich would have no guidance as to the proper maximum level of just and reasonable rates for its municipal customers. We shall, therefore, proceed to consider the cost of service issues in order to avoid any possibility of an expensive and lengthy retrial of the many issues that are now before us.

It is hardly surprising that in this, the first electric ratemaking proceeding before the Commission involving sales to municipal and cooperative customers in over a decade, we find substantial differences among the parties at almost every stage of the cost analysis, presenting a broad range of questions for consideration by the Commission.

The basic cost of service issues are as follows:

1. The appropriate power pool—whether Wis-Mich alone or in combination with Wis-Elec.
2. The proper classification of costs between demand and energy, and the proper allocation of costs between wholesale service and retail customers.
3. Rate of return.
4. Certain tax-related matters including liberalized depreciation.
5. Rate design.

In this case, as in many rate cases that come before us, one of the important issues is a reasonable and proper apportionment of costs. There are three stages to this process, functionalization, classification, and allocation.

Functionalization is the grouping of plant and related costs according to functions they perform as, *e.g.*, generation, transmission and distribution. In wholesale electric rate cases this step includes, also, the grouping of costs related to the "power pool", *i.e.*, the generation and transmission facilities that supply the wholesale service. Usually the Company's accounting records, which are required to be consistent with the uniform system of accounts, provide a considerable part of the information necessary for this procedure. Next is the classification of these power pool costs to either demand or energy. The last step is the allocation of costs which is the division of the classified costs between the wholesale customers and the Company's other customer groups.

---

[20] See Appendix C for § 205(e) and § 206(a) of the Federal Power Act.

Power Pool.—A first issue to be resolved in this case is thus to delimit the costs to be included in the power pool, which will then serve as the basic costing unit for calculating the costs of service to the wholesale customers.

Here there is a choice between including in the power pool only the separate costs of Wis-Mich, or rolling together the costs attributable to all of the facilities that serve the wholesale customers, whether owned by Wis-Mich or by its parent, Wis-Elec. Intervenors supported the use of the rolled-together basis, pointing to the material dependence of the Wis-Mich system upon power generated by Wis-Elec steam plants, to the substantial operating integration of the two companies and to their interlocking directorates and officers. The Company and Staff position, adopted by the Examiner, would observe the separate corporate entities and count in the power pool only the costs of Wis-Mich for serving the wholesale customers.

We agree that it is entirely appropriate to roll together in the power pool all costs associated with supplying service at wholesale, especially where, as here, there exists a parent-subsidiary relationship which furnishes an acknowledged basis for piercing the corporate veil. However, piercing the corporate veil is not an end in itself and the facts of this case show that the wholesale customers stand to gain nothing by the use of a rolled-in base. The physical facts certainly do not compel a rolled-in treatment. The respective service areas of the parent and subsidiary are completely separate, and while the two systems are interconnected, they are not thoroughly integrated. The intercompany energy transactions are metered and recorded, and the computation of the cost of service to wholesale customers on a separate company basis poses no unusual technical problems. Under the circumstances we agree with the Examiner that the power pool should be limited to the costs of the wholesale supplier, Wis-Mich.

Cost Classification and Cost Allocation.—Next we turn to the subject of classification of costs between demand and energy. In the regulation of electric rates it has been the custom to classify "fixed" costs as demand-related and "variable" costs as energy-related. Fixed costs have been generally defined as costs that do not vary with output, but are related to system capacity and thus to the plant investment; variable costs are those that vary with output and are incurred as utility service is being rendered. The costs to be assigned to each category are fairly well defined but as this case reveals are still a source of dispute.

All three of the participating parties have classified certain costs which they assume to be "fixed costs" to the energy-related component. Although they agree on the principle that a portion of such costs should be classified to energy, they differ as to the amount.

The Staff and the Company propose a modified fixed-variable classification of costs between demand and energy, *i.e.*, they assign certain amounts to energy which have traditionally been considered to be fixed. In classifying the pool costs, the Staff assigned to energy all production expenses, exclusive of the demand portion of purchased power costs. It also assigned 30 percent of all hydro costs (except hydro operation and maintenance) to energy, because about 30 percent of the effective capacity of the Company's hydro plants is available to generate energy during periods of flow in excess of adverse flow conditions. Other costs, including the demand portion of the purchased power costs, were classified to demand. The Staff's classification results in assignment to energy of about 20 percent of costs which it considers as "fixed." The Company's classification, generally, does not differ from the Staff's."

The Cities propose to import into the electric power field the so-called ***Atlantic Seaboard*** method of classification of costs which has been the source of much controversy and little satisfaction in the natural gas field. The method classifies 50 percent of all fixed costs to demand and 50 percent to energy. Stripped of its provocative title, Intervenors' proposal simply allocates the fixed costs in proportion to the average of (a) relative peak period use and (b) relative average use during the year. (Average use is annual kwh divided by 8,760, the number of hours in a year.) If the *Seaboard* principle is stated in this form one can more readily understand the claims made for it by the Intervenors, that it ". . . gives equal weight to the dual function of the generators, dams and transmission lines which are to serve the customers all year around . . . as well as to meet the collective peak requirements at points of high demand." (I. Br., p. 54.)

In classifying costs, we find the Staff correctly included in the energy component certain of the Company's steam production costs and hydro costs which are normally considered fixed. Staff also properly classified the cost of purchased power on a per-billed basis, which results in a larger classification of costs to the energy component than under the modified fixed-variable classification employed by Staff and Company. (The revenues assigned to energy on a per-billed basis were $5,238,552, as compared to $3,559,598 under Staff's cost-of-service. Exhibit S–17.) Such classification would allocate to the high load factor customer who uses the system more intensively a somewhat greater share of fixed costs for the same demand than the low load factor customer, although not as great a portion as Intervenors suggest.

Next is the question of allocation. The allocation factors applicable to the energy-related costs are generally determined on the basis of annual kwh use and are rarely in issue. The appropriate allocation factors applicable to demand costs and the portion, if any, of demand-related costs to be assigned to the energy component are very much in dispute.

Many methods have been suggested for allocation of demand costs. Most of these were designed for the purpose of allocating costs among the various groups of retail customers served by an electric company rather than for the allocation of costs between wholesale and retail sales. Some of the methods were also intended to provide an incentive to shift loads from a company's peak periods to off-peak periods, a purpose that is sometimes practicable where ultimate consumers are concerned, but is usually much less feasible for wholesale customers.

Both Company and Staff use as a point of departure the so-called peak responsibility method of allocation which as its name implies allocates the demands costs strictly on the basis of peak use. The Staff and the Company, however, depart from the strict application of the peak responsibility method by using an average of four separate peaks occurring in four different months in the winter season to develop the relative use factors for allocation of costs classified as demand costs. The demand allocation ratio of 15.69 percent so determined is approximately halfway between the average of the four peak months (15.92 percent) and the average of all 12 months (15.43 percent).

Cities propose the use of a modified peak responsibility method of demand cost allocation which differs from that proposed by the Company and the Staff in that it uses an average of five coincidental peaks occurring on two successive days. The effect of this method, all other things being equal, would be to allocate to high load factor customers a greater portion of fixed costs than that which results from the Company's and Staff's proposals.

It appears, therefore, that all three parties agree that a modification of both the strict fixed-variable cost classification and a modification of the traditional peak responsibility method are necessary to obtain a reasonable result. The issue in the case is the extent to which so-called fixed costs should be classified in the energy component and the proper manner of modification of the traditional peak responsibility method.

The Commission is not prepared to endorse for general application any single method of cost allocation. Peak responsibility was used as a point of departure in this case, as it is used in many others, because it was the only method for which data could be obtained. There are other well-recognized methods of cost allocation which may be appropriate in other cases, such as the non-coincident demand method, the average and excess demand method, and others which take into account the time incidence of customers' peak demands, the duration of such demands, and relation of such demands to the time and magnitude of the system maximum demand. However, the application of these allocation methods requires demand metering equipment that was not available here.

Under the non-coincident demand method capacity costs are allocated in accordance with the maximum demands of the various loads on the system. That is, cost is allocated to a given load in the ratio of its maximum demand to the sum of the maximum demands of all loads at the appropriate costing level. The effect is to assign some costs to all customer groups in accordance with their individual demands regardless of the relationship of such demands to the system peak.

Under the average-excess demand method capacity costs (C) are divided into two parts in accordance with the system load factor (L). The portion equal to LC is allocated to customer classes on an energy use or average demand basis, and the balance (1–L)C is allocated on the basis of excess demands (the maximum demand of a load less its average demand). The effect of the average-excess method is to emphasize the extent of use of capacity, resulting in allocation of an increasing proportion of capacity costs to a customer as his load factor increases.

In our opinion a cost allocation to be reasonable must recognize the relative energy use either in the classification of costs, or in the allocation of the demand costs, or in a combination of the two. All parties have recognized this principle but have differed in the effect given to it in their presentation.

We find that on this record a reasonable result would be reached if the demand costs are allocated to the wholesale sales on the basis of the average of relative use by the wholesale customers at the time of the 12 monthly system peaks. This method recognizes the fact that electric generation and transmission facilities are installed for the purpose of meeting the demands season to season, month to month and day to day and not just the maximum load on the system at any one given time or any one segment of the year. The monthly peaks have an important effect on total capacity requirements, inasmuch as they determine the extent to which generating equipment may be taken out of service for maintenance and repair. Also, this method appears to be especially applicable in the present case in view of the fact that the monthly peak loads are not substantially different from one another. The minimum monthly peak load of the four months used by the Staff and the Company was approximately 95 percent of the annual peaks. The minimum monthly system peak load during the test year of 191,828-kw uses more than 89 percent of the annual peak. It is worth noting that both the four-month average used by the Staff and Company and the 12-month average used herein are weighted averages so that the months of higher peaks are given greater weight than the months of lesser peaks.

In utilizing the 12-month demands so derived coupled with the Staff cost classification which we have adopted, the resulting demand allocation factor provides a wholesale cost which falls between the results that would follow under the *Seaboard* principle (low) and those ordinarily obtained from a rigid application of the fixed-variable, peak responsibility principle (high). We believe that such a result fairly allocates costs between the wholesale customers and the retail customers on Wis-Mich's systems and gives proper recognition to system operations.

Rate of Return.—As has often been noted, rate of return is one of the most difficult and at the same time most basic of regulatory issues. As indicated in the *Bluefield* and *Hope* cases,[11] rates of return should be generally equal to that on investments in other businesses with corresponding risk, must be sufficient to insure the financial soundness of the utility and adequate to maintain credit and enable the raising of money.

Extensive rate of return studies were presented in evidence by Staff and Company witnesses. The Intervenors offered no direct evidence on the issue of fair return but argued for a return of 5.55 percent citing the Commission's decision in *South Carolina Generating Company*, 16 FPC 52, which is the Commission's most recent decision in an electric rate case.

The Examiner, although approving the general approach of the Staff presentation, concluded by accepting the Company's "true claim" for the rate of return actually produced by the proposed rate increase of between 6.1 percent and 6.2 percent, which was approximately the return prescribed by the Wisconsin Commission in the Company's retail rate case. The Examiner's determination does not represent a judgment based on the rate of return evidence in this case but on the contrary assumes the correctness of the Company's rates as filed and therefore cannot be accepted. Such an assumption is comparable to the Examiner's decision in *Natural Gas Pipeline Company of America*, 14 FPC 212, where we held that the Examiner was not justified in approving proposed rates resulting in a 6.1 percent return as not constituting a "material departure" from the fair and reasonable rate of 6 percent.

Wis-Mich is a subsidiary of Wis-Elec and we recognize that in applying the recognized criteria for the proper rate of return the needs of the parent rather than the subsidiary should be given primary consideration because it is the parent which obtains the capital from the open market. However, as indicated by the evidence presented by the Staff, the capital structure and debt service cost of the parent and subsidiary in this case are reasonably comparable and we shall therefore consider Wis-Mich's rate of return independently.

The Company argues for a 6.5 percent over-all rate of return on the basis of its evidence and its test year capitalization of 40.9 percent common equity, 7.7 percent preferred stock and 51.4 debt. A 6.5 percent over-all return would yield 10.5 percent on common equity which the Company claims is necessary to attract new capital at reasonable cost. The Staff witness testified that a rate of return range of 5.75 percent to 6.25 percent would be reasonable for Wis-Mich and recommended 6 percent as the fair rate of return. A return in the range suggested by Staff would yield from 8.675 percent to 9.897 percent on common equity. The Intervenors in arguing for a 5.55 percent rate of return argued that this would produce a 8.27 percent return on equity and that this would be reasonable.

We have carefully considered the arguments of all the parties and we conclude that a return of 6 percent is fair and reasonable and meets the numerous tests set forth in the various cases cited by the parties.

Both the Staff and Company witnesses gave consideration to compilations of rates of earnings on book equity of selected electric utilities. The evidence on these utilities does not indicate whether the listed returns were in line with the proper rate determinations for the various companies as set by regulatory agencies. On the contrary, one group of 27 companies considered by the Company witness included several companies located in states that are regulated on a fair value basis and 9 companies located in states in which there is no regulation of electric utilities at all. The Company exhibit does not indicate the equity ratios of these 27 companies which adds to the difficulties of evaluating the comparability of these return figures.

---

[11] *Bluefield Waterworks and Improvement Co. v. P.S.C.*, 262 U.S. 679; *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591.

The contention of the Intervenors that a 5.55 percent return is sufficient was not supported by the introduction of any evidence into the record. It is based solely on the Commission's *South Carolina Generating Company* decision where the facts indicated the circumstances were entirely different. There a 5.55 percent over-all rate of return was found reasonable for a high debt company that owned a single generating plant. South Carolina's common equity ratio of 27.8 percent was unusually low and the 5.55 percent over-all return yielded 10.5 percent on common equity in contrast to the 8.27 percent it would yield here.

The Staff approach which took into account the necessity for consideration of a variety of factors and the inevitable exercise of judgment which must balance the various competing interests at stake is more in accord with the guidelines for determining rate of return previously laid down by this Commission.

The 25 electric utilities selected by the Staff for comparison purposes indicate an average earnings price ratio for these firms of 4.7 percent which compares favorably to the earnings price ratio of 5.1 percent for Wis-Mich. The return on equity of about 9.3 percent which would result from a 6 percent over-all return is in line with the past equity earnings of the parent and such earnings have apparently proved to be no detriment to the ability of the Company to carry out its public utility obligations or to raise funds when needed.

Tax Matters.—Another area of contention involves tax allowances—specifically, the handling of the investment tax credit and of the depreciation tax options in computing the Company's cost of service.

In light of the 1964 Revenue Act amendments the Commission's alternatives with regard to the investment tax credit for public utilities eligible for the 3 percent credit are limited to accepting the treatment chosen by the Company, or requiring annual flow-through of benefits of the tax credit to the ratepayers to the extent only of a fraction of the credit proportionate to the average useful life of the property.[12] The President of Wis-Mich testified that the Company considers a flow through of 48 percent of the credit and normalization of the remaining 52 percent to be the best treatment of the matter. [13] We therefore approve this method of treatment for fixing Wis-Mich's wholesale rates.

We have heretofore taken the position that, if a utility chooses to utilize a liberalized depreciation option permitted by the tax laws, the benefits thereof must be flowed through to ratepayers within the operating year.[14] Intervenors would have us go one step further and set the rates of a regulated utility as if it voluntarily used liberalized depreciation (as well as guideline service lives), even though the utility in fact chose to employ straight-line depreciation, as Wis-Mich has done. Intervenors' position proceeds from the proposition that public utilities are obligated to operate with all reasonable economies, including the lowest reasonable tax burden, and to pass these economies along to the ratepayer.

While there can be no dispute with the principle that utilities should operate with maximum efficiency, we do not believe this rule leads to the conclusion urged by the Intervenors. On this record it is clear that this Company has never used liberalized depreciation and has chosen to apply straight-line depreciation to its property as a matter of business judgment. Its officers firmly believe this to be the wisest course in the long range interests of the Company and its customers. The case that has been made for requiring the Company to use (or for assuming it has used) guideline service lives is not persuasive, either on the facts of this case or as a general principle, and we could not accept the Intervenors' position in this regard. As to liberalized depreciation, the tax laws give management the option not to take liberalized depreciation and we do not believe that on this record we should in effect deprive the Company of its option under the tax law.

---

[12] Pub. L. 88-272, 78 Stat. 35.

[13] Ex. C-37, p. 27; Tr. pp. 295-298.

[14] *Alabama-Tennessee Natural Gas Company,* FPC Docket No. G-5471, Opinion No. 417, issued February 3, 1964, 31 FPC 208.

Reconciliation of Other Disputed Cost of Service Questions.—Aside from the matters thus far reviewed, there remain only three items in the cost of service computation on which there is disagreement. These items involving at most a total of about $59,000, are as follows: $21,000 for annual costs relating to Appleton Steam Plant,[25] a "cold standby" plant that Wis-Mich would include in its cost of service but Staff would allocate to the parent, Wis-Elec; $22,477 for disallowance of certain substation and transmission properties which Staff contends serve retail outlets only; and $15,192 representing some minor variations in classification of production costs to demand and energy.

We agree with the Staff that the Appleton Steam Plant costs should be excluded from the power pool, since this plant, which is nominally owned by Wis-Mich, has been maintained on standby and operated exclusively to meet emergency needs of Wis-Elec system at considerable additional cost to Wis-Mich. The Examiner apparently felt that approximately half of this sum should be included in the Wis-Mich power pool because the Appleton Plant might be of some potential standby value to Wis-Mich, but we do not find this reasoning persuasive.

We also agree, as does the Examiner, that the disputed substation and transmission items should not be included in the wholesale cost of service, since they properly relate exclusively to retail service. We concur in the Staff's judgment on the disputed questions of classification.

Applying the findings and conclusions we have made (pp. 1452–1458 above) on the cost of service issues in this case, the total revenues produced by this cost of service for the test year would be $1,766,778, which amounts to a reduction of approximately $50,000 from the increased rates proposed by the Company. There is set forth below a comparison of the amounts of revenues under the proposed and the old rates with the allocated costs suggested by the parties, and the costs resulting from classification and allocation we have found reasonable under the circumstances of this case:

Revenues (normal hydro):[1]	
Proposed rates	$1, 815, 760
Old rates	1, 582, 293
Increase	233, 467
Allocated costs:	
Company	[2] 1, 889, 732
Staff	1, 782, 072
Cities	[3] 1, 339, 050
Commission	1, 766, 778

[1] Exhibit No. C-3A, Schedule 22.

[2] At 6.5 percent rate of return, Exh. C–3A, Schedule 24A (revision of 5/14/63). At 6 percent rate of return the amount is $1,848,460.

[3] Derived from combined system costs, at 5.55 percent rate of return, reflecting liberalized depreciation and exclusive of certain facilities includable in the power pool.

---

[25] Tr., pp. 1588–93. Staff Brief, Sept. 20, 1963, p. 34.

The derivation of the Commission's allocated cost of service for the test year is shown in Appendix A.

Rate Design.—The rate schedule at issue here is denominated as "Rate for Primary Service to Electric Public Utilities." It is purported to contain the rates and related terms identical to those approved by the Wisconsin and Michigan Commissions for large retail users. The Company seeks to justify the use of this new rate schedule which makes numerous changes in the rate design for sales to the nine wholesale customers without any support other than the provisions of its contracts. This will not suffice.

The burden of supporting the provisions of any change in a rate schedule is upon the Company. Since the Company failed to carry out its obligation on the record, we believe that under the circumstances of this case in order to obviate further delays in establishing reasonable rates for Wis-Mich wholesale customers, the public interest will be served if we determine and set forth an appropriate rate schedule based upon the cost level herein determined.

While the total increase proposed by the Company amounts to about 14.7 percent, the increases to individual customers vary from about 4 percent to about 31 percent. Through changes in the use blocks, differing increases in charges in the various use blocks, and a change in credit for delivery voltage, the highest percentage increases are generally proposed for the smaller of the nine customers. Also involved in the difference in percentage of increases is the fact that two customers, Crystal Falls and Upper Peninsula Power Company, had been served under demand and energy rates which resulted in higher charges than those obtainable under the rate applicable to the other seven customers.

Our examination of the old and proposed rates leads to the conclusion that percentage increases to individual customers should be as nearly identical as possible. The record does not show any reasons justifying the discriminatorily higher percentage increases proposed for the smaller customers. We believe that unless the Company makes such a showing, the general effect of proposed higher rates should be a relatively uniform distribution of the requested increase. This requires the establishment of new use blocks and the unit rates applicable to each block, as well as determination of the proper provision for high voltage discount.

Eight of the nine customers whose rates are proposed to be increased have been receiving a discount of 7 percent of the gross monthly bills for taking service at Company's "primary" or "transmission" voltage. These service voltages ranged from 2.3-kv to 34.5-kv. Crystal Falls, the customer which did not receive such a discount, obtained service at 12.47-kv.

The over-all voltage credit under the new rate would amount to $42,327, compared with the credit of $116,773 under the prior rates. It would apply to 6 of the 9 wholesale customers, 10 cents per kw for those with voltages of 12-kv to 25-kv and 15 cents per kw for voltages in excess of 25-kv.

The 7 percent voltage credit provision in the old rate schedules apparently was not based on any cost considerations—witness its application to service at as low as 2.3-kv. While the levels of proposed credits appear to conform to costs, we think that voltage discounts should apply for service at power pool voltages, which in the case before us are 34.5-kv and higher. Otherwise credits will be given to customers receiving service at lower than pool voltage, even though the Company incurs transformation costs to render such service. This determination will limit the applicability of the voltage discount provision to four customers, reducing the amount of the credit as proposed by the Company by only $1,336 from $42,327 to $40,491. This difference, of course would not represent a windfall to the Company, being distributed to all customers through the level of rates herein determined.

The Cities contend that the costs utilized by them for the rolled-in system should be adjusted to reflect the downward trend in fuel costs. While for reasons previously stated, we are not piercing the corporate veil in this case, we nevertheless agree with the Cities that the reduced cost of fuel on the Wis-Elec system should be recognized insofar as it is reflected in the bills paid by Wis-Mich to the former for purchased firm energy.

The rate schedule which Wis-Elec uses for billing Wis-Mich (Wisconsin Electric Power Company, FPC Electric Rate Schedule No. 3, as supplemented by Supplement No. 3) contains the following provisions with respect to the charge for firm energy:

> The energy charge for firm power shall be 0.65 cent per kilowatt-hour, based upon a cost of 30 cents per million B.t.u. for coal delivered in the Electric Company's plant bunkers. Whenever said cost of coal is greater or less than 30 cents per million B.t.u., the energy charge shall correspondingly be increased or decreased 0.015 cent per kilowatt-hour for each 1 cent increase or decrease in the cost to the Electric Company of one million B.t.u.

The annual reports (F.P.C. Form No. 1) filed by Wis-Mich with the Commission show that in 1961, the test year used here, it purchased 642,832,000-kwh of firm energy from Wis-Elec. The payment for this energy included a charge of $155,939 for fuel cost adjustment, or 0.02426 cent per kwh; and in 1963 it was 0.00506 cent. 12.56 percent of the adjustment, or $19,586 is applicable to wholesale business and is included in the $1,766,778 cost of service we have determined for the nine wholesale sales in the test year. Had the 1962 unit adjustment been in effect in 1961, the total charge arising from the fuel adjustment clause would have been $130,366 (0.2028 cent times 642,832,000), or $25,573 less than actual. The amount of such a reduction applicable to the sales here in question is $3,212 (12.56 percent of $25,573). Similarly, had the 1963 unit adjustment been in effect in 1961, the total charge under the fuel clause would have been $32,527, or $123,412 less than actual. The amount of such reduction applicable to the sales here in question is $15,501. These figures show a reduction in costs to Wis-Mich which should be reflected in its wholesale rates.

The proposed wholesale rate of Wis-Mich does not contain a provision for billing adjustments to reflect variations in the cost of fuel, although the rate proposed to be superseded contains such a clause. We believe that a clause providing for billing adjustments to reflect changes in the cost of fuel should be included in Wis-Mich's rates. However, since the Company does not purchase any fuel itself, its clause should provide for fuel adjustment charges or credits reflecting the amounts paid under fuel adjustment clauses of its suppliers. An appropriate adjustment clause would be as follows:

> The energy component of this rate shall be adjusted upward or downward to reflect the actual fuel cost adjustments on electricity purchased by the Company, such adjustment to be determined by dividing the sum of fuel adjustments paid by the Company on electric energy purchased by it during the second preceding month by the total kilowatt-hours sold during that month to all customers of the Company.

The schedule of rates hereinafter determined, coupled with this fuel adjustment clause, will insure that Wis-Mich's rates fairly reflect current fuel costs. However, the rate schedules under which Wis-Mich buys its electric energy are not before us and accordingly we do not undertake to pass upon the propriety of fuel adjustment clauses or the level of rates in such rate schedules.

The $1,766,778 wholesale cost of service for the test year which we have found reasonable for the nine sales here in question, and which the Company is entitled to recover through rates, is net after charges under fuel adjustment clause ($19,586), credits for level of service voltage ($40,991) and a one percent credit for prompt payment as proposed by the Company ($17,882). Thus the gross revenue from these rates is $1,806,075.[16]

The following schedule of rates will produce as uniform a rate increase as practicable for the various sizes of loads, load factors and voltage credits here involved:

Demand charge per kilowatt per month:	
First 1,000 kw of billed demand	$1.80
Over 1,000 kw of billed demand	$1.35
Energy charge per kilowatt-hour:	
First 200,000 kwh per month	1.0¢
Next 1,200,000 kwh per month	.9¢
Over 1,400,000 kwh per month	.8¢

The net revenue produced by the rate, applied to the sales in the test year presented in the record, would amount to $1,765,853, which is within $925 of the cost of service to the nine customers, a difference well within tolerable limits of rate design. The complete rate schedule which incorporates the above rate is included herein as Appendix B.[17]

The Company proposed the inclusion of a special minimum charge of $18.00 per kw per year for auxiliary service. Such charge would apply to two customers involved in this proceeding: Kaukauna and Crystal Falls. It is stated that the $18.00 charge is to replace a current $12.00 charge as provided for by the Company's retail rate VII-B. However, neither of the rate schedules on file with us for service, respectively, to Kaukauna and Crystal Falls contains a document designated as rate VII-B. The Company has agreed that the Kaukauna contract does not permit such a change to be filed as to it, but the Crystal Falls contract has been cancelled.

We conclude that the proposed charge is not appropriate in any event since the record contains no justification of the provision for such a charge.

On this record we see no reason for eliminating the common restriction on sales for resale in the proposed supplements.

The proposed supplements are incomplete in that they fail to include the specific text of the "Company's Rules and Regulations." The same is true, incidentally, of the rate schedules on file prior to the submission of the supplements here in question. The Federal Power Act and our Regulations thereunder require that filed rate schedules applicable to services subject to our jurisdiction shall be complete.

Summary and Conclusion

We have found that the increased rates filed by Wis-Mich are unduly discriminatory, and are unjust or unreasonable in the several respects indicated in the "Cost of Service" section of this opinion. As we have already pointed out the record in this case does not contain the data necessary for determining the rate to the Oconto Co-op, and we are not passing on the issue of whether service to Oconto can be separately classified.

We are therefore rejecting the discriminatory filing and permitting the Company to submit new filings for all of its wholesale customers which are just and reasonable in accordance with cost of service principles set forth herein and which are also nondiscriminatory. The new filings may include any difference in treatment for the Oconto Co-op from the rates prescribed for the municipalities that the Company believes it can justify. In accordance with our findings of undue discrimination we are also ordering that past rate collections in excess of the old rates should be refunded with interest at 6 percent.

---

[16] $1,766,778 — $19,586 + $40,991 + $17,882.

[17] Omitted in printing.

The Examiner relieved the Company from any requirement of paying interest because he found the delay not attributable to the Company. We consider this an inadequate basis for omission of interest, even indulging the doubtful assumption that the delays can be faulted to Intervenors and Staff. The excess revenues extracted from Intervenors have been available to Wis-Mich and unavailable to Intervenors. The Company should be required to pay for the value of this use. In view of the question that has been raised concerning the payment of interest, and because no interest rate was established in our initial notice of hearing, we are fixing an interest rate of 6 percent in this case. We intend in future electric rate cases, however, to apply the 7 percent rate which prevails in natural gas rate proceedings.

The Commission further finds:

(1) The proposed increased rates filed by Wisconsin Michigan Power Company on January 19, 1962, and suspended by the Commission until August 30, 1962, are unduly discriminatory and are unlawful within the meaning of Section 205(b) of the Federal Power Act.

(2) The proposed increased rates filed by Wisconsin Michigan Power Company referred to in paragraph (1) above are unjust and unreasonable within the meaning of § 205(a) of the Federal Power Act to the extent they are more burdensome to the wholesale customers than the rates set forth in Appendix B hereof.*

The Commission orders:

(A) The proposed increased rates filed by Wisconsin Michigan, referred to in paragraphs (1) and (2) above, are hereby disallowed. The rates in effect prior to August 30, 1962, shall continue in effect until superseded by an appropriate filing consistent with this opinion.

(B) Within 45 days from the date of issuance of this opinion Wisconsin Michigan shall refund to the wholesale customers listed below the excess of the total amounts charged and collected since August 30, 1962, over and above the amounts which would have been charged for sales to said customers if computed in accordance with Wisconsin Michigan's rate schedules and supplements thereto, applicable up to that date, with interest at the rate of 6 percent per annum from the date of payment to Wisconsin Michigan to the date of refund. The aforesaid wholesale customers and applicable rate schedules are as follows:

(Clintonville, Wisconsin), Rate Schedule FPC No. 24 as supplemented;
(Crystal Falls, Michigan), Rate Schedule FPC No. 36, as supplemented;
(Florence, Wisconsin), Rate Schedule FPC No. 38;
(Kaukauna, Wisconsin), Rate Schedule FPC No. 43, as supplemented;
(New London, Wisconsin), Rate Schedule FPC No. 41;
(Oconto Falls, Wisconsin), Rate Schedule FPC No. 39, as supplemented;
(Shawano, Wisconsin), Rate Schedule FPC No. 33, as supplemented;
(Upper Peninsula Power Company), Rate Schedule FPC No. 25, as supplemented; and
(Wisconsin Public Service Corporation), Rate Schedule FPC No. 12, as supplemented.

---

*Omitted in printing.

(C) Within 15 days of making the refunds required by paragraph (B) Wisconsin Michigan shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with copies of releases from each of the wholesale customers listed in paragraph (B) above.

(D) The Examiner's decision issued January 7, 1964, herein to the extent not inconsistent herewith is hereby adopted as part of this opinion and order.

(E) Exceptions not granted herein are hereby denied.

Commissioner BLACK *concurring.*

APPENDIX A

MICHIGAN WISCONSIN POWER COMPANY WHOLESALE COST OF SERVICE

Computed at 6% Rate of Return, 52% Federal Income Tax and 48% Flow Through of $80,000 Investment Tax Credit

		Total	Demand	Energy
1	Cost of service—pool:			
2				
3	Total operating expenses [1]	$10, 208, 699	$3, 918, 365	$6, 290, 334
4				
5	Return at 6%	1, 456, 212	1, 211, 008	245, 204
6	Federal income tax	1, 010, 724	840, 533	170, 191
7	State income tax	78, 306	65, 120	13, 186
8				
9	Total return and income taxes	2, 545, 242	2, 116, 661	428, 581
0				
1	Subtotal (line 3 + line 9)	12, 753, 941	6, 035, 026	6, 718, 915
2	Other electric revenue	(60, 853)	(60, 853)	
3				
4	Cost of service—pool	12, 693, 088	5, 974, 173	6, 718, 915
5				
6	Allocation to wholesale customers:			
7	Demand ratio—15.43%		921, 815	
8	Energy ratio—12.56%			843, 896
9	Subtotal	1, 765, 711		
0	Exclusive use	20, 797		
1	Appleton plant adjustment	(21, 000)		
2	Substation adjustment [2]	1, 270		
3				
4	Cost of service to wholesale customer	1, 766, 778		
5				

[1] Exhibit S-1 as corrected, line 27.
[2] Staff Brief, 9/20/63, footnote 41.

APPENDIX C

Pertinent Provisions of the Federal Power Act

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

Sec. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form

as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [49 Stat. 851; 16 U.S.C. 824d]

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

Sec. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission

or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

BLACK, Commissioner, *concurring:*

I agree with the Commission's decision in this case that we should not compute cost of service to reflect the assumed use of liberalized depreciation. This determination should not be interpreted, however, as a policy decision of necessarily general application, and I feel our opinion requires elaboration.

I am concerned that the implication may be drawn from the language of the opinion that we do not intend to examine into the exercise of "business judgment" in any management decision not to use liberalized depreciation. A principal function of this agency is to protect against the erroneous exercise of managerial responsibility which is inimical to the public interest. That a company's "officers firmly believe this to be the wisest course in the long range interests of the company and its customers" is not a substitute for the judgment of the Commission in the discharge of its statutory responsibilities.

Wisconsin Michigan has never elected to take liberalized depreciation—even during the period when this Commission permitted normalization and allowed 1.5 per cent return on the reserve. While this factor alone is not conclusive, it at least indicates that the company's long standing depreciation practices were not dictated by considerations of changing regulatory policy. Should we be faced in the future with a situation in which a regulated utility has abandoned liberalized depreciation to avoid the effects of our recent decision in *Alabama-Tennessee Natural Gas Company*, Docket No. G-5471, *supra* p. 208 or for any reason not consistent with the public interest, in my view a different result would be indicated.

I am also uncomfortable with the Commission's suggestion that to "deprive the Company of its option under the tax law" might be a pivotal consideration. The Solicitor General of the United States in his brief *amicus curiae* before the Supreme Court in *United Fuel Gas Company* v. *Public Service Commission of West Virginia*[1] stated:

> **Where the Code provides such an option, it is in nowise inconsistent with the intent of Congress for a regulatory agency, State or federal, to require a public utility to take advantage of the tax savings and pass them on to its rate-payers. The mere fact that rapid depreciation procedures are not mandatory as a matter of federal tax law does not bespeak a congressional purpose to relieve taxpayers of their obligations under other federal statutes or under State law. In particular, there is no purpose to immunize public utilities from otherwise valid regulations requiring them to utilize available cost-savings opportunities.**

It is clear that Congress in enacting Section 167 of the Code did not intend to bind the hands of the Federal Power Commission and we should not use language implying that we believe otherwise.

---

[1] Memorandum for the United States and Federal Power Commission as *Amici Curiae*, in the case of *United Fuel Gas Company* v. *Public Service Commission of West Virginia* (O.T. 63, No. 527) pp. 16–17; appeal dismissed for want of a substantial federal question, 376 U.S. 784, 84 S. St. 1133.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON THE RATE INCREASES FILED BY THE WISCONSIN MICHIGAN POWER COMPANY

(Issued January 7, 1964)

Table of Contents

Page

I. *Nature of the case and questions presented* 1466
II. *A procedural history* 1468
III. *The nature of the sale* 1469
IV. *Is the increase barred by contract, under Mobile?* 1471
  (A) The contracts mean what they say 1472
  (B) The Staff's contentions 1473
  (C) The city interveners' contentions 1475
  (D) The Florence contract 1476
  (E) The Kaukauna contract 1477
  (F) The issue is foreclosed 1481
V. *Discrimination with rate charged to REA electric cooperatives* 1483
  (A) What the issue is 1483
  (B) How the issue arose 1484
  (C) The "position" of the parties 1486
  (D) The service to the Oconto Electric Cooperative 1487
  (E) The law against discrimination 1490
  (F) The result as to discrimination 1491
VI. *Unitization of costs of service* 1491
  (A) How to verify the cost of power purchased from the parent company? 1491
  (B) Staff study shows 4.38% return on the sale 1492
  (C) Verification is essential in view of the common ownership 1493
  (D) The unitized cost study is less accurate than Staff's method 1493
  (E) The operation of the contract between the companies is controlled 1495
VII. *Cost of Service—Wisconsin Michigan* 1496
  (A) Legal basis 1496
  (B) Net cost developed 1497
  (C) Reconciliation of costs 1497
VIII. *Tax allowances* 1498
  (A) Income tax depreciation formula 1498
  (B) Investment tax credit 1500
  (C) New tax rates in effect 1500
IX. *Rate of Return* 1501
X. *Other questions* 1502
XI. *Findings and order* 1503

ELLIS, *Presiding Examiner:*

I. Nature of the Case and Questions Presented

This is an electric rate case under Section 205(e) of the Federal Power Act, which began nearly two years ago by the filing of certain increases for the rates for wholesale electric service rendered by the Wisconsin Michigan Power Company to nine distributor customers in Wisconsin and Michigan. Revenues are to increase under the new rates by 14.7 percent,[1] and since the Wisconsin Michigan Power Company's business is largely intrastate and retail, it is their program that the new wholesale rates continue to equate the rates being charged to their large retail customers (increases for which were recently approved by the two state commissions). The wholesale rates are subject to the Federal Power Act, and under authority of that Act the Federal Power Commission suspended the increases for the maximum period of five months, after which time, that is on August 30, 1962, the new wholesale rates went into effect by operation of law. Any part of the increase collected which is found by the Commission not to be justified is "subject to further order of the Commission."

---

[1] But, as computed from Ex. C–8A, Schedule 22, the increase ranges widely among the nine cities from 3.7% for Crystal Falls to 31% for the town of Florence.

Six of the nine municipal or wholesale distributors joined in a complaint protesting the proposed increase and presented their own counter-studies of the cost levels thought truly allocable. They also raise a number of fundamental legal objections casting a cloud upon some or all of the increases.

The several issues noted in the Commission's notice of hearing and those raised by the parties include the following:

(a) *Contract:* Whether the rates fixed by the long-term contracts with the cities are binding upon the company and therefore estop the filing of increases under the Federal Power Act or whether the savings clauses in the same contracts are effective to remove any such bar.

(b) *Discrimination:* Whether the differences between the new and higher rates being charged the nine city distributors over the rates remaining in effect for one or more other wholesale customers constitutes an "unreasonable difference" or an "undue prejudice or disadvantage" prohibited by Section 205(b) of the Federal Power Act.

(c) Whether the company's *cost of service*, against which the reasonableness of the new rates is to be tested, should be a unitized or integrated cost study including not only the immediate supplier (Wisconsin Michigan) but also the allocable costs of its parent (Wisconsin Electric Power Company), from which Wisconsin Michigan buys two-thirds of its power supply; alternatively, whether the price paid by the company to its parent company under their filed rate represents a reasonable and justifiable cost for the power so purchased.

(d) Regardless of which cost of service is used—that is, the combined operation of the two companies or Wisconsin Michigan's alone—whether the income tax allowance in the cost of service shall be reduced, effective when the new rates went into effect over a year ago, to allow only that amount for income taxes which the company would have paid to the Internal Revenue Service had the company elected to take advantage of the accelerated rates of depreciation provided by Section 168 of the Internal Revenue Code, the new and higher guideline rates of depreciation announced by the Internal Revenue Act beginning in 1962.

(e) A number of questions related to the *allocation* of expenses between "demand" and "energy" and the assignment of the total costs used in the service to the nine wholesale customers.

(f) In computing the cost of service based upon the 1961 test year, whether a number of *adjustments* are required to reflect indications of later change.

(g) The level of the *rate of return* to be allowed in connection with the cost of service; also certain minor questions as to the rate base applicable.

(h) A possible question of *rate design* and of certain special tariff provisions.

There is no jurisdiction question since this same service—that is, the company's sale of electric energy at wholesale in interstate commerce to these cities—was considered by the Commission some years ago and determined to be subject to the Federal Power Act, and this was affirmed by the Court of Appeals for the Seventh Circuit. 197 F. 2d 472. It is stipulated in the present record that the jurisdictional facts underlying that decision have not materially altered (3T72),

II. A Procedural History

This case began in January 1962, with the filing of nine new rate schedules by the Wisconsin Michigan Power Company, to become effective March 30, 1962, as follows:

Supp. 3 to Rate Schedule FPC 12—Wisconsin Public Service Company.
Supp. 3 to Rate Schedule FPC 25—Upper Peninsula Power Company.
Supp. 3 to Rate Schedule FPC 36—City of Crystal Falls, Michigan.
Supp. 2 to Rate Schedule FPC 43—City of Kaukauna, Wisconsin.
Supp. 2 to Rate Schedule FPC 33—City of Shawano, Wisconsin.
Supp. 6 to Rate Schedule FPC 24—City of Clintonville, Wisconsin.
Supp. 1 to Rate Schedule FPC 41—City of New London, Wisconsin.
Supp. 2 to Rate Schedule FPC 39—City of Oconto Falls, Wisconsin.
Supp. 1 to Rate Schedule FPC 38—City of Florence, Wisconsin.

Just before the new rates were to go into effect, that is on March 29, 1962, the Federal Power Commission's order under E-7026 directed that a hearing be held concerning the lawfulness of the new rate schedules, and in the meantime suspended their effectiveness for a period of five months, so that the new rates could not go into effect until August 30, 1962. The Commission's notice lists the nine municipal distributors affected by the increased rates and cites the protest filed by six of them on February 26, 1962. Three grounds of the protest are stated, namely, the contract rate question, the reasonableness of the rate level, and the discrimination from the failure to increase at the same time the wholesale rates to certain rural electric cooperatives.

The Commission's order recites the following questions to be examined before the lawfulness of the rate can finally be determined: whether the rate schedules are justified, or result in excessive rates or charges, whether they place an undue burden on ultimate consumers or may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, whether the rates may produce an excessive return on the net investment properly allocated to the service to the nine customers, whether the allowances for purchased power from the parent company is excessive, whether there are reasonable allowances for operating expenses and plant investment, and for any cost adjustments to the test year.

The Commission's order did not fix the date of the hearing but provided for petitions to intervene, and in a few days there was received the petition on behalf of six of the nine wholesale customers affected by the increases (Cintonville, Florence, Kaukauna, New London, Oconto Falls and Shawano, all in Wisconsin); following which the Commission's order of May 22 permitted their intervention. However, in the meantime, that is on April 26, the Secretary's order issued directing that the hearing be held on June 4, 1962.

Because of the schedule ensuing, the prehearing conference contemplated by the FPC rules, Section 1.18, could not be called; instead, since no testimony had been served and the cross-examination could not then begin, the opening day of the hearing was converted into such a conference. At this time it developed that the company had supplied its basic cost justification with the filing of the rate increases and certain other information as requested from time to time by the Staff, including a number of proposed exhibits, with copies furnished to the counsel for the cities.

But on the other side, nothing or practically nothing had been done. The intervener cities were not prepared to furnish anything of consequence in support of the general allegation that the increases are unreasonable, nor had the Staff begun its program of verification. Whether or not so indicated to the Commission, neither by the time the order issued fixing the date of the hearing nor on the date of the opening "hearing" itself had the Staff yet had occasion to begin its field study and check of the company records. In the light of this impasse, it was the Staff's suggestion on the opening date that the evidentiary hearing be deferred until this field work was done. The indication was that this would require many weeks but might result in a considerable narrowing of the issues. So far as the cities are concerned, the forum was given to understand that they might bring in a few witnesses but that the cities' case "will not be lengthy at this point" (1T10). This was the reaction after the intervener cities had seen all or nearly all the material to be submitted by the company. Accordingly, a recess at least until the end of July was ordered with the concurrence of all parties.

An informal session on July 31 disclosed that the Staff examination was only beginning and the parties agreed to continue the case until September 18, 1962, with rebuttal testimony to be submitted in advance.

However, on August 31 the three parties filed a joint request for continuance to October 23, saying that the field work was not completed and that time was also required to work out possible areas of agreement or at least to limit the areas of disagreement. At the September 18 meeting it was revealed that the company had served upon the other parties a study supporting its cost of purchased power from its parent company, also a cost analysis concerning the service to the rural electric cooperatives. It had still not been found possible to complete and cross-serve direct and rebuttal cases of all sides, nor had the Staff position on the basic issues been stated, but its field work was completed. It now developed that an extensive series of conferences might be required for the purpose of working out a general settlement of the entire case, at least, that proposals and counter-proposals for settlement would be tendered. The settlement which was hoped for would, of course, have eliminated the need for any hearing, briefing, or initial decision. The cities undertook "right away" to get at the study of the new cost of service information lately served by the company. Because of the uncertainties no hearing date could be determined or agreed upon.

During the ensuing period the engineer witness for the cities made a total of three field trips to Wisconsin and there followed a great deal of exchange of data and continued negotiations toward settlement of the entire controversy. Finally, in January, it still appearing that the settlement efforts would be unavailing, the opposition parties were notified the hearing would be set in two weeks, whereupon the parties joined in filing on February 21, 1963, a proposed schedule for the service of the final testimony of the cities and of the Staff, for the service of the rebuttal testimony and for the resumption of the hearing, which was fixed for May 13, 1963, at Appleton, Wisconsin. This is the schedule that was followed and the hearing took place on 16 days through June 11, 1963, nearly all of it at Appleton. At the final session the parties concurred on a schedule of briefing which called for initial, answering and reply briefs, the final date for which became fixed and agreed as October 7, 1963. This was over a year after the new rates had gone into effect subject to refund (August 30, 1962) and over two years after the corresponding increase in the intrastate rates to the retail users had been authorized by the state commission (May 26, 1961).

III. The Nature of the Sale

It is significant that the service to the six cities at rates equal to the large-user retail rates is not a new one but has been continuous for at least 20 to 40 years and the rates have been on file here for many years. In 1949, a question arose concerning an indirect rate increase to the cities of Kaukauna, Shawano, New

London, Clintonville, the Oconto Electric Co-Operative and certain others; that is, a change was filed in the fuel adjustment clause of the filed tariff. The Commission issued an order to show cause to determine whether these sales are subject to the Federal Power Act, resulting in the decision of May 29, 1951, 10 FPC 170, to the effect that the sales are at wholesale and in interstate commerce and must be made only at the rates effectively on file with the Commission as required by the Federal Power Act. This ruling was affirmed by the Court of Appeals for the Seventh Circuit and certiorari was denied by the Supreme Court on April 13, 1953 (197 F. 2d 472, 345 U.S. 934).

The Commission's Opinion, 10 FPC 170, rather fully describes the company's operations, requiring it now only to be summarized to the effect that the company serves at retail and through the wholesale outlets referred to a large segment of northeastern Wisconsin, operating in two far separated divisions, the Southern Division comprising the area around Appleton, and several counties northwest of it, and the second, well over 100 miles north, comprising the Northern Division serving a number of retail and wholesale customers in the Upper Peninsula of Michigan and in the northeastern counties of Wisconsin. The two divisions are joined by a 138 kv transmission line, and the customers grouped at either end are served through a series of smaller transmission facilities operating at various lower voltages. Substantially all of the company's generation facilities are hydroelectric units located near the north end of the system, and they supply roughly one-third of Wisconsin Michigan's needs, varying considerably according to the season of the year. The remainder of the power supply is acquired by purchase, practically all of it from its parent company, Wisconsin Electric Power Company, which delivers to Wisconsin Michigan at a junction a little east of Appleton, some at other points. Small amounts of power are acquired from other independent power systems. Excess hydrogeneration may on occasion be sold to the parent company. In general, the needs of the company's customers are supplied through the company's hydrogeneration (about one-third) and through purchase of steam-generated power from its parent, Wisconsin Electric (nearly two thirds).

The company's wholesale business with the nine city distributors accounts for 8.2% of its total annual revenues, which come to slightly over $19,000,000.[2] The company's installed hydroelectric generating capacity totals 90,185 kw, which is to be compared with its 1961 system peak demand of 216,669 kw. The parent company's steam generating capacity is about 20 times greater than the other's hydro, since it serves primarily the populous area within 50 miles of Milwaukee. The extent to which the operation of the two companies is in fact a joint program for the production of power for all of the customers of both is discussed below, under the heading "Unitization of costs of service."

It has been Wisconsin Michigan's program to correlate their wholesale rates by the technique of charging the wholesale customers the same rate as that filed with the respective state commissions for service to the large-user retail class of customers. The rates had not been increased at least since 1937 and are about the lowest of any municipal purchase rates in the state of Wisconsin. Recently, the company has filed with the Public Service Commission of Wisconsin, received approval and put into effect an increased rate for the retail users (which, of course, are subject to the state's jurisdiction). The new rates for the retail service area within Wisconsin went into effect in May 1961, some months before the company filed its corresponding increase for the wholesale rates which is here in issue. Similarly, the Michigan Public Service Commission in 1960 approved an increase to the same level for the retail customers in the Upper

---

[2] Ex. C-3A, Sched. 20. From Ex. S-4 is taken the system map reproduced herewith.

Peninsula of Michigan, and that increase is now proposed for the two Michigan wholesale customers. The concept is important that the company has consistently maintained a policy of the same rates for its large users and for its wholesale customers; that the large users' retail rates were increased in 1960 and 1961; and that the corresponding increases for nine of their ten or more wholesale customers is the subject of this proceeding. The "ten" wholesale customers is explained in this way: Six are city distributors whose rates have now been increased, subject to refund, and who are joined as interveners to protest the exaction of the increased rates. Three more are distributors in Wisconsin and Michigan who are subject to the same rate increase but have either failed to respond and take part or have indicated affirmatively that the increase is not objectionable. The tenth wholesale customer is the Oconto Electric Cooperative, which has hitherto been treated as one of this group, paying the same rate, but whose present rate was not increased in the company's filing of January 1962. The effect of that apparent discrimination—increasing the rates to nine out of the ten customers—is discussed below in Part V.

IV. Is the Increase Barred by Contract, Under Mobile?

Invoking the trilogy of decisions of the Supreme Court which are called Mobile, Sierra and Memphis, both the Staff and the city interveners object to the increase for the six cities *in toto* upon the dispositive ground that the company's long-term contract with each city contains a fixed rate, which, under ordinary principles of contract, the company is not free to abrogate unilaterally. The issue is stated succinctly in the interveners' brief as follows:

> The Intervenors rely on the principles announced by the United States Supreme Court in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958), as applied by the Commission and the courts. The lesson of those decisions is that an electric utility may not unilaterally change its contract rates by filing a new rate schedule under the filing provisions of section 205(d) of the Federal Power Act unless it has expressly preserved such right in the contract. Only changes which are 'otherwise valid' may be unilaterally put into effect under section 205(d).
>
> The company asserts that its proposed changes are "otherwise valid," contending that certain savings clauses contained in each of the contracts constitute contractual consent by the Intervenors to unilateral changes. Absent the savings clauses relied on by the company, there is no question but that the unilateral filings would have to be rejected by the Commission. The pivotal issue, therefor, is whether such savings clauses are effective to convert an unauthorized change into one "otherwise valid." In short, do they constitute valid consent to a unilateral change which may be put into effect under section 205(d) of the Federal Power Act?

Parenthetically, had this position first taken by the Staff in its brief filed on July 29, 1963 (and consistently maintained by the six cities throughout) been made at the outset of the case the subject of a motion to dismiss as to their increases, and had the motion been sustained under a procedure akin to demurrer, there would have been eliminated a year's delay in the case for the preparation of the cost studies and the expensive and protracted testimony; in fact, the issue could have been settled finally before the new rates went into effect at the end of August 1962.

(A) *The contracts mean what they say:* The question on its merits is purely what the company and the respective cities meant by the admitted language of the contracts, or at least what they must be understood to have meant. The contracts of four of the six cities (New London, Shawano, Oconto Falls and Clintonville) are almost identical; and the quotation of the critical provisions from one of them (New London, Ex. C-12) is enough:

> Section 1. . . . the distributor shall pay to the Power Company . . . an amount computed on the rates and charges set forth in Wisconsin Michigan Power Company's large Users' Power Service Rate VII now on file and approved by the Wisconsin Public Service Commission, to wit:
>
> Demand charge:
> First 50 kilowatts of demand per month—$2.25 per kilowatt
> Next 150 kilowatts of demand per month—$2.00 per kilowatt
> Next 100 kilowatts of demand per month—$1.50 per kilowatt
> All over 300 kilowatts of demand per month—$1.25 per kilowatt
> Plus an energy charge as follows:
> Energy charge:
> First 10,000 Kw-hr. consumed during month—1.25¢ per kw-hr.
> Next 10,000 Kw-hr. consumed during month—1.15¢ per kw-hr.
> Next 10,000 Kw-hr. consumed during month—1.05¢ per kw-hr.
> Next 10,000 Kw-hr. consumed during month—0.95¢ per kw-hr.
> Next 20,000 Kw-hr. consumed during month—0.85¢ per kw-hr.
> Next 140,000 Kw-hr. consumed during month—0.75¢ per kw-hr.
> All over 200,000 Kw-hr. consumed during month—0.65¢ per kw-hr.
>
> * * * * * * *
>
> Section 2. It is hereby agreed and understood that should there be any revision and/or change in said Rate VII approved by the Wisconsin Public Service Commission, at any time during the life of this contract, then the Distributor shall under this contract automatically receive and accept such revised rates.

Thus the question is what is meant by Section 2, where each distributor agrees to accept "such revised rates" according to any revision or change which may be approved by the Wisconsin Public Service Commission in the Rate VII there on file and applicable to the company's large-user retail customers, whose rates are, of course, subject solely to the jurisdiction of the state commission. The first section quoted above bears witness that, as testified time and again in the case, it is and has been the company's policy for many years to charge to its wholesale distributor customers the same rates which, under the aegis of the state commission, it charges to its retail customers of the larger class.[3] The company's position is put very simply that they certainly did not intend to bind themselves for a long term of years to charge to the wholesale customers only the large user's retail rate in effect at the time of the contract signing, but that Section 2 was inserted for the express purpose of changing the wholesale rate agreed upon to accord with and equate any changes, up or down, which the state commission might approve and make effective for the large-user retail customers subject to its jurisdiction. The contracts are dated in 1949, 1948, 1944 and 1945, respectively. Two of the contracts (Shawano and New London) were for 10-year periods with 10-year renewal, subject to two-year notice of termination (Exhibit C-11 and Exhibit C-12). Clintonville's was for five years with one-year renewal periods and Oconto Falls was for three years with one-year renewal periods.

---

[3] There is a great deal of precedent for this rate policy. See, *e.g.*, Re *Southern California Edison Co.* (1957) 21 PUR 3d 15, 43, Re *Kentucky Utilities Co.* (1958) 22 PUR 3d 113, 120.

With that background, to the net effect that—

(a) Ever since the service to the towns began as far back as the 1930's the company has charged the cities the same rate that the state commission has sanctioned for the large-user retail customers;

(b) The various contracts which the Staff and the cities rely upon specify that the cities shall pay charges equal to Rate VII on file and approved by the Wisconsin Public Service Commission;

(c) Each contract contains also, as a further (and possibly even unnecessary) precaution, a savings clause to the effect that if, as and when a change in that Rate VII becomes approved by the state commission, then the city shall receive and accept an equal revision in its rates—

the solution seems to be most uncomplicated, namely, the company agrees to serve the cities at the rates they charge their large retail customers, subject to change (if, of course, FPC approves) as those same retail rates may be changed from time to time with the approval of the governing state commission. In that view, no *Mobile* problem arises at all since the company has not bound itself for all time to the rates then in effect; rather, as in *Memphis*, the company has said simply that it will charge certain rates but in certain circumstances those rates will be changed, and the cities agree to accept such change, with two conditions, namely: (a) the changes may not exceed the like changes made in the corresponding local rates for large retail users as approved and made effective by the state commission, and (b) by reason of the Federal Power Act there is necessarily written into the contracts, by operation of law (9 FPC 443), the further reservation that no change may become finally effective until considered and approved by the Federal Power Commission in a proceeding such as this one.

(B) *The Staff's contentions:* In that view, the discursive contentions of the cities and the Staff require but short answers.[4] First off, the Staff begs the question by saying the record is clear that the company "executed fixed rate contracts with each of these six wholesale customers." Of course, they are not; their plain language says their rates are to equal the Rate VII rates *as* they may be changed from time to time.[5] How can it be said that a provision providing for a rate change "disables" the company from seeking that very change?

Second, the Staff makes a great deal of the company's precautionary actions taken after this question arose for the first time, apparently in 1959 or 1960, and the contracts with the three distributors which do not appear in this proceeding and those with Clintonville and Oconto Falls became subject to cancellation. Saying the savings clause had been found not satisfactory, the company accordingly rewrote or amended them so as to allay any possible doubt and make it even more clear that the rates are subject to change by new filings under the Federal Power Act. The Staff seems to regard this as some sort of fatal admission by the company that the former contracts did not mean what they say. How that is to be regarded as "contemporaneous construction" (Staff

---

[4] The special language in the contracts with Florence and Kaukauna is more fully considered below.

[5] It seems immaterial that there are other differences, such as delivery voltages and fuel clause adjustments, from those appearing in the retail Rate VII—it is the demand and energy block rates which are incorporated by reference.

Brief, page 35) when it was made many years later is hard to imagine; anyway, no reason or authority is suggested why the company could not or even should not seek an improvement in their contract terms,[6] without being held to the fell admission that, fairly and honestly viewed, the contracts did not already fully and lawfully sustain their position.[7]

Third, the alleged "fact" that these are fixed rate contracts is somehow supposed to be further demonstrated by one special feature of the Wisconsin public utility laws. A contrast is noted with the Federal Power Act, under which a proper change in rate can be filed and put into effect thirty days later, subject to suspension for five months and to refund thereafter, following the FPC's final decision. But in Wisconsin, a change in the retail rates does not work that way. It becomes collectible, not upon filing, but only from and after the final order of approval by the state commission; it does not, as in the case of the interstate rates, become effective shortly after filing subject to refund when the Commission so orders. Why that makes any difference here is not explained. In fact, the difference seems to be recognized in the very language of the contract as quoted, which refers to a change in the local rate "approved by the Wisconsin Public Service Commission." The background here is that, as explained, the same change which is the subject of this case had long since been filed with the state commission for the large retail users and had been approved by the Wisconsin Commission. The same change for the large users in the state of Michigan has long since been filed and approved by the Michigan Public Service Commission.[8] Thus the simple fact is that the local Rate VII has been changed, and the change has been approved by the applicable state commission, and the present contracts that are supposed somehow to disable the company from claiming a change contain in their very words a provision calling for a corresponding change upon the happening of that very event. The result is that the higher rates are being charged to and paid by the large retail users, but the identical increases were not being charged to the cities until the present filings became tentatively effective on August 30, 1962, after the five-month suspension period. If the increases are not continued, the company will not be receiving the increased rates their contracts lead them to expect and the cities are not paying the increases they agreed to (subject to FPC's ruling on them). The Staff (September brief, page 49) calls for more "definitive terms and conditions that should appear on the face of the contractual instruments," but it is believed the terms are simple and obvious and they should be given effect according to their plain terms.

---

[6] Compare the same point in the field of legislative interpretation: When an FPC regulation was challenged as beyond its statutory authority, as proved by the Commission's efforts to achieve a like result by legislative amendment of the statute, the Commission's brief to the Ninth Circuit in *Superior Oil Co.* v. *F.P.C.* (March 11, 1963) says this request for congressional action "certainly provides no indication that the Commission doubted its authority to proceed on its own" (p. 47). Similarly, the company's perfecting amendment to their contract provides no indication that the company doubted or should doubt its contractual authority to proceed by relying on the previous savings clauses.

[7] Surely, if that sort of evidence has to be paid attention to, it would be more significant to note the company's 1959 action soon after they first submitted the rate increases. It was their request they be made effective, quite in accord with the savings clause, namely thirty days after the approval by the state commission of the corresponding change in the corresponding local rates. (See the company's letter of September 11, 1959, in the official files.) This, of course, is consistent with reliance on the savings clause, not with repudiation of it.

[8] The state commission orders are in evidence as Exhibits C-17 and C-20 dated respectively May 26, 1961, and January 21, 1960, long before the present increases were filed in 1962.

(C) *The city interveners' contentions:* The approach of the city interveners is on a somewhat different basis. At least, they do not belie the existence of the savings clause (Section 2, quoted above), but they claim it is not a valid consent to the company's proposed unilateral rate change. Just why is not stated. Again there is a reference to the Wisconsin procedure, under which the company could not charge the retail increase until after the state commission had approved; but since the state commission has approved (the very contingency the contracts specify), the point is quite irrelevant. The next claim is that the savings clause purports to impose automatically whatever rates are determined by the Wisconsin Commission for the comparable retail customers, and this is viewed with alarm as an invalid, indirect imposition of state regulation on these interstate sales. This is not true and anyway is not the point. Regardless of the state rates and regardless of the state commission action on the state rates, the increase in the interstate wholesale rates becomes finally effective only if found just and reasonable by the Federal Power Commission under the Federal Power Act, as every one in this case well understands by their participation in it and as the company recognized by withholding the effective date of the increases for the five months suspension period provided in the Federal law. Anyway, the question at this point is not what increases the cities must pay—that problem comes up in the sections which follow below—the only immediate question is whether the company by its contract has, to quote the Supreme Court cases cited, abrogated or bargained away its right under the Federal law to file for the increases and seek the Power Commission's approval effectively to collect them.

The cities' brief for some reason relies on the line of natural gas cases where the producers' sales contracts call for buyers to pay whatever price might be fixed by a valid state commission order fixing the wellhead gas price, which provisions were held to be ineffective.[9] The differences are so obvious as hardly to require discussion: at least three come to mind, *viz.*: (a) There the state commission orders were held to be void *ab initio;* here there is no question but that the state commission orders are valid for what they apply to, the retail rates. (b) There the state commission orders applied to the wellhead sales of gas in interstate commerce, itself the subject of Federal regulation since the cases of *Phillips* and *Deep South;* here the state commission orders relate directly only to sales that are within the state jurisdiction—that is, the sales at retail. (c) In *Pan American*, the increases were sought on the basis that the buyers by their contracts had agreed to pay them, the net effect of the litigation was to enforce the contract rights of the seller; here it is not a common law action in assumpsit to collect anything, this is merely a proceeding to determine whether the rates filed call for a just and reasonable increase (in which case they are chargeable and collectible with or without a contract promise to pay them; the resulting payment obligation accrues by force of the Federal Power Act which requires the filed rates to be charged, subject to FPC ruling, not merely by force of the private contract). In other words, the state commission action here is not at all the controlling force which makes the just and reasonable increases payable; the only effect in this immediate connection of the state's action upon the retail rates is to counter and overrule the thought that the company by its contract has disenabled itself, or abrogated its right, to file increases, justify and charge them up to the level (as a ceiling) of the newly effective state rates for the corresponding retail sales.

---

[9] *Pan American Petroleum Corporation* v. *Kansas-Nebraska Natural Gas Company, Inc.*, (CA 8, 1962), 297 F. 2d 561; *Cities Service Gas Company* v. *F.P.C.* (CA 10, 1958, 255 F. 2d 860, 864, where this statement in the opinion suggests the answer here: "If the Kansas order were valid, there is no question but that despite the protests of the parties the contract would be altered by the order." In the present case, the Wisconsin order is valid.

A much more credible, even if erroneous, point made by the cities is that the savings clause is similar to the two-party favored-nations escalation clauses, which for the gas business have now been banned by regulation of the Commission. Indeed the similarity is striking—there the gas purchaser agrees to pay to the producer a certain price, plus an increase to equal any higher price the same buyer later on pays to somebody else for similar gas in the area. Here the buyers (that is, the cities) have undertaken to pay to the seller a certain specified price plus an increase to equal any higher price which the seller later on is permitted to charge to somebody else, namely the large retail users. It is true that, since such clauses in the gas purchase contracts lead to uncertainty, the F.P.C. has found them not to be in the public interest and has prohibited their current filing. Even, however if that comparison applies here it fails for the double reason that the Commission's restriction on the use of this clause (a) applies only to the gas business and was not extended to the electric business under the Federal Power Act, and (b) the Commission's ban was not made retroactive to cover contracts already filed. 18 CFR § 154.93, *cf.* 13 FPC 1576, 1584. Hence it results that gas contracts made at the same time as these sales were fully accomplished and enforced if otherwise within established ceilings, including their escalation clauses,[10] and the cities now declare them to be "analogous" to the clauses in their own contracts.[11] Thus the cities' comparison proves too much—the gas purchase favored-nations clause would be valid for this very period and the comparable electric rate savings clause is equally valid.

(D) *The Florence contract:* The contract with the town of Florence (Exhibit C-13) has a somewhat longer savings clause; perhaps for that reason it is claimed to be more vague or at least more ambiguous than the others. Under "Prices," Section 1 calls upon the customer to pay "an amount computed on the rates and charges set forth in Wisconsin Michigan Power Company's Large Users' Power Service Rate VII now on file and approved by the Wisconsin Public Service Commission, to wit: . . ." There follow the demand and energy block rates, as listed above, and in Section 2——

> *Section 2.* It is hereby agreed and understood that should there be any revision and/or change in the above rate as applied to other customers receiving the same class of service approved by requisite governmental authorities, at any time during the lift of this contract, then the Customer shall under this contract automatically receive and accept such revised rates. The rate structure utilized in this contract, although approved by the Public Service Commission of Wisconsin on December 18, 1948 (supplemented by order of December 23, 1948) has been questioned by the Federal Power Commission. Each commission has claimed jurisdiction over the matter. Should a withdrawal, correction or modification of such rate result and

---

[10] *Cf. Pure Oil Co.*, 25 FPC 383, 389, affirmed 299 F. 2d 370 (CA 7, 1962); FPC brief in *Superior Oil Co.* v. *F.P.C.* (CA 9), March 11, 1963, p. 46. It is as the Supreme Court says respecting the earlier "spiral escalation" clauses: "The effect of a clause of this type is only to permit the producer to resort to the filing provisions of § 4(d) of the Act." *Wisconsin* v. *F.P.C.* (1963), 373 U.S. 294. In his dissent on other grounds, Mr. Justice Clark said, "Obviously the clauses have no effect whatsoever in determining the reasonableness of a rate from the public standpoint. They do have the effect of triggering the filing of increased rates." That is what occurred here.

[11] Cities' July brief, p. 11.

> the effect thereof be to lessen the amount of the charge resulting from this contract, the customer will be given an appropriate refund consonant with the facts.

The background here is that before 1949 (when the Florence contract was signed) there was some doubt and confusion as to whether these sales are subject to Federal or to state regulatory jurisdiction. On May 5 of that year the Commission's order suspended a number of the rate schedules to the cities now in this case (8 FPC 851). There followed a "show cause" order issued February 10, 1950, to determine whether the municipal sales for resale are jurisdictional (9 FPC 457), the resulting order from which became the subject of the court action in the Seventh Circuit, affirming the Commission's finding of jurisdiction, which was not finally settled until 1953 with the denial of certiorari by the Supreme Court. Because of the uncertainty then prevailing, the 1949 contract with Florence inserted the all-encompassing provision above quoted.

Why the contract should be regarded as unclear is difficult to perceive since it calls for the identical rates being charged to the large retail users (Rate VII), and this is obviously the rate referred to in Section 2 where the language mentions "the above rate as applied to other customers receiving the same class of service." Since there has now, that is since 1961, been a change in that Rate VII as applied to other customers receiving the same class of service—that is, the large retail users—and that change has now been approved by the requisite governmental authorities—that is, the Wisconsin Commission in its order of May 26, 1961, Exhibit C–17—it is manifest that there has occurred the contingency which is the subject of Section 2 above quoted and that by force of that section the company is relieved of its common law contract obligation to continue the service at the previous rates. That is, the company is not to be regarded as having abrogated its right under the Federal Power Act to file increased rates and charge them (up to the ceiling of the new Rate VII approved by the state commission), subject to the Federal Power Commission's suspension action and final determination whether the increase is just and reasonable, as the Federal Power Act provides.

Again, the cities in their first brief at page 10 confuse the issue by claiming that the town of Florence should not be regarded as "bound automatically by rates set by the Wisconsin Commission." Of course that is not the question, nor is it the case. The purpose and effect of the quoted Section 2 are not to bind the town to anything but to unbind the company; what the town is bound by is Section 205 of the Federal Power Act, the rates filed by the company under authority of that Act, and the decision of the Federal Power Commission on the validity of those rates.

(E) *The Kaukauna contract:* With respect to one of the six contracts—that is, the arrangement with Kaukauna for a substantial supply of power to supplement the city's own hydrogeneration facilities on the Fox River—the city's objection based upon the contract does have merit, in part, and requires different treatment. Because of the large standby facility required to be maintained by the company, in order to meet the widely varying needs of the city during periods of greater or lesser river flow (Exs. C–4, p. 9 and S–14), the contract hitherto in force contained a specific provision for a minimum bill, which comes to $76,667 per year. In its new filing the company has substituted a formula arrangement which would result in the requirement of a bill of at least $315,000 when there is a high water year. There is nothing in the savings clause in Kaukauna's contract to open the door to this unilateral change by the company, and under the doctrine of the *Mobile* case it would have to be regarded as an unauthorized change. This objection by the cities the company seems to concede, in its second brief at page 19; accordingly, it will be expected that any refiling of the Kaukauna rate, as discussed below, will restore the former provision for the annual minimum charge.

Upon the general question of the company's freedom or lack of freedom to file under the contract for rate increases—that is, whether it is estopped by the record, so to speak—the Kaukauna contract has another special arrangement. Article III of the contract in question, Exhibit C-15, covers the prices to be charged and paid and Section 2 contains the city's undertaking to pay "the following rates and charges," that is, the same block of four demand charges ranging from $2.25 to $1.25 per kilowatt per month and seven energy charges ranging from 1.25 cents per kwh down to 0.65 per kwh. Comparing the figures with the retail rate for large users on file with the state commission—that is, Rate VII set forth in Exhibit 16, page 4—it is noted and found that the various words and figures of the two blocks of charges are identical. Then there follows in the contract an escalation clause based upon changes which may occur in the cost of coal used by the Wisconsin Electric Power Company (increasing the energy charge by .02 cents for each one-cent increase in the cost of one million heat units), which appears to be copied exactly from the same Rate VII on file at Madison for retail users (Ex. C-16). The next paragraph of the contract calls for a seven percent discount because the buyer is served at a voltage of 33,000, and this seems to recapitulate exactly that part of Rate VII known at Rate VII-a, giving the same discount to other customers who take at primary voltage—that is, above 4,000. Numerous other provisions, referring to the maximum demand, the standard power factors, the billed demand, and other matters, appear to recapitulate corresponding provisions of Rate VII. At this point, there follows the purported savings clause, which heads as follows:

> *Section 4.* If, during the period of this agreement, rates different than herein quoted are made applicable to the general class of service covered herein, then such different rates shall be applicable for the service rendered hereunder.

Surely it is not open to question that this is *some* form of an escalation clause intended, upon the happening of some certain or uncertain contingency, to make different rates applicable or at least to make different rates subject to filing with the proper commission and to become collectible subject to the Commission's action under the governing statute. The contingency—that is, the triggering event—is said by the language of Section 4 to occur when a different set of rates is "made applicable to the general class of service covered herein." Now it can hardly be denied—indeed, a certain amount of ambiguity seems to be admitted—that the phrase "general class of service" could be taken out of context and read to mean a number of things. Among those suggested at the hearing were the service (a) to other customers who buy in large quantities, (b) to other customers who buy at high voltages, (c) to other customers who buy for resale, or (d) to other customers who buy as an auxiliary service to their own generation capacity. The crux of the opposition's case seems to be that since the questioned phrase could mean so many things, the entire clause must be held to mean nothing at all. But that sort of narrow, wooden philosophy of construction, "making a fortress out of the dictionary," is not the approach to the reading of a contract, either under Wisconsin law or otherwise.[12] A review of the panorama of circumstances surrounding the transaction makes clear what might otherwise be doubtful, and makes it pretty evident that the several officials of the city who signed the document had no question of what they were bargaining for or where they stood as a result, so far as rates are concerned, and the company's privilege to change them, *subject* to the law of the land.

In the first place, Kaukauna had been dealing with the company for years and the present contract only repeats word for word the Section 4 that appeared in the contract of December 5, 1945, Exhibit C-15A. It strains credulity to suppose that the town officials were not and are not fully aware that for a quarter of a century at least they have been charged the same rates that the company charges to its large retail users[13] and that these same rates appear in Kaukauna's contract and also in the similar contracts of the neighboring towns; in fact, nobody denies it.

Secondly, the time factor must be accounted for. When the savings clause originated, the *Mobile-Sierra opinions* (1956) had not yet been announced by the Supreme Court. At the very time that the clause was repeated in the renewal contract of January 1, 1956, the Federal Power Commission had decided and its Staff was contending to the Supreme Court that *no* savings clause at all (whether ambiguous, vague, or clear) is needed to permit the filing of increases. See *Re P.G. & E. Co.* (1954), 13 FPC 200, and for the argument of November 8, 1955, before the Supreme Court, upon Sierra's court review of that case, see 100 L. ed. at p. 390. It is cavalier treatment, indeed ironic, for the same Staff now to contend the contracting parties should have anticipated the Supreme Court's decision, that they could not rely on the FPC's announced position, and that they should have had the prescience to revise and perfect their old and customary form of savings clause in order, as the Staff now suggests, to make it more definitive (Staff's September brief, page 49).

In the third place, even if the company's recent letters of cancellation to several of the cities did amount to a change of position—which they do not—the Staff view that the company is estopped from relying on its original version seems to require of the company a degree of consistency to which the Staff and other parties in this proceeding are strangers. Thus—

(a) When the company first submitted these increases for filing (see note 7 above) they were returned by a letter of this Commission's Secretary dated September 22, 1959, saying,

> It appears from the texts of the "saving clauses" . . . that no rate changes such as proposed may be tendered by you to this Commission until the rate approval from State Commissions, referred to in those "saving clauses," has been obtained.

Now, that state approval having since been obtained, the Staff is in the position of saying they can't be filed anyway.

(b) Before that rejection in 1959, the city customers were asked whether there was objection to the filing of the new rates by the company, particularly in the light of the Memphis-Mobile-Sierra decisions. Official notice is taken from the files of the Commission of the reply from Mayor Bayorgeon of Kaukauna, dated September 10, 1959, which quotes their savings clause (Section 4 of the contract as above) and states:

---

[12] 12 Am. Jur. Contracts. § 250 "Where the language of an agreement is contradictory, obscure or ambiguous or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred . . . An agreement will not be interpreted so as to render it oppressive or inequitable as to either party or so as to place one of the parties at the mercy of the other, unless it is clear that such was their intention at the time the agreement was made."

[13] Not counting, of course, the special minimum rate which is referable to Kaukauna's special, auxiliary service.

> Under this article we are assuming that they would have the right to ask the Federal Power Commission for an increase in rates, to change the rates or rate schedules.[14]

In the fourth place, the significant relationship of the rate increase for Kaukauna with that applicable to the other cities (based on the increase in the Rate VII charges to the company's industrial or large-user customers) is illustrated by their joint reaction when the increase, as just stated, was first tentatively filed in 1959. His Honor, Mayor Bayorgeon of Kaukauna, furnished the Commission under date of September 29, 1959, a copy of the minutes of a meeting called by him which included representatives from Oconto Falls, the Oconto Falls Cooperative, Shawano, New London, and Clintonville, all of whom met to discuss the problem arising out of the request for the company's rate increase.

In the fifth place, the ambiguity in Kaukauna's Section 4 may be explained by its history. The company has served the city at least since 1919, and along with all the other cities, Kaukauna has been charged consistently the company's large-user retail rate. If the present Section 4 in the contract renewed in 1956 (when the Mobile question was in the courts) were its first manifestation and had it been drafted by the attorneys for the parties, there might be some question as to whether the particular meaning now selected by the company could be given effect here. But its genesis is quite otherwise. Since no question had come up about it, the language of the clause in the much older contracts was merely repeated. The negotiator of the terms was the company's commercial manager; he is their sales manager and is not required to be an etymological purist devoted to verbal niceties. It is comprehensible that to him the language is ample to mean what the company now contends it means—that is, that Kaukauna's rate is geared to the company's large-user retail rate. The admitted fact that the language of Kaukauna's Section 4 contains certain imprecision and perhaps could mean a number of things does not require that it be held to mean nothing at all.

What is most significant here is that three witnesses testified for the cities, including the manager of the Kaukauna utility, and many other representatives of the cities were in attendance throughout the hearing and not one of them testified or came forward to present any contrary view as to the meaning of Section 4 in Kaukauna's contract or in any of the others. The city of Kaukauna is only nine miles from the site of the hearing in Appleton, and yet not one of the seven signatory officials of the city of Kaukauna came in to testify what different meaning, if any, he had attached to Section 4 at the time of the signing or even to attest to any doubt about what it meant. On the other hand, the evidence that Kaukauna has been treated with respect to its basic rate schedule the same as all the other cities and that this has been true for many years is overwhelming. See, for example, 8 FPC 851 (1949), 9 FPC 457, 460 (1950); 10 FPC 170 (1951); and compare the following explanation of the company's Mr. Williams:

> That from the time I became manager of the company's southern division [before 1944, see Ex. C-45, p. 1], I was charged with the responsibility for

---

[14] Of course, notwithstanding these 1959 actions, both the Staff and the city of Kaukauna are now quite free to contend that Mobile-Sierra and company's contract estop the company from filing for increases, but the company is equally free to contend their original savings clauses are adequate and did not in truth require the revision which an abundance of caution called upon them to make.

negotiating large power agreements with retail customers and wholesale customers.

And with respect to wholesale customers, it was common knowledge and it was discussed between the various managers and myself and some members of some commissions that all of our wholesale customers were receiving service under the same rate.

That was usually one of the first questions that a new commissioner would ask. "Is this the same rate that New London is paying or Shawano is paying?" (10T1137, 1. 6-17)

In that background, correlating Kaukauna's circumstances with those of the other cities in this proceeding and reading Kaukauna's contract *in pari materia* with all the other contracts, including those developed in more recent years and perhaps for that reason more explicit, the only conclusion fairly and fully to be arrived at is that Kaukauna's contract, ambiguous though it be, was in fact intended and understood by all parties to mean the same as the corresponding provisions in the other contracts.

In the absence of other explanation as to what the savings clause means in any of the contracts, we are left with a choice between the company's natural and obvious meaning—they started with equating the two rates and put in the section as a means of keeping them the same thereafter—and a holding with the opposition that the savings clause means nothing whatever and is mere surplusage, which is hardly the judicious approach to the interpretation of a contract, either under the applicable Wisconsin common law or under any other. Restatement, Contracts 2d, § 236(a).[15] In short, the evidence is adequate that the savings clauses mean what they say, as the company contends, and there is really no evidence at all that they mean anything else.

(F) *The issue is foreclosed:* But if there is not to be used this straightforward and natural approach, relying upon the plain language found to be fully in accord with everyone's rational program and the connected circumstances, and instead there is to be substituted the hypertechnical objection that the words as drafted are not quite as perfect as lawyers would like them to be, then this entire objection based on the *Mobile* doctrine must fail entirely because of an equally hypertechnical counter-objection, which is this: At least the Kaukauna and Clintonville contracts contain this proviso: "This agreement shall not become effective until it shall have been approved by the requisite governmental authorities." Note that this is found in the very document which the Staff and city interveners rely upon to show that the company is supposed to have abrogated its right to file rate increases under the Federal Power Act. A question was raised at the hearing as to how that condition of the contract—that is, the approval by the governmental authority—is to be met, the company witness supplying the view that the authority referred to is "whatever regulatory or governmental authority has jurisdiction over the contracts" (10T1163). The cities' July brief at page 6 says this means that the contracts would become effective when they had been accepted for filing by the proper commission and that, "All six contracts, of course, have been accepted for filing by the FPC in accordance with the filing requirements of 18 CFR, Section 35.3." The trouble is that action is *not* approval, which is what the contracts call for. The Staff and the cities (who perforce must prove this "approval") did not deign to furnish the record any evidence of this acceptance for filing; but the forum is not unaware that the FPC's standard letter of acceptance for filing contains the following routine disclaimer of any approval:

---

[15] For the full exposition of the FPC's function in contract matters, and the approach which is indicated, see the opinion of Judge Brown for the Fifth Circuit in *Texas Eastern Transmission Corp. v. F.P.C.* (1962), 306 F. 2d 345, 347.

> This acceptance for filing does not constitute approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the above-designated rate schedules; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith.[16]

Hence, if that sort of acceptance for filing is what the cities rely on as constituting the approval by governmental authority which the contract requires, it would have to be held that no approval has been demonstrated and the contract as such did not and does not come into effect.[17] As stated, however, the proper approach is the full and understanding reading of the contractual arrangement with a sense of its real and useful application in the actual conduct of affairs between the parties, and to carry out their true and honest purpose. But if, as the Staff and the cities seem to insist, the interpretation rather is to be the verbalistic and technical reading of the bare words, without understanding or effort to arrive at their meaning, then that technical approach must be regarded as defeated entirely by the equally technical objection just cited.[18]

The Staff, in its October brief at page 3, refers to the Sierra case as demonstrating somehow that Wisconsin Michigan's contracts are a fixed rate tariff, which ignores entirely their savings clause and writes them out of the contracts. The Staff concludes:

> There, PG&E's contract allowing changes as directed by the California Commission constituted in truth, little more than an agreement to abide by utility regulatory law. The same could be said of Wisconsin Michigan's contracts.

This is just what the company is saying also, and there results only a confirmation that the true understanding is as above held—namely, that the result of the clause is freely to permit the company to file these rate increases with the FPC and to collect them subject to the company's burden to establish the truth and reasonableness of such charges under "utility regulatory law," namely the Federal Power Act.

Finally, as a postscript, if any actual and different meaning of the several savings clauses were expected to be inferred from the countering evidence or briefs, this would be hard to square with the following: first, the testimony on behalf of the cities that they knew their new rates are the same as the rate applicable to the large retail users (7T688); second, the letter above quoted from the Mayor of Kaukauna; and third, the evidence that they took occasion to enter an appearance before the State Commission in connection with the

---

[16] Cf. Exs. C-24 and C-26.

[17] The Commission Secretary's disclaimer clause has been held to prevent an acceptance for filing from amounting to an order of approval. *Pan American Petroleum Corp.* v. *Kansas-Nebraska Natural Gas Co., Inc.* (CA 8, 1958), 297 F. 2d 561, 567.

[18] Something of the same reaction is called for by the opposition's several references to the Sierra case, which applied the Mobile doctrine to rate filings under the Federal Power Act—the city makes the objection (Sept. Brief, p. 4) that Sierra itself is against the company, because in Sierra's contract there was found a provision inflating the rates through action under the authority of the state commission, just as here. But the city briefs neglect to point out the entire and 100 percent difference: In Sierra the state commission did not approve the rate change (13 FPC 200, 205), for what reason is quite irrelevant; here the state commissions have acted to give approval to the local rates.

State Commission's review of the retail rate increase.[19] Their active interest in the proceeding which established the company's retail rate increase can hardly be explained except upon the implicit comprehension that the approval of higher rates for the retail customers would result in higher rates to the wholesale municipalities, as a result of the savings clause of their contracts (subject of course to the FPC action in the present proceeding).

With the Mobile-Sierra-Memphis contract issue disposed of for the city interveners, it remains only to record that no such issue arises as to the three city wholesale customers whose rates are also being raised, but who did not appear in the proceeding, because the contracts in those three cases were canceled, revised or expired before the new rate filing by the Company took place.[20]

V. Discrimination With Rate Charged to R.E.A. Electric Cooperatives

(A) *What the issue is*: In the Commission's order of March 29, 1962, which called the hearing in this proceeding, there is recited the protest of the six Wisconsin cities to the effect that the new rates "would be unduly discriminatory because Wisconsin Michigan does not propose increases in its electric rates and charges to rural electric cooperatives which it serves at wholesale for resale, . . ." referring evidently to Section 205(b) of the Federal Power Act, which forbids any undue preference or advantage, or any unreasonable difference in rates, charges, etc., either as between localities or as between classes of service.

The point is, in brief, that the company also serves three cooperatives at wholesale, and one of them (at Oconto Falls) has from the beginning been served at the same rate as that charged to the Wisconsin cities, but the new rate filings for the city customers did not include a corresponding filing to make the same increase for any of the cooperatives. The company has now announced that it plans to make such a filing but only after this case is concluded. Such new filing, if and when made, may eliminate the discrimination issue from and after the date it becomes effective, but inasmuch as the nine city customers have actually been paying the increased rates since they went into effect on August 30, 1962, and the cooperatives have not been paying the increase at any time, the discrimination question stated in the Commission's order remains for determination, applicable to the more or less limited period from August 30, 1962, until the effective date of such new filing, if any such filing occurs. There are stated below the background as to the equality of the old rates, the variance with the new rates, and the comparability of the service with respect to at least one of the cooperatives. First, however, since the issue is almost entirely ignored in the nine briefs filed in this case, and none of them suggests any resolution of it, there are first reviewed how this issue arose and the rather amazing vacillations in the reaction of all three parties to it.

---

[19] Exhibit C-17 is the Wisconsin Commission's findings of fact and order on the power company's increase to its retail customers. The only appearances listed (apart from the power company and one customer corporation) were the manager of the utility for the City of New London, the Mayor and manager for the City of Kaukauna, a member of the Clintonville Water and Electric Utility, and the Superintendent of the Shawano Electric Utility.

[20] The consistent interpretation which is here made of all six contracts makes it unnecessary to consider the Staff's (July Br., p. 34) highly intricate and legalistic argument which would apply *Mobile* even to two of the six contracts which expired and/or were canceled in 1962, after the rate filing here in issue. Clintonville's contract was canceled on May 1, during the five months' suspension period. Oconto Falls' was canceled on December 6, three months after the new rates became chargeable on August 30, 1962.

(B) *How the issue arose*: The question of discrimination was first raised in August 1959 in the responses of several of the cities to this Commission's notification of the first filing of the rate increase. Clintonville's letter signed by the Mayor, the president of the electric plant and five other officials, states the issue as follows:

> III. It is further felt that all customers of a similar nature should be treated exactly the same and it is to be observed that the Oconto Electric Cooperative will not pay the same rates to the same supplier as does the City of Clintonville, Water & Electric Plant, but will enjoy lower rates.

The similar letter from the Superintendent for the City of New London reads in part:

> 4. We took note of the fact, during the Wisconsin proceedings, that the officials of the Wisconsin Michigan Power Company were intending to continue to serve the Oconto Electric Cooperative at the present existing rates. We maintain that if it is possible to do so in Oconto, it is likewise possible to do so in New London.

After the 1959 filing was rejected by the Commission because the company had not yet received the State Commission's approval for the corresponding increase in the retail rates, as required by the savings clause discussed in Part IV, the new rates were refiled in 1962, following the effective date of the state commission orders. Again, the Commission requested the comments of the various cities, in response to which the cities filed the "complaint" of February 1962, one count of which is to the effect that the proposed rates are unduly preferential and discriminatory, in violation of the Federal Power Act, "inasmuch as applicant has not proposed to increase its corresponding rates to certain electric cooperatives in Wisconsin which it serves at wholesale." The company's response to this complaint denies the allegation, saying it has but one such customer in Wisconsin, namely the Oconto Electric Cooperative, and the company has under consideration the matter of proposing new and increased rates for that customer as well as for the two in Michigan.

It is this background which was before the Commission when it issued its order of March 29, 1962, directing that this hearing be held and that this issue be included in the general inquiry as to the lawfulness of the new rate filing.

The next manifestation of this issue appeared on the opening day of the evidentiary hearing in May 1963, with the following statement by the company's counsel:

> Mr. QUALE. I think the only other question is on the matter of rates to electrical cooperative customers. I am prepared to state on the record that on December 21, 1962, Wisconsin Michigan Power Company board of directors adopted the following resolution:
>
> Resolved that the officers are hereby authorized and directed to commence an appropriate proceeding before the Federal Power Commission and such other regulatory bodies as may have jurisdiction for the purpose of establishing new and reasonable rates for the company's electric cooperative customers, but the actual commencement of such proceedings be deferred until the Federal Power Commission has made its determination in the rate proceeding now pending in Docket No. E-7026. (3T75, 1. 9-22)

On the following day, counsel for the company inquired whether, pursuant to some prior understanding among counsel, the foregoing statement "would satisfy the contentions of the cities." He was asked whether the proposed rate change would take place in another proceeding after the present one had determined. With that made clear, the attorney for the cities announced "I think that satisfies us," while the Staff attorney announced:

> Mr. JOURNEY. I would think that in view of the fact that the cities' complaint raised this as an issue it would be primarily of concern to them, although I think I should recognize on the record that only the Commission can dispose of issues in the sense of having fixed a hearing on this particular issue. I think that counsel's statement would be taken into account by the Commission in ultimately disposing of this proceeding. (4T215, 1. 8-15)

The attorney for the cities added further, "We do not intend to raise it further in view of this development." However, some question did arise on the following day (5T317) and there was elicited the following comment from the president of the company:

> . . . We are asked by both the Wisconsin Commission and the Michigan Commission from time to time how this matter of wholesale rates is coming along because they have granted rate increases to retail customers for rate schedules of that magnitude which are higher than those now in effect for the sale for resale customers. This is similar to the situation in which the wholesale customers are wondering what is going to be done with co-ops. We have classes of customers within the same—getting their energy and paying for it from the same company and they want to know are they treated on a par . . . (5T401, 1. 2-13)

A week later, the company's case in chief appearing to be coming to a close without further reference to this matter, the Examiner took occasion (a) to point out on the record that the issue remains in the case by virtue of the Commission's original order and the law of the land, regardless of any action or inaction by the cities in presenting or withdrawing their complaint (11 FPC 685, 690), and (b) to notify the company that a simple comparison of the new city rates with the cooperatives' would be to be drawn (using data from the official files), after which—

> If that comparison shall disclose a discrimination, that is, a difference between the rates now filed and the rates in effect for the co-op, then it seems to me there is, on the face of it, an apparent or possible discrimination. Whether that discrimination is an unlawful one is something to be decided. There is where I understand would be your burden of proof under 205-E, where it comes into play.
>
> And, frankly, what I am trying to get down to with all this long speech is simply this: If there is a difference, it would seem to be necessary to regard it as an apparent discrimination subject to be removed or overcome by any showing which the company wants to make under its burden of proof to show that it is really not a discrimination at all, or (b) if it is one it is not an undue discrimination. It seems to me that is the company's job. [See 11 FPC 685, 689.]
>
> If they do not show to us that this difference is neither a discrimination or an undue discrimination, then it seems to me there would be serious question on the other side as to how I could come out with an order to the effect that the new rate was just and reasonable. That's my feeling, my present

feeling in the matter; and I want to give that to you to think about before you conclude whatever you want to conclude.

Is there any doubt about what I mean?

Mr. QUALE. I understand you. (10T1190, 1. 1-25)

Toward the end of the hearing the company again presented their commercial manager, who testified generally that the two cooperatives in Michigan are very small, serving a particular class of customers, purchasing at smaller voltage and on an entirely different rate arrangement, all tending to suggest that the service to those two customers may not be comparable and that the difference might warrant a variance in the rates. On the other hand, as to the Oconto Electric Cooperative, their rate is to be increased in order to eliminate the discrimination.

(C) *The "position" of the parties*: In their briefs, parties' statements of position are something less than definitive:

(a) From the Cities' July brief at page 4:

> While the interveners have maintained that the failure of Wisconsin Michigan to include certain rural electric cooperative customers among those wholesale customers to whom the proposed rates would be applicable constitutes undue discrimination, they do not now press this issue in view of statements by the company (Tr. 75) that new rates for the cooperatives will be filed with the Commission which presumably will be identical to those sought for all other wholesale customers.

However the Cities' September brief refers to the company's "eleventh hour presentation attempting to justify such discrimination" and concludes, "While we do not press the issue, it cannot be assumed that we feel the Company has justified such discrimination by witness Williams' testimony."

(b) The Staff briefs unaccountably would leave the issue for later determination, *i.e.*, they give passing mention to a few of the foregoing facts (July brief, page 9), without discussing the issue or even listing it among the questions presented, but their proposed findings (as to the three utilities not affected by the *Mobile* contract issue) suggest that the company, upon filing new rates to accord with the Staff cost of service, be required to establish at that time "their non-discriminatory and non-preferential character" (September brief, p. 58), adding on the next page that when that has been done the new rates should be determined to be just, reasonable and not unduly discriminatory. Not a word appears to suggest what showing must be made to establish that the new rates are non-discriminatory, nor where, when, or by whom will the determination of that question be to be made, nor what, if any, refund action is called for to correct the admitted discrimination which began August 30, 1962 (the end of the suspension period) and is to end some time in the future, upon the filing of the new rate for the cooperatives which the Board of Directors has determined upon.

(c) The Company brief (July, pp. 20, 48) contents itself with a conclusion that the service to the two Michigan cooperatives has been shown to be substantially different and that the issue of discrimination as to the Oconto Electric Cooperative service they understand is not to be pursued by the interveners in view of the company's announcement that a new rate for the cooperative customers would be established after the close of the present proceeding.

In short, it is the understanding that the company regards the issue as present only as to the Oconto Electric and that the new filing some time in the future will take care of the question; the cities remain unconvinced but do not press the issue; while the Staff would postpone consideration of the discrimination issue until after the new filing designed to eliminate the discrimination. It is concluded that (a) the issue is here as a result of the Commission's order specifying it as one; (b) the company's announcement of a proposed new filing later on does not even purport to allay the discrimination, if any there be, during the interim period from August 30, 1962, to the date of such new filing; and (c) that under the plain language of the Federal Power Act, Section 205, there cannot at this time be issued an FPC order approving the increases for the interim period beginning August 30, 1962, unless it be first found that the increases do not create an undue preference or disadvantage, or an unreasonable difference in rates and charges either as between localities or as between classes of service.

(D) *The service to the Oconto Electric Cooperative*: According to its rate schedules the company's service to the Oconto Electric Cooperative is at 33,000 volts, mostly delivered to the Cooperative's substation located at or "appurtenant" to the Power Company's plant at Oconto Falls (where the company also makes its delivery at 2,400 volts to the City of Oconto Falls, Exhibit C-10, p. 2). The Oconto Electric Cooperative serves 3,318 customers, predominantly farm, residential and seasonal cottage customers. By 1961 its annual purchase was 15.6 million kwh and the highest monthly demand 4,080 kw. The annual bill for purchased power (under the same rate schedule as that for the several cities) came to $166,135.[21] The sales figures are from slightly to considerably smaller than the corresponding figures for Clintonville, Kaukauna, New London, Shawano, and the Upper Peninsula Power Company (Iron River). At the same time the Oconto Electric Cooperative figures are three or four times larger than the corresponding figures for Florence, Oconto Falls, Crystal Falls, Michigan, and the Wisconsin Public Service Corporation (Suring) (Ex. C-4).

It was testified that the Oconto Electric Cooperative has been a "fast growing co-op" and is "more comparable to the municipal customers, far more than either of the Michigan ones in size." (15T2018) It serves a more or less scattered area, some of it perhaps a less prosperous one. At 4,720 kwh, average annual consumption per customer is 90% of the company's own average sales to residences in the southern division or to farms in the northern division, but only 57% of the company's average sales in the southern division (Ex. C-53, pp. 2–3; 15T2020).

At the return session of the hearing there was received a total of 18 pages of generalized testimony designed particularly to show that the Upper Peninsula service to the two Michigan cooperatives is of such sub-marginal, scattered and seasonal character that the entirely different rate form said to be in effect for them is quite appropriate without the new increase being charged to the others. But the suggestions then made as to the Wisconsin co-op, namely the Oconto Electric Cooperative, amount to nothing more than an undocumented and undemonstrated gesture to the effect that conditions might also be a little different. While the smaller co-ops are on a "load factor rate," the rate for the Oconto Cooperative ever since it began in 1947 has been the identical rate as that charged to the nine wholesale customers, as shown by the table herewith, and that rate has not been increased since 1937.

---

[21] If the increased rates as now being charged to the other cities had been in effect for the Cooperative, their 1961 bill would have been $200,160, a 20% increase amounting to 85¢ per consumer per month. Ex. C-53, p. 4.

COMPARISON OF OLD AND NEW RATES FOR THE SEVEN WISCONSIN CUSTOMERS WITH THE RATES CHARGED ORIGINALLY AND STILL IN EFFECT FOR THE OCONTO ELECTRIC COOPERATIVE

	Demand block ($ per KW per month)				Energy block (cents per KWH)						
	First 50 kw	Next 150 kw	Next 100 kw	All over 300 kw	First 10M kwh	Next 10M kwh	Next 10M kwh	Next 10M kwh	Next 20M kwh	Next 140M kwh	All over 200M
Previous contract rates to the 7 wholesale distributor customers in Wisconsin* (Exs. C-10, C-11, C-12, C-13, C-14, C-15, C-15-A, C-25)	2.25	2.00	1.50	1.25	1.25	1.15	1.05	0.95	0.85	0.75	0.65
Previous *and Present* Rates to Oconto Electric Cooperative (Wis. Mich. FPC Sched. 32, filed Nov. 26, 1947 (Less 7% for primary voltage, as in Rate VII-B for retail customers)	2.25	2.00	1.50	1.25	1.25	1.15	1.05	.95	.85	.75	.65
	First 200 kw	Next 800 kw	Next 1M kw	Next 2M kw	All over 4M	First 25M	Next 75M	Next 100M	Next 800M	Next 2MM	All over 3MM
New Rates** filed for the 9 distributors (but not for Oconto Electric Cooperative) as charged since Aug. 1962, subject to refund	2.15	1.80	1.55	1.35	1.25	1.50	1.30	1.10	0.90	0.85	0.80

*First line also agrees with Wisconsin Rate VII filed with PSC of Wisconsin in 1938, for company's large retail users (Ex. C-16); and is subject to the high voltage discount (VII-B).

**New rates agree with new Wisconsin rate for "primary" (over 4,000 volts) service at retail, as approved by Wisconsin PSC on May 26, 1961 (Ex. C-17, p. xv). Also, they agree with the new rates for large users in Michigan approved by the Michigan PSC on March 3, 1960 (Ex. C-21).

Notwithstanding the company had already announced that it expects to file a new rate for the Oconto Cooperative (in response to the claim of discrimination) the conclusion was stated that the new rates as here filed would be appropriate for that cooperative "if no consideration is given to the fact that such customer is a cooperative, and the further fact that it serves widely scattered customers over a relatively large service area, substantial portions of which are submarginal from an economic standpoint." (C-53, p. 4) But the company itself serves similar and adjacent areas with a similar type of retail load, so does the Wisconsin Public Service Corporation, the difference being that the proportion of such territory to their total is very small. It was repeated that the Oconto Falls Cooperative has been fast growing and thus "it is more comparable to the municipal customers." Some comment had been heard that some sections of its area are not self-supporting and that some classes of customers present a credit problem. However, the company's manager, Mr. Williams, think "all three of the cooperatives we serve are meeting their interest payments and are meeting their principal payments. I wouldn't undertake to give the impression that any one of the three are on relief, nor are they flush, financially." (15T2018)

After he had related the story of the negotiations and interviews with the various commissions which preceded the fixing of the contract rate for the two small Michigan cooperatives, the witness was asked how the rate arrangements for the Oconto Electric Cooperative came to be fixed, to which he explained:

> By negotiation with the officers of the Oconto Electric Cooperative. They outgrew their substantial facilities and they could anticipate they were

going to do some months in advance, and they asked for service to a larger substation. They asked to purchase at primary voltage and we submitted our large users rate 7-A for their consideration.

> It was explained that that rate was in use by the municipalities which we serve, and there was mutual agreement that they would thereafter take service under that rate . . . (15T2024, 1. 3–12)

No other evidence was submitted to establish any difference in the service or any basis for a difference in the rates.

These tentative, hesitant, unproven and undemonstrated suggestions that there might be some differences between the service to the Oconto Electric Cooperative and that to the neighboring cities are entirely belied by the manifestations of similarity, at least of comparability. In the first place, the Oconto Cooperative has always been treated along with the municipal group from the time of its inception in 1947, when the Cooperative "signed up" for the municipal rate, which it has paid ever since. See 8 FPC 851, where the Commission set for hearing a proposed revision of the fuel adjustment clause as applicable to the Wisconsin Michigan rates for the municipal customers in this proceeding, including the Oconto Electric Cooperative. See 9 FPC 457 and 10 FPC 170 (1951), the case which, as affirmed by the 7th Circuit, determined that the company's wholesales are jurisdictional under the Federal Power Act, referring to its service to the cities of Kaukauna, Shawano, New London, Clintonville, the Oconto Electric Cooperative, and three others. Not a word appears to suggest any differentiation between the Oconto Cooperative's service and that rendered to the other wholesale customers.

In the second place, the policy which accords to the Oconto Cooperative the same rates as the other wholesale customers' coincides with the policies intended to produce the same rates for the ultimate consumers throughout the area, that is, the consumers buying directly from the power company, those buying from the City of Oconto Falls or the other municipal distributors, and those buying from the cooperative. As explained by the company witness—

> At one time, we all mutually sought the same rate for the same class of service and we had almost achieved it because of the fact that we might be serving one side of the road and the co-op the other side of the road, and it would save ourselves embarrassment to have the same rates for the same class of service.
>
> With our increase in 1960 and 1961 in Wisconsin, and in 1960 in Michigan, I expect our retail rates are somewhat higher. I am not certain of it. (15T, p. 2025, 1. 22–25 and p. 2026, 1. 1–5)

In other words, whether and to what extent, the cooperative may have more or less suburban, farm, or seasonal cottage customers, and whether or not the resulting "low density" warrants a difference in rates, the indication is equally true that the company's own retail service area in the vicinity and some of the areas served by the municipal customers have the same characteristics.

In the third place, and most significantly, the company has itself already determined that the present, current situation as of today amounts to a discrimination and has proposed to eliminate it by filing new rates as soon as this case is done. At the hearing, referring to the testimony that the board of directors of the company has authorized an appropriate rate to be entered for the R.E.A. customers "at the termination of this case," there occurred the following:

> Presiding Examiner. Is that in order to eliminate the discrimination, Mr. Quale?

Mr. Quale. Yes.

Presiding Examiner. Why is it being eliminated?

Mr. Quale. The question was raised in this proceeding on discrimination, I think it was directed at the Oconto Co-op in the protest of the Cities.

Presiding Examiner. So you eliminate it because Section 205 says so[?]

Mr. Quale. We propose to eliminate it because we think it is a fair and appropriate thing to do. (15T2022, 1. 7-17)

(E) *The law against discrimination*: The governing statute, Section 205 of the Federal Power Act, is quite as plain as it is all-encompassing:

> Sec. 205. (b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

The statute is unyielding and the Commission's approach has been equally forthright. Thus, its policy has been as laid down in 1938 (Gulf States Utilities Company, 1 FPC 522, 524):

> Proper practice and the avoidance of undue discrimination requires, except in unusual cases, that once a new rate is adopted by a company it be made available and applied uniformly to all customers of the same class at the same time.

In a recent natural gas case under a similar law, the Federal Power Commission denied a filing of a special and discounted rate for a particular customer notwithstanding (a) the plea of hardship, (b) the acquiescence of all the other customers, (c) the claim that an old and settled relationship should be continued, and, finally, (d) the point that the discrimination would be for a temporary period of months only—all as in this case. *Transcontinental*, 28 FPC 979. See also 2 FPC 134, 140; 11 FPC 685; 22 FPC 900, 903; and 13 FPC 301.

There is no doubt applicable the principle of the Interstate Commerce Act and the common law generally to the effect that not all discriminations or preferences fall within the ban; only such as are unjust and unreasonable (*Interstate Commerce Commission* v. *B. & O. R.R.*, 145 U.S. 263, 276; *Great Western Ry. Co.* v. *Sutton* (1869) L.R., 4 H.L. 226, 237, per Blackburn, J.). But it is clear that discrimination between two nearby areas or discrimination among similar enterprises in the same general area is peculiarly the subject of the statutory rule. *Ayrshire Collieries Corporation* v. *United States* (1949), 335 U.S. 573. As it was put in the initial decision of October 3, 1963, in *Carolina Pipeline* v. *Southern Natural*, RP63-4, 31 FPC 705 at 721.

> . . . Illusory, inconsequential differences without distinctions will not support a difference in rate schedules and cogent reasons for such differences in treatment of customers must be shown. *Cf. Panhandle Eastern Pipe Line Co., et al.*, 10 FPC 328, 331.

Numerous decisions have validated a rate difference for R.E.A. cooperatives when the service has been demonstrated to be of quite different character in a number of ways[22] but, as held by the Indiana Public Service Commission (in a case where the power company likewise filed increases for some distributors but not for the cooperatives), a ruling either establishing or disestablishing a difference on that score cannot be made without full evidence (21 PUR 3d 309).

---

[22] *Carpenter* v. *P.U.C.* (Penn., 1940), 15 At. 2d 473; *State* v. *Municipal Corporations* (N.C. 1955), 90 S.E. 2d 519. Last March, in an order accepting a rate *reduction* for service to R.E.A. cooperatives by several Eastern Shore power companies, the Commission announced it is conducting an investigation of the power companies' rates for all forms of wholesale service, anticipating Commission action on any of the rate schedules, if found warranted. *Re Delaware P. & L. Co., et al.*, March 15, 1963.

(F) *The result as to discrimination*: The result of the discrimination issue could hardly be more clear, or more dispositive. The evidence suggesting a difference in service to sanction the discrimination is not more than a scintilla, certainly not the substantial evidence the law requires for any such finding. Rather, there is an outright negation of any such difference in the company's own conclusion that (a) the cities and the Oconto Cooperative have always been treated the same, (b) they should be treated the same, and (c) as soon as this case is over, they will be treated the same.

In that posture, the fact of unjustified discrimination for the period beginning August 30, 1962, is plainly established, indeed all but admitted. The discrimination is patent, open, notorious, blatant and unvarnished, inevitably so as a result of the company's ambivalence—discrimination next year, then it is equally unfair and inappropriate to maintain the discrimination this year, and it was quite as unfair and inappropriate to begin the discrimination last year, on August 30.

For that reason—and that only—it is concluded the increased rate filings which are the subject of this case cannot be found to be lawful or effective. From the effective date hereof until some new and non-discriminatory rate filing becomes effective, billings should be, and are directed to be, made at the former rates. For the interim period, since August 30, 1962, the collections which have been made of any amounts in excess of those chargeable at the former rates should be, and are directed to be,[23] refunded to the respective payers. However, since the delay in this case is not found to be attributable to the company, no interest thereon is required to be paid.

VI. Unitization of Costs of Service

(A). *How to verify the cost of power purchased from the parent company?*: Before entering upon the study of the cost of service—which, of course, will become relevant as soon as the new, non-discriminatory filings are made in accordance with the company's announced program—it is necessary to conclude what costs of what service are to be counted. The point is this: Out of a total cost of service approaching $19,000,000 for the 1961 test year,[24] between a third and a half of that amount consists of a single item for the contract cost of purchased power, $7½ million, nearly all of which is bought from the company's parent, the Wisconsin Electric Power Company. It is the method of auditing and justifying that expenditure that is very much in issue.

Pointing to the numerous evidences of common ownership of the two enterprises, common control and joint operation, the city interveners posit a single, basic costing unit made up of the integrated power pool system of the two companies which serves the nine wholesale customers, using an appropriate portion of the joint costs, after classifying them between "demand" and "energy", and allocating the separate components on the basis of peak and annual usage. This method, of course, disregards and "washes out" the sale transaction between the two companies; quite possibly it is the method that would be employed if there were no Wisconsin Michigan Power Company and this were solely a rate case of the Wisconsin Electric Power Company.

The company, while insisting upon the preservation of the separate corporate identities, and not failing to mention that the sale to the company by its parent is under a "filed rate" which has been determined and approved by the state commission and has been accepted for filing by the Federal Power Commission, nevertheless accepts fully that appropriate inquiry into the validity of that charge is in order. The company has indeed furnished a detailed cost study on the parent company's sale to its subsidiary, Ex. C–30, which concludes on Schedule 13 that the parent company during the accepted test year of 1961 earned a net return of only 4.43 percent on that portion of the company's depreciated capital property allocated to the power service furnished to the Wisconsin Michigan Power Company.[25] But the company stoutly opposes the cities' much broader program, which, after integrating the entire system's costs for the two companies, then applies about 2 percent as the share of the total business attributable to these nine city distributors. The company assails this approach as illegal, illogical, unnecessary and incorrect (perhaps especially so since the result (Ex. I–1B, Sch. 3, p. 1) is to show that even under the prior rates, before the increase, the revenues from the nine cities were $95,000 (or about 7 percent) in excess of the cost of service as developed under that system).

---

[23] Under authority of Section 205(e) of the Federal Power Act, 16 U.S.C. 824d.

[24] The various figures herein are rounded off for clarity. For this item see Ex. S-1, Sch. 2.

(B) *Staff study shows 4.38% return on the sale*: The FPC Staff restates the admitted premise that the cost of purchased power from the parent company must be clearly examined into, but the Staff objects to the city interveners' "rolling together" of the costs of both companies. Their difference with the cities is upon the selection of technique rather than objective. The Staff's Exhibit S–17 is a cost of service study on the operations of the Wisconsin Electric Power Company related solely to its one sale to its subordinate, the Wisconsin Michigan Power Company. The result is to show that the parent company earns a return of only 4.38 percent on its sale to its subordinate firm, the same purchase which represents nearly half of Wisconsin Michigan's cost of doing business as explained above. It is shown that, in order for Wisconsin Electric to earn a normal rate of 6 percent on this sale, it would have to raise its price to Wisconsin Michigan from $7¼ million to $8 million, based on the 1961 figures (S–17, Sch. 2, l. 25, col. 4 and 7).

This study is quite elaborate, consisting of 15 schedules, and purports to consider Wisconsin Electric Company's entire cost of doing business, from which there is selected out and counted the portion that operates its primary transmission system (138 kv and higher), since the service to Wisconsin Michigan is at that voltage. Wisconsin Electric's various lower voltage transmission systems, such as the 26.4 kv facilities, are not included because they are not used to serve Wisconsin Michigan. Otherwise, there is an allocation of the facilities of Wisconsin Electric which are used for this sale and then an application of the demand and energy ratios as shown in Ex. C-30, Sch. 2. The net result of the exhibit is to demonstrate quite clearly that the sale to Wisconsin Michigan does not produce an excessive return to the parent company, actually only 4.38 percent, and upon that basis, the exhibit was admitted and was not challenged in cross-examination (12T1673). The rate of return shown, 4.38 percent, compares closely with the company's own figure of 4.43 percent as shown on Exhibit C–30.

---

[25] To arrive at that figure, the exhibit computes that the demand responsibility for this sale comes to 11.25 percent of the maximum system demands upon the Wisconsin Electric facilities, and accordingly allocates to this service that percentage of its depreciated production and transmission property, or a total net property assignment of $20,000,000 out of about $188 million. The net return, $965,316 (which produces the claimed rate of 4.43 percent on the allocated rate base), results from charging about 12 percent of the production expenses of the Wisconsin Electric Power Company to this sale, which is the ratio of the delivery to Wisconsin Michigan to the total power supply available for sale.

(C) *Verification is essential in view of common ownership*: The fact that all of the common stock of Wisconsin Michigan is held and owned by Wisconsin Electric Power Company is enough, without more, to require that the transaction between them for the sale of power be scrutinized with care, that it be examined to determine whether the cost is a fair and reasonable one from the standpoint of Wisconsin Michigan. "Such an inquiry is essential to the fixing of just and reasonable pipelines rates. *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (DC Cir., 1957) cert. den. (355 U.S. 904)." [20]

In that view, it is unnecessary to discuss the degree to which the operations of the two companies are in fact integrated and under common control. It is enough to record that four out of the seven directors of Wisconsin Michigan are among the nine directors of Wisconsin Electric and that the two companies do have common officers at the principal posts. To some extent they operate separately, that is, the dispatcher for Wisconsin Michigan, located at Appleton, determines the hourly needs of all the customers on its system and the hydrogeneration available at the dams in the north, from which there is derived the amount of steam power required from the parent company. It is that information that is communicated to the dispatcher for Wisconsin Electric 100 miles away, perhaps on an hourly basis, who incorporates it into the pattern of the needs of all the Wisconsin Electric customers and arranges for steam generation accordingly. While it is denied that the two companies operate their systems jointly to fit the needs of their combined load curve, it was shown that the hydrogeneration is used mostly for "peaking" of the Wisconsin Michigan load, and that since the two load curves are virtually the same, the practical result is to operate for the benefit of the common load. While it was denied that the two companies function as one, it was agreed that the practical operations are as they would be if there were no subsidiary company and the northern operations were conducted by a separate division of the overall enterprise. Anyway, all this would seem to be irrelevant as soon as it is agreed that the "filed rate doctrine" (for Wisconsin Electric's sale to Wisconsin Michigan at Forest Junction, near Appleton) does not foreclose inquiry into the reasonableness of the rate of that sale. Thus the degree of interrelation is not so important; what is needed is the correct method of checking the validity of the annual price, $7.2 million, paid by the subsidiary to its parent for its supply of power.

(D) *The unitized cost study is less accurate than Staff's method*: The method advocated by the city interveners could perhaps be used if no better were available, but it has the obvious defect that it depends upon too many judgment factors and other variables to be accurate when it is considered that the sales to the nine cities comprise only 2 percent of the combined system's total power generation. By applying the "Atlantic Seaboard" formula, the cities' exhibits charge half the fixed costs to the energy component, then charge to the cities 2.12 percent of the remaining fixed charges (as the demand component) and 1.92 percent of the resulting energy charges, for a total cost of service of $1,339,050. This turns out to be $220,000 below the actual revenues under the former rates, let alone the greater difference after the increase. The Staff undertook a similar study of the joint or unitized costs, Exhibit S–3, and this produces an allowable price to the cities actually somewhat in excess of that claimed by the company under the new rates. This results from supposing a rate of return of 6 percent, instead of the 4.38 percent that Wisconsin Electric is said to earn on its sale to its subsidiary. The greater part of the difference between the Staff study and that of the cities comes from the allowance for the return (the cities use 5.55 percent) and for income taxes. The latter alone accounts for a difference of $140,220, which results from the income tax allowance only at the accelerated depreciation rate, which the company does not use, as explained below.

---

[20] Quoting from *Northern Natural*, Opinion No. 385, April 2, 1963, 29 FPC 689.

Two points of difference are enough to illustrate why the one approach should be used and the other should not be. The cities' cost study for service to the nine cities from the combined system includes the entire primary transmission facility of Wisconsin Electric, 138 kv and higher, but does not use its secondary transmission system which serves the Wisconsin Electric areas in the southern part of the state at 26.4 kv. Their point is that neither the Staff nor the company used the latter facilities as part of the rate base in their testing of the Wisconsin Electric cost of service for its one sale to Wisconsin Michigan, and since that demonstrates that the 26.4 system is not considered "used or useful" in serving Wisconsin Michigan or its customers, there is no need to include it in the cost study so prepared. The Staff rejoinder is that the only proper approach to a joint study of the costs of the entire system is one which combines the entire generation and transmission facilities used for all of the wholesale customers of *both* companies, and since Wisconsin Electric has a number of wholesale customers served under the 26.4 system, then that installation must be counted in so that all wholesale customers of both will be treated and figured alike. The cities' surrejoinder is that power does not swim upstream, so to speak, from the 26.4 system of Wisconsin Electric into its primary transmission facilities, and therefore none can reach Wisconsin Michigan from the 26.4 lines; anyway there are no power generation facilities directly serving the 26.4 system. This, the Staff says, is beside the point.

The answer would seem to be that either aspect might be more appropriate, depending upon the true objective, but the disparity in view-points demonstrates the difficulty of using the combined costing method at all. When these diverse applications of the joint costing process result in a major and bona fide difference of opinion as to the scope of the transmission plant to be included as the starting point, the inevitable reaction is to doubt the validity of the entire joint costing method for present purposes.

As another example, the cities apply the "Atlantic Seaboard" formula for classifying half of the fixed costs to the energy use because that has been used by the Commission in a number of gas pipeline cases. The Staff points out that formula is peculiarly applicable to lines which have a large volume of interruptible sales, but here neither company has any sales of that character; the Staff prefers a more refined system which works out to charge about 20 or 25 percent of the fixed costs into the energy component—but all of this appears to be a judgment factor, undemonstrable and indefinable, designed to charge the high demand customer somewhat more for periods of sustained demand.

Numerous judgment factors affect many other elements of both studies also (such as the method of measurement of the customer demand to compute the demand responsibility percentage as explained below), and they tend to explain the wide variance in the results obtained in the two exhibits which apply the joint costing method. But at the same time they serve to demonstrate the inutility of that method here, since the sales in question amount to such a small amount, only 2 percent, of the total operations in question. Allocations tend to lose reality and credibility when reduced to such fine amounts. An error of only one tenth of one percent in the demand ratio works a $40,000 change in the annual cost of serving the nine wholesale customers. (Ex. S-3, Sch. 1). Accordingly, the Staff method (Exhibit C-17), showing a 4.38 percent return to the parent on the sale to the subsidiary, is believed to be preferable and is accepted as adequate test of the validity of the sale price between the two companies.

(E) *The operation of the contract between the companies is controlled*: Nevertheless, while rejecting, for the reasons stated, the cities' "rolled together" study on the cost of service of the combined operations of the two companies, it is still possible, for the purposes of review of the operating costs of Wisconsin Michigan Power Company alone applied to these wholesale customers, to consider the various adjustments and correctives which are advocated by the city interveners and which underlie their exhibit. There is one exception—the cities propose a downward adjustment of 1.5 percent in the expense for coal purchased by Wisconsin Electric at its thermal plants, which is suggested on the basis of studies of the recent coal contracts which are believed to indicate that the cost of coal is going down since the 1961 test year. But the evidence of the trend of prices over a number of years, that is since 1940, does not confirm the prediction, based upon these few and very recent coal purchases, that the over-all cost of coal over the long range can be counted on to be lower than the 1961 costs used. Anyway, the difference—evidently some $6,000 per year[27]—would seem to affect the resulting rate of return of Wisconsin Electric, in its sale to Wisconsin Michigan, by much *less* than one-tenth of one percent and thus, even if the predicted reduction in coal costs should be experienced in fact, this would hardly affect the validity and reasonableness of the price at which Wisconsin Michigan buys its supply of purchased power.

One final point on the cost of purchased power. The cities (September brief, p. 16) perceive some fatal result from relying upon the purchase arrangement between the two affiliated companies and the Staff verification thereof just referred to. Their problem is that Wisconsin Electric supplies energy at several different rates according to operating conditions, selling firm power at .65 cents per kilowatt hour (plus a demand charge) and economy power (misnamed "dump") at .5 cents per kilowatt hour. The selection of the applicable rate appears to depend upon whether total demands upon Wisconsin Electric's system at the moment are such that only its newest and most efficient plants are required for the time being to meet them, in which case their costs are low and their price is low, or whether the total demands at the moment are so high as to require the company to put on the line its older and more expensive equipment. It is manifest that with this complication only the dispatcher in the Milwaukee area and the Wisconsin Electric operating personnel are in a position to determine which of their operating units must be pressed into service, which of them are actually in use, and, accordingly, which rate is applicable for the kilowatts then being produced. The arrangement thus seems to the cities to be one-sided and is claimed to be subject to fell or sinister manipulation by Wisconsin Electric at the expense of its subsidiary customer, Wisconsin Michigan.

It is worth reminding that there appear to be many situations in the utility business where the particular service available (and therefore the rate applicable) at the moment can be determined only by examination of the facts and data available at the utility headquarters, hardly subject to convenient verification by the customer. It is notable here that, with all the checking and verifying by the Staff and the interveners at the offices of both companies, no serious question of manipulation was actually demonstrated. In any event, the arrangement has been reduced to a formal operating memorandum (6T646), it is subject to the supervision of the state commission (6T640), and in practical operation the Wisconsin Michigan personnel have in fact been in a position to raise questions about correctives when called for (15T1935). Anyway, if the cities' basic premise be correct that the two companies are in reality one, and all of the personnel of both of them are engaged in a single joint enterprise, then there would seem to be no motivation for any improper maneuvering of the classification of the power sold to the subsidiary, nor any basis for the apprehension about it.

---

[27] $6,395; that is, 1.5 percent x 1.9269 percent x $22,125,843, which comes to less than one-third of one-tenth of one percent of the assignable Wisconsin Electric Rate base.

It is concluded accordingly that the cost studies on Wisconsin Electric in connection with its sale to Wisconsin Michigan are adequate verification of the disbursement by Wisconsin Michigan for the cost of purchased power, that is, for the nearly $7¼ million out of nearly $19 million for its over-all cost of service (Ex. S-1, sched. 2).

VII. Cost of Service—Wisconsin Michigan

(A) *Legal basis*: The legal basis for the Commission's inquiry into the costs incurred by Wisconsin Michigan, as a basis for judging the validity of its proposed rates, is fully reviewed in the Staff's opening brief, as follows:

> *Statutory objectives*—Part II of the Federal Power Act obligates all interstate electric utilities to provide adequate service to the public, at a fair monetary return to the utilities and with due recognition of "* * * the congressional objective of efficient use of the nation's power resources * * *." *Pennsylvania Water & Power Co.* v. *F.P.C.*, 193 F. 2d 230, 234 (CADC), affirmed 343 U.S. 414. The Act recognizes the duty of utility investors and managements to invest, manage and operate their properties in a prudent manner so as to achieve a "* * * fair rate of return, on a fairly established rate base * * *" after allowances for operating expenses, depreciation and taxes. *South Carolina Generating Company*, 16 FPC 58; *Pennsylvania Water & Power Co.* v. *F.P.C.*, *supra* pp. 242-243.[24] If interstate utilities fail those tasks, this Commission's responsibilities under the Power Act require that it prescribe the just, reasonable, and non-discriminatory and non-preferential "* * * rate, charge, classification, rule regulation, practice * * *" and "* * * fix the same by order."[25]
>
> *Standards*—The statutory criteria (just, reasonable and not unduly discriminatory or preferential) spring from the interstate commerce power and free this Commission from any conflicting state or local laws. *State Corp. Comm. of Kansas* v. *F.P.C.*, 206 F. 2d 690, 705 (CA8), certiorari denied, 346 U.S. 922.[26] They are applied subject to a single limitation—that Commission orders be "* * * necessary or appropriate to carry out the provisions of this Act.* * *" (Section 309).
>
> In judging what principles and procedures are necessary or appropriate for ratemaking purposes under the Power Act the controlling factor is the end result of Commission action. Particular ratemaking formulas,

---

[24] Regulated and non-regulated businesses alike share the risk of actually earning a net operating profit. *Hope Natural Gas Co.* v. *F.P.C.*, 196 F. 2d 803 (CA 4).

[25] Section 206(a) of the Act prescribes this Commission's authority over established interstate wholesale rates and services. Section 205(e), in prescribing the Commission's authority over proposed rates and services, specifies that "* * * the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it [rate of service] had become effective. * * *"

[26] Construing similar provisions of the Natural Gas Act, Sections 4 and 5, which were modeled on Sections 205 and 206 of the Power Act and are identical thereto in all respects here relevant.

methods, theories (or even infirmities of method) are unimportant if the end result may be said to be just and reasonable. *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591. The Commission "may formulate its own standards" if the end result of its rate regulation is a product of reason, supported by substantial evidence and protective of the respective interests of consumers and investors. *Pennsylvania Water & Power Co., supra*, p. 242. Commission discretion is circumscribed only by the doctrine of abuse of discretion.[27]

(B) *Net cost developed*: The remarkable result of the plethora of studies and exhibits by all three parties is that, excepting for the two major differences in the "joint costing" approach considered above and the income tax question which is considered below, they come out to practically the same result. The Staff concludes that the company's cost of serving the nine wholesale customers for the year 1961 (allowing return at six percent) came to $1,784,050, which is more than 98 percent of the actual revenues to be expected under the new rates, $1,815,760, while the company's cost of service with a return at 6 percent, works out at $1,848,460.[28]

(C) *Reconciliation of costs*: The Staff's September brief has furnished a reconciliation of their cost of service with the company's, showing three items of difference, as follows:

(1) $15,192 from a slight variance in the percentages of demand and energy to which the total production costs of nearly $8 million are classified. But this is largely a judgment factor and neither one can be *proved* to be exact or correct.

(2) $23,747 from the disallowance of certain substations and transmission property under the Staff's view that a few such facilities serve only the company's retail outlets. These are step-down installations from the 69 and 34.5 kv lines and do seem, according to the testimony, to be related more directly to distribution. However, two small items (Twin Falls and Oconto Falls) the Staff concedes were unnecessarily so classified, which would restore $1,270.

(3) $25,000 for the annual costs related to the Appleton Steam Plant, which is mostly a "cold standby" steam generation facility kept available for use in emergency. Of this, $11,321 is obviously correct as the cost of certain local and retail functions, but for the rest the adjustment raises a question quite out of proportion to its importance. Since the plant's only power use for some years has been occasioned by an "outage" in Wisconsin Electric's generating plants down state, the Staff views the Appleton plant as chargeable to the parent company's power pool, *i.e.*, not "used and useful" for Wisconsin Michigan at all (or at least not solely). But this both is extraordinary, and proves too much.

No reason appears why any customer company (such as Wisconsin Michigan) should not maintain at nominal or minimal cost a standby generator against the possibility that its supply source may fail, a measure of insurance so to speak. That it has not been needed locally does not show it may never be.

Further, the Staff's thought seems to be that Wisconsin Electric (the supplier) should make some sort of a rebate of the amount ($13,679 per year), apparently to recognize that should there transpire a power source emergency on Wisconsin Electric, then *this* customer's demand (after a few hours' start up time) could be made that much less. Even if this logically follows, all it really suggests is that Wisconsin Electric's sale price should be reduced a little to allow for this indirect benefit to it. But that has already occurred. Wisconsin Electric now sells at a discount, earning, according to the Staff, only 4.38 percent return on this sale. The Staff cannot expect Wisconsin Michigan to have it both ways, that is, both the indicated rebate and the favorable electric rate too. For all that appears, the low return to Wisconsin Electric was settled upon partly in view that its customer company maintains this small standby for their joint benefit. Disallowing it as a charge to Wisconsin Michigan's customer service means only that Wisconsin Electric is expected to pay it, perhaps twice.

---

[27] *Pennsylvania* case *supra*, p. 242 where the Court states: It * * * remains for us * * * to examine the theory upon which the Commission purported to act and to assure that its action was within the realm of allowable discretion * * *.

[28] See, respectively, Staff's July brief, p. 21; Ex. C-3A, Sch. 24 and *id.*, Sch. 24A. For the Staff a total of seven different figures were given at various stages, ranging from $1,769,550 to $1,785,172, which reflects the various refinements achieved as the case progressed. See also the September brief at pp. 3, 56 and App. A, p. 1; Ex. S-1, Sch. 1; 11T1461, 15T1958.

These three differences would cover the $64,000 between the Staff cost of service and the company's (Ex. C-3A). But actually there is no such difference to explain. The company's "cost of service" is moot or academic insofar as its total is more than the total sum the actual rates here under review are expected to exact in dollars from the nine wholesale customers, and that latter figure is unchallenged. The total, that is, the expected receipts under the new rates for the test year volumes, is $1,815,760 (Ex. C-3A, Sch. 22) which is only $31,858 above the Staff cost of service, and already well within the zone of reasonableness. But "adding back" to the Staff cost the steam plant item of $13,679 and the other one for $1,270 (Pars. (2) and (3) above) there is left only the small and inconsiderable difference of $16,909, or less than one percent. And that lingering difference only equals the margin (referring back to item (1) above), that divides the purely subjective judgment conclusions about the relative demand-energy classification of the production plant—where the true measure can never be known and might be many more thousands greater, or lesser.

Thus, apart from the income and other tax questions which are treated below, the cost of service differences fade into insignificance. But even if it were otherwise, rejection of the increases is not necessarily called for. Assuming that continued refinements and further research might conceivably reestablish or locate various items of difference in terms of a few thousands of dollars out of the $1.8 million being charged, or not over one or two percent, it is the opinion that, for the reasons stated below under "IX–Rate of return," the rates proposed and presumably to be refiled would not require to be rejected.

One specific difference more. The intervener's study uses a somewhat different, and seemingly unusual, method of determining the kilowatt figure representing each city's demand responsibility. The company and the Staff average the peak usage in four separate winter months, a technique which is believed to give a more promising result, especially since no method can guarantee certain accuracy.

VIII. Tax Allowance

(A) *Income tax depreciation formula*: Using a proportion of effort and argument that might better be addressed in a more likely case, the city interveners have projected a double-barreled income tax controversy, proposing—

(1) that the company be credited in the income tax allowance only with the smaller amount the company would have paid to the Internal Revenue Service *had* the company chosen to take advantage of the tax law's two programs for tax reduction or deferral by more favorable depreciation; and

(2) that the tax savings so resulting be required to be reflected in lower rates to the city customers (the so-called flow-through).

The reference of course is to the tax computation method which uses an accelerated rate of depreciation (I.R.C., Section 167) and to the guide line service lives which were promulgated, or at least announced, by the taxing authorities last year (I.R. Procedure 62.21). The trouble is the company pays its income tax on the same straight-line basis as always, and, after full policy deliberation, has concluded that it proposes to continue to do so.

Parenthetically, the entire question becomes of real value to the cities only if there should be adopted the joint-costing technique which "rolls together" the cost of service of both the company and of its parent, Wisconsin Electric—then the tax "savings" could apply to both. But that technique has been rejected herein—see Part VI above. Limiting the question to Wisconsin Michigan alone, the Staff's July brief, App. B, computes the tax savings under the two programs at only $17,000, which means that the rate reduction here sought would amount to only 1 percent.

The cities must prevail on both points if the results are to help their rates, hence the second one may be taken up first. But no such issue is open at this, the initial decision stage. The Commission, by regulation and decision, has directed that the tax savings accruing from these programs be set aside in a special reserve, which may be invested in company facilities, with return allowed at 1½ percent. See 25 FPC 431 and the numerous decisions, regulations, and court opinions there referenced; also *Panhandle Eastern Pipe Line Co.* v. *F.P.C.* (CADC, March 15, 1963), 316 F. 2d 659; cert. denied, 375 U.S. 881 (1963); *Cities of Lexington, et al.* v. *F.P.C.* (CA 4), 295 F. 2d 109; *Appalachian Power Co.*, Op. No. 375, 28 FPC 1199; FPC Order No. 204, 19 FPC 837.

The order just cited prescribes the reserve accounts and appears to direct that tax deferrals shall be there recorded, which has all the status of a regulation and necessarily negates any other use of such funds.[29] That which the Commission forbids by regulation can hardly be sanctioned or permitted by the initial decision of a hearing examiner. The parties refer to certain pending proceedings to reconsider the matter of "flow-through," such as Alabama-Tennessee (G–5471), and the rule-making Docket R–232. Should there occur a revision of the present announced rules and policies, this question could be reconsidered (prospectively—see 27 FPC 1180). As of now, these tax deferrals or savings are not available for reflection in customer rates.

In that state of the record it is not necessary to prolong the first issue, since without "flow-through" the tax reductions are of no immediate moment to the utility customer (4T236). It is enough to record that the Internal Revenue Code and the Treasury clearly make the use of these two tax methods subject to the taxpayers' management policy election, and this choice the Federal Power Commission has foregone any measure to control. Upon a rational basis believed adequate to its policy-forming board, the company has made that election, that is, has determined to compute its taxes currently as figured from the straight-line rate of depreciation, with service lives as prescribed and approved by the state commission (Exs. C–33, 34, 35). The company might have concluded otherwise, but that is not, under present precedents, to be required of them.

---

[29] It is not quite clear that the accounts prescribed cover the use of guideline rates as well—see account 266:3 as to "deferred taxes on income—other," 19 FPC at p. 845. As to this, the distinction (so far as tax deferrals is concerned) between guideline rates and liberalized depreciation seems to be one of semantics and theory, with no real practical distinction—which would seem to call for the same treatment with respect to "flow through." But in any event, the conclusion stated in the following paragraph is certainly equally applicable to both, and thus forecloses the issue here.

(B) *Investment tax credit*: Beginning with 1962 (after the 1961 test year herein), the Internal Revenue laws prescribe an abatement of tax equal to 3 percent of the current investments made in certain property.[30] It is not an optional item; the company expects to take advantage of it (3T297), and its President testified that 48 percent of the savings should "flow through" by a credit to a net income (Ex. C-37, p. 27).

This subject is also involved in current rule-making proceedings, Docket No. R-252, to prescribe the accounting treatment for this credit. Meanwhile, the Commission's order No. 261 of January 9, 1963, 29 FPC 62, directs that the amounts so saved and abated be credited to Account No. 253, "Other Deferred Credits," subject to later adjustment and filings as may be required. It is reported the Wisconsin Commission has announced a "flow-through" requirement (Ex. C-37, p. 27). Certain pending legislation (H.R. 7111, 88th Congress) may also affect the matter.

In that posture, at least pending further rate filings (which are expected to reflect this saving), no present action herein is called for, nor do the parties' briefs appear to request any. The action to be required and taken is that which may be called for by the rule-making proceeding referred to.

(C) *New tax rates in effect*: Effective in 1962, the Wisconsin property tax was reduced by 10 percent, under a law passed in 1961, before the present rate filings were made. However, in keeping with its policy of eschewing any and all adjustments, up or down, after 1961,[31] the company's filing and proofs do not reflect this tax saving, evidently about $8,000 to $9,000. Their brief points to the possible repeal of the 1961 reduction. Both the Staff and the cities call for recording this credit and ask its reflection in the rates (Cities' July brief, p. 38; Staff September brief, p. 30, Oct. p. 10).

Under the cost of service system any direct tax (*i.e.*, property or income) is a fully reimbursable item, *pro tanto*; whatever its amount it is added to the costs, included in the rates as fixed from time to time, and thereby charged to the ratepayers, with the company's intervention solely as a collecting intermediary.[32] In that sense, the property and income taxes are in reality an excise—Ex. C-3A shows that the two income taxes (Federal and state) and the property tax come to .15¢ out of each dollar (or roughly .15¢ per kilowatt hour) in the cost of service to be recouped from the customers. Under ordinary principles any excess collection of tax reimbursement from the ratepayers, unless treated for their account, is inevitably a windfall to the company and its beneficial owners, the common stockholders.

Accordingly, any refiling of the rates should reflect the amount of this tax saving. It is not in the class with the diverse cost adjustments, such as those in coal and wages, upon which the company justifiably stands on the 1961 record. Taxes are inevitable, certain, and uncontrollable; their reimbursement in the rates should be dollar for dollar, neither more or less.

Of course, if there is a repeal of this tax saving before the new filing, no adjustment is called for. But the property tax is not different in this respect from the Federal and state income taxes—each is just another line in the cost of service. The forum is not required to ignore that legislation is also pending to revise the Federal tax law, to reduce the corporate income tax from 52 percent to 48 percent. The order herewith must treat them alike; it anticipates accordingly that any new filing shall reflect the true tax liability in these several respects which is current at the time of filing.

---

[30] S. 2, Revenue Act of 1962, 76 Stat. 960, 26 USC 38.

[31] Except for "normalizing" all production and sales figures to adjust hydro production to a normal or average year, in which all parties concur.

[32] *Galveston Electric Co.* v. *Galveston* (1922), 258 U.S. 388, 399.

IX. Rate of Return

The company argues for a rate of return at 6.50 percent, the Staff recommends 6.0 percent and the city interveners propose 5.55 percent, all based as follows:

(A) The company's 6.5 percent figures out to 10.5 percent on the common equity, that share being 40.9 percent of the total capital. This is on a "cost of money" theory, it appearing that comparable utilities earn over 12 percent on their equity share (C–27, p. 2).

(B) The Staff's 6.0 percent produces 9.29 on the equity, and is a net resulting judgment figure worked out by the Staff expert witness, who studied the company's own record and its capital ratios, the data of other utilities and businesses, earnings-price ratios, and many other factors, as required by *Safe Harbor*, 2 FPC 191.

(C) The cities' 5.55 (8.27 on equity) comes from the *South Carolina* case (1956), 16 FPC 52, said to be the latest FPC precedent in this field. Otherwise it depends mostly on price-earnings ratios, using the Staff's evidence that this ratio averages 5.23 percent.

The trouble is none of these studies is addressed to the facts of the case. The opposition's rebuttals presume the showing they are to meet is the 6.5 percent rate discussed by the company. For all the interesting but moot discussion about the 6.50–10.50 theoretical rate sponsored by the company, those figures are quite irrelevant.

The purpose of the hearing was not to explore rates of return, *in vacuo*, but to pass on the actual electric sales rates filed. The company says their new wholesale rates will bring in $1.815 million in revenues. Hence the only question is whether *that* amount will result in a return which is just and reasonable. By their figures this amount of revenue will produce a return of only 5.62 percent (Ex. C–3A, Sch. 24).

But this figure may be stated too low. Staff shows a 6 percent return out of a cost of service $31,858 below the revenue total just stated (15T1956). Using that cost for a base, as adjusted under Part VII above, the actual return to be expected from the rate increases filed, which is the subject of this case, appears to be between 6.1 and 6.2 percent, or practically the same as the 6.13–6.15 percent rate figured by the Wisconsin commission in the company's recent rate case on its retail business (Ex. C–17).

Thus the 6.5 discussion (Par. (A) above) is irrelevant since no one expects to earn, charge, collect, or pay it. The cities' 5.55 relies too much on a case where the utility's common equity was unusually low;[33] they also unduly rely on the price-earnings ratio, which of course is on the base of the market price, not on the book value.

The Staff study (6.0–9.29) has the virtue of showing thought and weight given to all factors and might well prevail over the 6.1 or 6.2 which the company's actual new rates seem to claim, except for two factors:

(1) The Staff briefs recite the many pertinent factors of the company's operations, the money market, other companies' earnings, average price-earnings ratios, and others, but twice there is mentioned a "negative factor" (ap-

---

[33] This is the *South Carolina* case where it is notable the return allowed on equity (which, after all, is the real controlling and decisive factor) was 10.50 percent, the same figure the company sponsors here. 16 FPC 52, 64.

parently a *downward* influence), arising from the company's "failure" to take advantage of liberalized depreciation in figuring its income tax (see part VIII above). Just why that should be a depressing factor in the earnings allowance is quite unexplained and, unless sanctioned by commanding authority, should be specifically negated. It was shown above that both the tax laws and the FPC regulatory policies make this tax depreciation method entirely optional, a responsibility of the company's management. But that is a Hobson's choice indeed if its free exercise works a reduction in the quite unrelated matter of the rate of return. There can be no penalty for the adoption of a program which both the law and the Commission freely permit, in fact which perhaps should be encouraged.

(2) It is not clear, on the other hand, that the 6.0 percent allows anything for the company's excellent over-all record, as shown by the average sales price comparisons in evidence—the city customers in this case have been served electricity at the lowest rates charged to any city in the entire state, with one minor and atypical exception (Exs. C–7, C–8).

The company's true claim (evidently 6.1–6.2 percent) results from a set of rates worked out for the company's major, retail business by the Wisconsin commission and serves the highly desirable policy of equalizing interstate rates with the large retail users' own rates. As suggested above, that purpose—to apply the same pattern to the local and to the interstate business—would justify absorbing minor differences in the cost of service, and should likewise sanction a uniform rate of return, as near as may be, on both classes of service. In any event, the 6.1–6.2 percent rate of return is well within the zone of reasonableness, and no reason appears to take exception to the rate increases on that score.

X. *Other Questions*

In the 400-odd pages of briefs in this case (and the 2,000-odd pages of transcript and 100 exhibits) there lurk quite a composite of points, objections and questions, all of which have been fully considered, and it is the belief that all are covered in the foregoing and in the following residuary clause:

(A) *High voltage discount*: The cities ask for evidence to justify "the elimination of the high voltage discount," saying none was presented to the two state commissions (when the retail rate was raised last year). The reference to the state commission hearings on the retail rates seems to betray a rather unwonted affinity to the company's large-user retail rate schedule (*cf.* p. 1475, above, under IV–C); anyway the discount has not been eliminated. For example, Shawano's 1948 contract incorporated a 7 percent discount for high voltage, deprived from Schedule VIII–A of the retail tariff, whereas the new rate substitutes a 15¢ credit per kw of billed demand for service at over 25 kv (10¢ off for service between 12 and 25 kv). The 15¢ is 10 percent of the median demand charges shown on the same page.

(B) *Kaukauna's demand*: The cities point out that Kaukauna lost its biggest customer in January 1962, which calls for a downward adjustment from the 1961 test year figures used to set the typical demand. But Kaukauna's demand and purchases are still high, absolutely and perhaps relatively. The point is adequately and copiously answered in the Staff's September brief, pp. 21–29. Kaukauna is still "The Electric City," as its seal proclaims.

(C) *The minimum rate*: The former Wisconsin retail rate VII–B included a minimum annual bill provision at $12 per year per kva, where a customer maintains its own power plant, figured on its capacity, since the company's service then becomes an auxiliary. The new rate schedules increase this to $18. The two cities affected are Kaukauna (Wisconsin) and Crystal

Falls (Michigan, whose contract minimum was based on its demand). The company has agreed that the Kaukauna contract bars this change for it (see p. 19 above, under IV-E), but Crystal Falls' contract was canceled three years ago (Ex. C-19). It will be assumed that any re-filing of the new schedule for Crystal Falls will be accompanied by a justification of the $18 minimum bill provision.

(D) *Energy resold*: The Staff objects to a proviso in the new rates which forbids the customer to sell to another utility for resale. No answer to this is noted, and the point is covered in their proposed finding, which is No. 7 of the "findings" below. So far as appears, this question applies equally to all.

(E) *Filing company regulations*: A point is raised in the Staff's July brief about certain company rules which should be filed with the tariffs. The company accedes (October brief, p. 10), and the point is covered in "finding" No. 8, below.

(F) *Rate design*: The total rate increases amount to 14 percent, but, apparently because of internal changes between the demand and energy elements, the increases to the respective nine cities vary widely from 3.7 percent for Crystal Falls to 31 percent for Florence (figured from Ex. C-3A, Sch. 22). To this undocumented change the cities object, as follows (Sept. brief, p. 36):

> The Company rests its case on rate design on the prior approval of similar rates for large retail users by the Wisconsin and Michigan commissions. WM. Op. Br. 40-41. No witness sponsored it in this proceeding nor was any evidence offered to support it. Moreover, the record in this case does not reveal, nor did any company witness know, how the retail rate structure which the company has proposed herein for these wholesale customers was developed before the Wisconsin and Michigan Commissions. The circumstances, proof (if any), and arguments which might have moved those commissions to alter the structure of the retail rates and thereby redistribute the revenue load among the retail customers in addition to increasing it in total, are not known, and obviously might not apply to the wholesale customers here.

The company relies on the cities' contracts (*i.e.*, the savings clause discussed above) but agrees this change is "subject to Federal Power Commission review under Section 205." (Sept. brief, p. 85). Accordingly, in order that that review may be had, it will be expected that any re-filing of the rate increases be accompanied by a showing in justification of the change in design, particularly as to why the rate design for large retail users is rationally appropriate for these city customers, who buy for resale and to meet the highly diversified electric needs of their many customers.

XI. Findings and Order

Upon consideration of the whole record, and those matters officially noticed, it is further found and concluded—

(1) The Wisconsin Michigan Power Company (Wisconsin Michigan), a Wisconsin corporation, is a public utility within the meaning of Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission as heretofore determined by order of the Commission issued September 17, 1958, *Wisconsin Michigan Power Company, et al.*, 20 FPC 358.

(2) Wisconsin Michigan, in effecting each of the sales of electric energy at wholesale to the following purchasers, transmits and sells electric energy at wholesale in interstate commerce for resale within the meaning of Sections 201, 205, and 206 of the Federal Power Act:

(Clintonville, Wisconsin), Rate Schedule FPC No. 24, as supplemented;
(Crystal Falls, Michigan), Rate Schedule FPC No. 36, as supplemented:

(Florence, Wisconsin), Rate Schedule FPC No. 38;

(Kaukauna, Wisconsin), Rate Schedule FPC No. 43, as supplemented;

(New London, Wisconsin), Rate Schedule FPC No. 41;

(Oconto Falls, Wisconsin), Rate Schedule FPC No. 39, as supplemented;

(Shawano, Wisconsin), Rate Schedule FPC No. 33, as supplemented;

(Wisconsin Public Service Corporation), Rate Schedule FPC No. 12, as supplemented; and

(Upper Peninsula Power Company), Rate Schedule FPC No. 25, as supplemented.

(3) Wisconsin Michigan's rate filings supplementary to the above schedules, submitted to be effective March 30, 1962, pursuant to Section 205 of the Federal Power Act, are unduly discriminatory and are unlawful within the meaning of Section 205(b) of that act.

(4) The supplemental rate schedules referred to in finding No. 3 above, as proffered by Wisconsin Michigan and retained in the files of the Commission pending Commission determination of the lawfulness thereof, are unauthorized rate schedule filings under Section 205 of the Federal Power Act.

(5) Wisconsin Michigan, in collecting after August 30, 1962, the rates and charges embodied in the supplemental rate schedules referred to in finding No. 3 above, collected rates and charges under schedules which, although retained in the files of the Commission, are determined to have been improperly filed with this Commission and therefore not effective as rate schedules under the Federal Power Act.

(6) Wisconsin Michigan, by reason of its collection of rates and charges as specified in finding No. 5 above, is obligated to return to the respective payers the amounts (without interest) collected on and after August 30, 1962, in excess of the amounts which would have been collected if computed in accordance with Wisconsin Michigan's rate schedules, and supplements thereto, applicable up to that date.

(7) Wisconsin Michigan's Rate Schedule FPC No. 36, Supplement No. 3 (Crystal Falls, Michigan), No. 12, Supplement No. 3 (Wisconsin Public Service Corporation) No. 25, Supplement No. 3 (Upper Peninsula Power Company) provide in part:

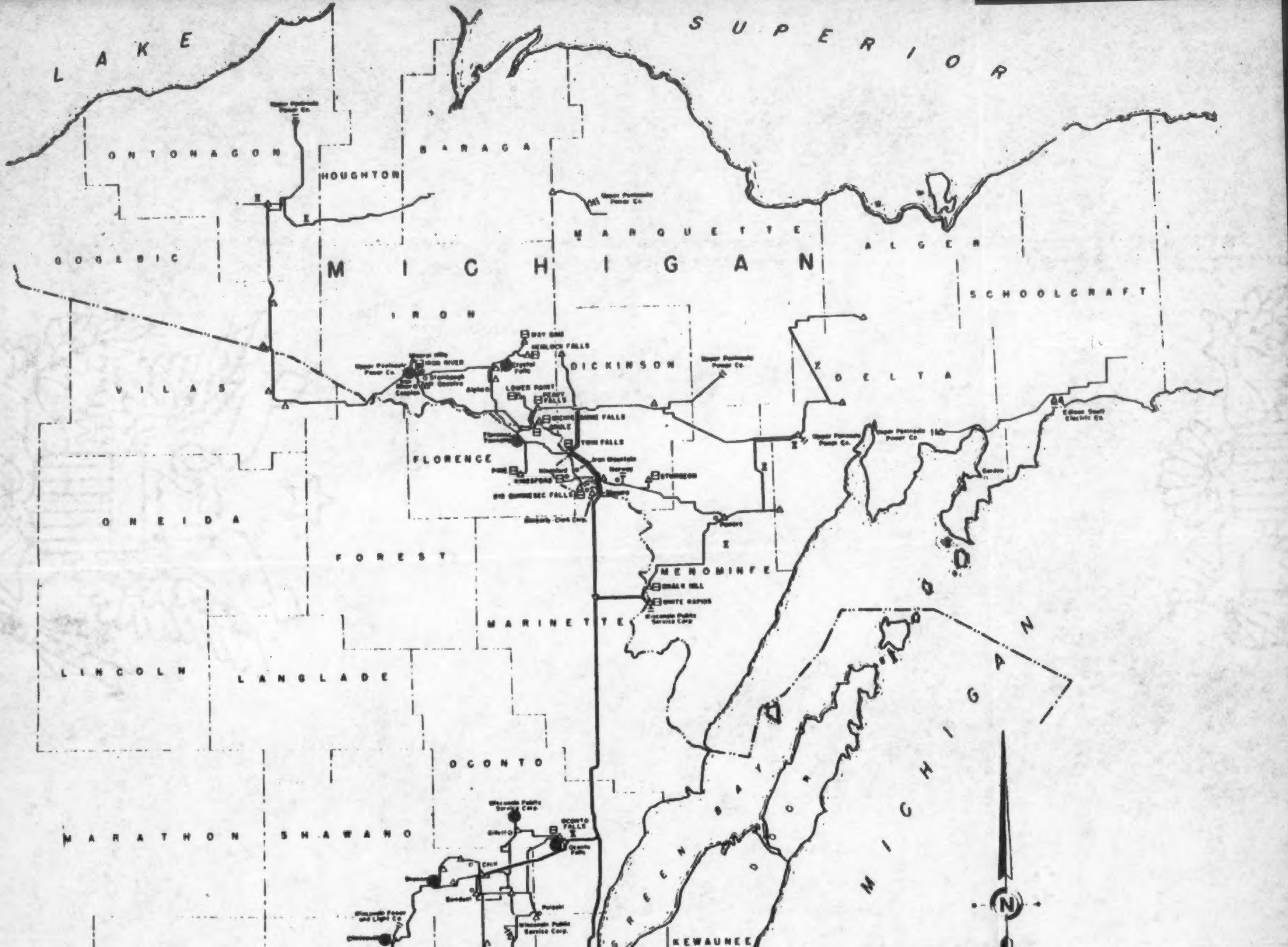
> Rate For Primary Service to Electric Public Utilities * * * Conditions of Delivery * * * 2. Energy furnished under this rate shall not be resold to any other electric public utility for resale without approval of the Company

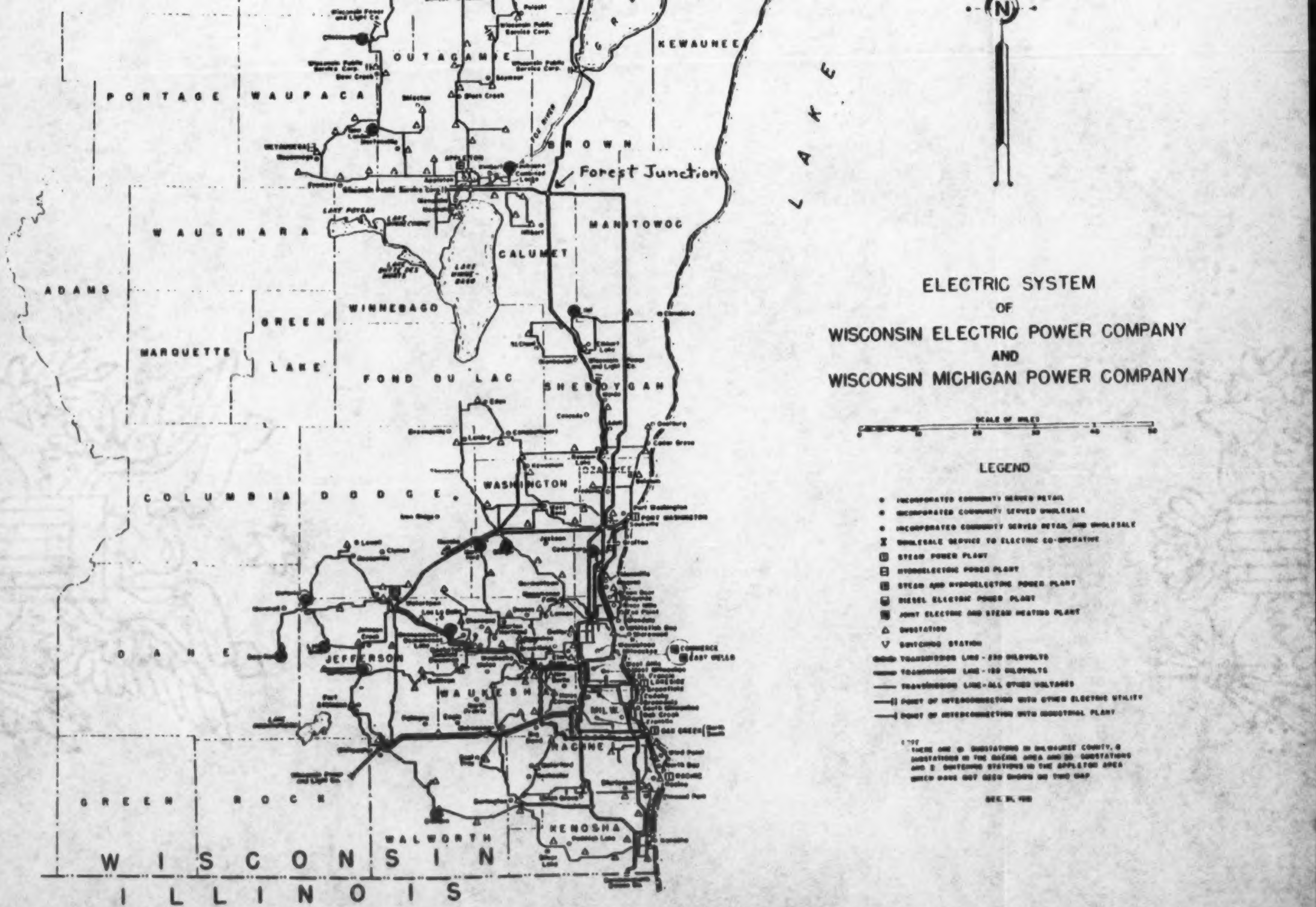
and those schedules are by reason of that provision unduly restrictive in controlling activities of the respective purchasers (Crystal Falls, Michigan, Wisconsin Public Service Corporation and Upper Peninsula Power Company), and serve no useful purpose of Wisconsin Michigan which is not otherwise served by definition in the rate schedule of the maximum demands and quantities of electric power and energy available thereunder.

(8) Wisconsin Michigan's rate schedules and supplements thereto, as designated and referred to in finding No. 7 above, are also shown to be incomplete as currently filed with this Commission due to Wisconsin Michigan's failure to file, as a part thereof, "Company's Rules and Regulations" as referred to in the "Rate For Primary Service To Electric Public Utilities * * * Conditions of Delivery * * * 11. Service under this rate shall be furnished only in accordance with the Company's Rules and Regulations."

(9) There are no contractual provisions contained in any of the rate schedules referred to in finding No. 2 which prohibit the filing of the proposed rate changes, or which prohibit putting into effect said proposed rate changes.

(10) Any new rate filings for the customers above listed should, to be acceptable, be at no higher level than the rate schedules referred to in finding


LAKE SUPERIOR
ONTONAGON
HOUGHTON
BARAGA
MARQUETTE
ALGER
SCHOOLCRAFT
GOGEBIC
MICHIGAN
IRON
DICKINSON
DELTA
VILAS
FLORENCE
ONEIDA
FOREST
MENOMINEE
MARINETTE
LINCOLN
LANGLADE
OCONTO
MARATHON
SHAWANO
KEWAUNEE
GREEN BAY
DOOR
LAKE MICHIGAN
Upper Peninsula Power Co.
IRON RIVER
WAY DAM
HEMLOCK FALLS
Crystal Falls
LOWER POINT
PEAVY FALLS
TWIN FALLS
Iron Mountain
Norway
STURGEON
PINE
BIG QUINNESEC FALLS
Kimberly Clark Corp.
CHALK HILL
WHITE RAPIDS
Wisconsin Public Service Corp.
Edison Sault Electric Co.
Garden
OCONTO FALLS
Oconto Falls
Gillett
Cecil
Bonduel
Pulaski
Wisconsin Power and Light Co.
N

ELECTRIC SYSTEM
OF
WISCONSIN ELECTRIC POWER COMPANY
AND
WISCONSIN MICHIGAN POWER COMPANY
SCALE OF MILES
LEGEND
INCORPORATED COMMUNITY SERVED RETAIL
INCORPORATED COMMUNITY SERVED WHOLESALE
INCORPORATED COMMUNITY SERVED RETAIL AND WHOLESALE
WHOLESALE SERVICE TO ELECTRIC CO-OPERATIVE
STEAM POWER PLANT
HYDROELECTRIC POWER PLANT
STEAM AND HYDROELECTRIC POWER PLANT
DIESEL ELECTRIC POWER PLANT
JOINT ELECTRIC AND STEAM HEATING PLANT
SUBSTATION
SWITCHING STATION
TRANSMISSION LINE - KILOVOLTS
TRANSMISSION LINE - KILOVOLTS
TRANSMISSION LINE - ALL OTHER VOLTAGES
POINT OF INTERCONNECTION WITH OTHER ELECTRIC UTILITY
POINT OF INTERCONNECTION WITH INDUSTRIAL PLANT
N
LAKE
Forest Junction
KEWAUNEE
OUTAGAMIE
BROWN
PORTAGE
WAUPACA
WAUSHARA
CALUMET
MANITOWOC
ADAMS
WINNEBAGO
GREEN
LAKE
MARQUETTE
FOND DU LAC
SHEBOYGAN
COLUMBIA
DODGE
WASHINGTON
OZAUKEE
DANE
JEFFERSON
WAUKESHA
MILW.
RACINE
GREEN
ROCK
WALWORTH
KENOSHA
WISCONSIN
ILLINOIS

No. 3, and should otherwise be in accord with the determinations expressed in the foregoing.

ACCORDINGLY, IT IS ORDERED, subject to review by the Commission, that—

(A) Within thirty days of the effective date hereof, Wisconsin Michigan shall make the refunds referred to in finding No. 6 above.

(B) Until any new rate schedule filings for the customers listed in finding No. 2 shall have become effective by virtue of an order of the Federal Power Commission, Wisconsin Michigan shall continue to serve the wholesale purchasers pursuant to the rate schedules there listed.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. G-1964

ORDER ON REMAND

(Issued June 9, 1964)

This case is before us on remand from the United States Court of Appeals for the Fifth Circuit, *Texas Eastern Transmission Corp.* v. *F.P.C.*, 306 F. 2d 345, setting aside 25 FPC 955.[1]

By order issued October 9, 1953, the Commission approved a settlement reached by all the parties to the increased-rate proceedings in Docket No. G-1964. One of the provisions in the Commission's order required Texas Eastern to make refunds and rate reductions in the event that it should receive certain specified refunds or reductions as a result of the final order in a proceeding involving the rates of one of its suppliers. Settlement of the supplier's rate case was approved as of August 1, 1954.[2]

Shortly thereafter, the Commission and Texas Eastern began a protracted series of correspondence and conferences, wherein the Commission or its staff contended that Texas Eastern had an immediate refund and rate-reduction obligation and Texas Eastern contended that it had no such obligation. The course of these exchanges is narrated in detail in the court's opinion, and it is sufficient to state here that by the fall of 1958, the issue was still unresolved. At that time, Texas Eastern, while asserting its view that its legal liability under the October 9, 1953 order was limited to $385,569, tendered to its customers, in *pro rata* shares, a total of $3,862,572 in purported "full and complete satisfaction, settlement, and discharge of any and all obligations, requirements, and conditions" of that order. All of Texas Eastern's customers, except Manufacturers Light & Heat Company, and Ohio Fuel Gas Company (the Columbia Companies) accepted the offer, signed the purported releases, and, so far as the record reveals, cashed Texas Eastern's checks. Thereupon, Texas Eastern submitted to the Commission a letter stating that it has fully complied with the requirements of the October 9, 1953 order "by reaching a full and complete settlement with all of its customers except . . . [the Columbia Companies] and by tendering to . . . [the Columbia Companies] amounts far in excess of any obligations" under that order.[3] The Columbia Companies protested against this report of compliance, contending that Texas Eastern's legal liability exceeded the total amount of $3,862,572, which it had offered.

---

[1] Certiorari denied *sub nom., Manufacturers Light & Heat Company* v. *Texas Eastern Transmission Corporation*, 375 U.S. 941.

[2] *United Gas Pipe Line Company*, 13 FPC 398.

[3] The amount tendered to the Columbia Companies was $1,051,071.

By order of March 13, 1961, the Commission rejected Texas Eastern's settlement proposal and directed Texas Eastern to pay to *all* the customers (those who had accepted Texas Eastern's tender, as well as the Columbia Companies), certain specified amounts, which would have totaled substantially more than the $3,862,572 previously tendered. This order was set aside by the Court of Appeals upon Texas Eastern's petition for review. The Court held that Texas Eastern's total refund liability under the October 9, 1953 order was limited to $385,569.[4]

Under the mandate of the Court of Appeals, the Commission must determine the amount which Texas Eastern is now obligated to refund to the Columbia Companies. By order issued June 20, 1963, the Commission directed Texas Eastern and Columbia to file proposed findings and conclusions with respect to this issue. The parties were requested to give specific consideration to the question of whether or not the payment to the Columbia Companies of anything less than the $1,051,071 previously tendered them would subject the Columbia Companies to an undue prejudice or disadvantage, or result in an unlawful rebate to the other customer.

We have considered the memoranda filed by the parties and have concluded that our authority to order refunds is plainly limited by the decision of the Court of Appeals. We shall therefore require that Texas Eastern refund $54,111.56 to Manufacturers and $65,310.20 to Ohio Fuel. On each of these amounts we will require interest, at six percent per annum.[5]

We do not believe Texas Eastern has any obligation to pay the Columbia Companies more than it owed them simply because it made an offer to all its customers, which the others accepted and the Columbia Companies alone saw fit to reject. In retrospect it is clear that Texas Eastern should have made its tender subject to approval by the Commission, but its failure to do so is not a sound basis for requiring additional overpayments. Texas Eastern may very well be entitled to recoup these overpayments but if it is unable to do so its stockholders, and not its consumers will bear the expense.

We recognize that this result could be said to discourage distributors from rejecting apparently inadequate settlement offers because of their fear that unless they accepted a compromise tender when made they might never recover even this sum. No such result is intended. To insure that distributors will not be so constrained, we shall require in the future that no payment in settlement of a pending Commission proceeding be made by any natural gas company prior to approval by the Commission. We think, however, that there is no violation of the statutory prohibition against discrimination by a natural gas company if in the situation where one of a group refuses an offer of settlement, even improvidently tendered, that is accepted by the others, the offering company does not retender the original offer when it is determined to be in excess of offerer's legal obligation.

---

[4] The Columbia Companies share of this amount is $119,421.76, of which Manufacturer's share is $54,111.56 and Ohio Fuel's share is $65,310.20.

[5] Texas Eastern appears to suggest that it was relieved of its duty to pay interest on its refund obligation as of October 1, 1958, the date on which it tendered to the Columbia Companies an amount in excess of the $119,421.76 and interest then due. The Commission is not persuaded that this tender of an amount in purported satisfaction of an unliquidated obligation had such an effect. It is significant that after the Columbia Companies rejected Texas Eastern's offer, Texas Eastern did not tender $119,421.76, plus the interest then due thereon, in satisfaction of the Columbia Companies undisputed claim to that amount. This could have been done while leaving to adjudication Columbia's claim for additional payment. Instead, Texas Eastern has retained and had the use of this liquidated amount, and accordingly, the Commission shall order payment of interest thereon from August 1, 1954 until the date of actual payment.

The Commission orders:

(A) Within thirty days from the date of this order, Texas Eastern shall refund to The Manufacturers Light & Heat Company $54,111.56, plus interest as prescribed herein.

(B) Within thirty days from the date of this order, Texas Eastern shall refund to The Ohio Fuel Gas Company $65,310.20, plus interest as prescribed herein.

(C) Texas Eastern's motion for oral argument is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2075

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued June 9, 1964)

The Washington Water Power Company, Licensee for Project No. 2075,[1] on March 30, 1961, filed its initial statement of actual legitimate original cost of the project, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming as of December 31, 1960 an actual legitimate original project cost of $85,008,887.17, as is more specifically shown in the attached Schedule I.[2]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed and recorded project costs. Following this study, the staff, subject to Commission approval, proposed certain adjustments which were agreed to by Licensee's representatives. The proposed adjustments involve (1) a reclassification of certain engineering costs totaling $265,228.07 within the project plant accounts as shown in the attached Schedule II; (2) the elimination of the net amount of $323,237.69 from the claimed and recorded project costs as shown in the attached Schedules I and II; and (3) the accounting disposition of the foregoing amounts as shown in the attached Schedule II. Based upon the proposed adjustment, the resulting recommended project cost is $84,685,649.48, as of December 31, 1960, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961, as shown in the attached Schedule I.

The recommended project cost includes certain charges to Licensee for engineering and construction management services by Ebasco Services Incorporated, a part of which may represent intercompany profits which violate this Commission's rule prohibiting profits to affiliates. Therefore, the staff recommends that the determination of the cost of Project No. 2075 at this time be made subject to possible further adjustment to reflect all necessary changes by reason of any later Commission determination that any part of the charges to Licensee by Ebasco Services Incorporated represent such intercompany profits.

---

[1] The project may be described as the Noxon Rapids Hydroelectric Project. It is located on Clark Fork, a navigable water of the United States, in Sanders County, Montana, and affects public lands of the United States and lands of the United States within the Kaniksu and Lolo National Forests. The license, authorizing the construction, operation and maintenance of the project, was issued pursuant to Section 4(e) of the Federal Power Act for a period of 50 years, effective as of May 1, 1955 (14 FPC 731, 734). The project began commercial operation on August 15, 1959.

[2] Article 23 of the license for the project provides for Commission determination of the actual legitimate original cost of the project and changes therein.

By letter dated September 24, 1963, Licensee confirmed its agreement to the adjustments proposed by the staff and resulting project cost, as set forth above.

The Washington Utilities and Transportation Commission and the Montana Board of Railroad Commissioners were advised by this Commission of the proposed adjustments and resulting project cost by letters dated October 1, 1963. The Washington Commission, by letter dated October 3, 1963, and the Montana Board, by letter dated October 15, 1963, indicated no objection thereto.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting disposition and resulting project cost, and the Washington Utilities and Transportation Commission and the Montana Board of Railroad Commissioners, by their lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting disposition, are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) As of December 31, 1960, the actual legitimate original cost of Project No. 2075 is $84,685,649.48, classified by primary plant accounts as shown in attached Schedule I.

(4) It is necessary and appropriate for purposes of the Federal Power Act, the Commission license for Project No. 2075, and the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, that the Commission reserve for future consideration the matter of revision of Licensee's actual legitimate original cost of Project No. 2075, as determined herein, to reflect such further adjustments therein as may be necessary in the event that any portion of the cost of the project representing charges to Licensee by Ebasco Services Incorporated is determined to represent intercompany profits which violate this Commission's rule prohibiting profits to affiliates.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The adjustments, including the accounting disposition, proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by the Licensee as shown in the attached Schedule II.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts showing the amount of $84,685,649.48 as the actual legitimate original cost of Project No. 2075 as of December 31, 1960, classified by primary plant accounts as shown in the attached Schedule I.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission three copies of FPC Form No. 7 as of December 31, 1960, showing compliance therewith, and shall submit two copies of FPC Form No. 7

to the Regional Accountant, Federal Power Commission, San Francisco, California.

(E) The actual legitimate original cost of Project No. 2075, as determined herein, is expressly subject to revision as set forth in finding (4) above.

SCHEDULE I

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2075 (NOXON RAPIDS)

ACTUAL LEGITIMATE ORIGINAL COST AS OF DECEMBER 31, 1960

Account*		Claimed	Adjustments	Allowed	
No.	Title			Before distribution**	After distribution**
	Intangible plant:				
302	Franchises and consents	$175,341.30	------------	$175,341.30	$193,078.48
	Hydraulic production plant:				
320	Land and land rights	24,259,288.87	$265,228.07	24,524,516.94	29,778,069.74
321	Structures and improvements	5,401,061.41	------------	5,401,061.41	6,852,344.88
322	Reservoirs, dams, and waterways	21,363,165.07	------------	21,363,165.07	27,103,519.80
323	Water wheels, turbines, and generators	11,641,655.14	------------	11,641,655.14	14,769,807.27
324	Accessory electric equipment	757,959.65	------------	757,959.65	961,625.97
325	Miscellaneous power plant equipment	696,202.50	------------	696,202.50	883,274.47
326	Roads, railroads, and bridges	66,179.19	------------	66,179.19	83,961.77
	Total hydraulic production plant	64,185,511.83	265,228.07	64,450,739.90	80,432,603.90
	Transmission plant:				
340	Land and land rights	66,786.32	------------	66,786.32	71,008.89
341	Clearing land and rights-of-way	409,575.28	(560.00)	409,015.28	551,870.87
342	Structures and improvements	41,732.54	------------	41,732.54	52,946.21
343	Station equipment	1,563,333.92	------------	1,563,333.92	1,983,407.02
344	Towers and fixtures	48,375.48	(48,375.48)	------------	------------
345	Poles and fixtures	488,848.72	------------	488,848.72	659,587.52
346	Overhead conductors and devices	577,654.05	(29,899.62)	547,754.43	739,067.08
	Total transmission plant	3,196,306.31	(78,835.10)	3,117,471.21	4,057,887.59
	General plant:				
378	Communication equipment	1,639.12	------------	1,639.12	2,079.56
	Total direct costs	67,558,798.56	186,392.97	67,745,191.53	84,685,649.48
	Indirect construction costs:				
52	Material expense	217,977.01	------------	217,977.01	------------
61	Temporary construction facilities	543,293.41	(132,767.48)	410,525.93	------------
62	Construction equipment	172,596.81	(844.78)	171,752.03	------------
63	Camp and commissary	7,520.50	------------	7,520.50	------------
64	Labor expense	606,785.76	------------	606,785.76	------------
65	Superintendence, timekeepers, clerks, etc	3,319,450.75	(11,960.94)	3,307,489.81	------------
66	Insurance, injuries, and damages	80,068.76	------------	80,068.76	------------
67	Equipment operation	79,692.05	------------	79,692.05	------------
69	Contractors' fees	800,000.00	------------	800,000.00	------------
	Total indirect construction costs	5,827,405.05	(145,573.20)	5,681,831.85	------------
	Overhead construction costs:				
71	Engineering	3,362,435.58	(276,204.28)	3,086,231.30	------------
72	Legal expense	15,527.87	------------	15,527.87	------------
75	Taxes during construction	378,372.11	(10,935.79)	367,436.32	------------
76	Administrative and general expenses	133,447.21	(10,090.92)	123,356.29	------------
77	Interest during construction	7,895,079.60	(180,938.78)	7,714,140.82	------------
80	Earnings and expenses during construction	(162,178.81)	114,112.31	(48,066.50)	------------
	Total overhead construction costs	11,622,683.56	(364,057.46)	11,258,626.10	------------
	Total indirect and overhead construction costs	17,450,088.61	(509,630.66)	16,940,457.95	------------
	Total cost of project No. 2075	$85,008,887.17	$(323,237.69)	$84,685,649.48	$84,685,649.48

( ) Denotes credit.

*Account references are to account numbers and titles prescribed in Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to January 1, 1961.

**Of indirect and overhead construction costs.

SCHEDULE II

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2075 (NOXON RAPIDS)

SUMMARY OF ADJUSTMENTS TO CLAIMED ACTUAL LEGITIMATE ORIGINAL COST AND ACCOUNTING DISPOSITION, THEREOF AS OF DECEMBER 31, 1960

Account*		Total	Adjustments							
No.	Title		No. 1 Nonproject plant	No. 2 Plant dedication costs	No. 3 Power used in aid of construction	No. 4 Power produced during construction	No. 5 Taxes during construction	No. 6 F.P.C. annual charges	No. 7 Interest during construction	No. 8 Reclassification
	Hydraulic production plant:									
320	Land and land rights	$265,228.07								$265,228.07
	Transmission plant:									
341	Clearing land and rights-of-way	(560.00)	($560.00)							
344	Towers and fixtures	(48,375.48)	(48,375.48)							
346	Overhead conductors and devices	(29,899.62)	(29,899.62)							
	Total transmission plant	(78,835.10)	(78,835.10)							
	Indirect construction costs:									
61	Temporary construction facilities	(132,767.48)	(132,767.48)							
62	Construction equipment	(844.78)	(844.78)							
65	Superintendence, timekeepers, clerks, etc.	(11,960.94)			($11,960.94)					
	Total indirect construction costs	(145,573.20)	(133,612.26)		(11,960.94)					
	Overhead construction costs:									
71	Engineering	(276,204.28)	(10,976.21)							(265,228.07)
75	Taxes during construction	(10,935.79)	(450.46)				($10,485.33)			
76	Administrative and general expenses	(10,090.92)		($9,891.79)				($199.13)		
77	Interest during construction	(180,938.78)	(13,892.12)	(297.90)	(804.59)				($165,854.17)	
80	Earnings and expenses during construction	114,112.31				$114,112.31				
	Total overhead construction costs	(364,057.46)	(25,318.79)	(10,189.69)	(804.59)	114,112.31	(10,485.33)	(199.13)	(165,854.17)	(265,228.07)
	Total adjustments	(323,237.69)	(237,766.15)	(10,189.69)	(12,855.53)	114,112.31	(10,485.33)	(199.13)	(165,854.17)	
	Accounting disposition:									
100.1	Electric plant in service—nonproject	237,766.15	237,766.15							
271	Earned surplus	85,471.54		10,189.69	12,855.53	(114,112.31)	10,485.33	199.13	165,854.17	
	Total disposition	323,237.69	237,766.15	10,189.69	12,855.53	(114,112.31)	10,485.33	199.13	165,854.17	

( ) Denotes credit.

*Account references are to account numbers and titles prescribed in Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to January 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 2075

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued June 9, 1964)

On December 17, 1963 and on March 12, 1964, The Washington Water Power Company, licensee for Project No. 2075, located on Clark Fork River in Sanders County, Montana, filed for Commission approval certain modified Exhibit K prints which show corrections and changes which should be made on Exhibit K tracings now on file with the Commission, and authorized our staff to correct the Exhibit K tracings accordingly. This the staff did on March 12, 1964.

The sole effect of the changes is to show on the Exhibit K tracings an additional 0.1 acre of lands of the United States as having been occupied by the project from the effective date of the license, namely, May 1, 1955.

The Commission finds:

(1) The following described Exhibit K tracings on file with the Commission and corrected by our staff as noted above, conform to the Commission's rules and regulations, and should be reapproved as part of the license for the project.

Exhibit K: revised March 12, 1964 (FPC No. 2075-91, -92, -96, -99, -100, -102, -103, -104, and -110).

(2) The increased amount of annual charges for recompensing the United States for the occupancy of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The corrected Exhibit K tracings designated in finding (1) above are hereby reapproved as part of the license for Project No. 2075.

(B) Subparagraph (ii) of Article 36 of the license is hereby revised by substituting the figure ($2,715.10) for the figure ($2,714.86) appearing therein, effective as of May 1, 1955.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168,[1] G-20435,[1] AND G-20577[2]

ORDER DENYING APPLICATION FOR REHEARING

(Issued June 9, 1964)*

The Superior Oil Company on May 13, 1964, filed an application for rehearing of the Commission's order issued April 15, 1964, in the above-entitled proceedings. In the April 15 order we modified our order issued March 9, 1964, so as to require Trunkline to pay interest on those amounts properly payable but not tendered by Trunkline as determined in the March 9 order.

---

[1] Consolidated with the area rate proceeding in Docket No. AR64-2, *et al.*

[2] Consolidated with the area rate proceeding in Docket No. AR61-2, *et al.*

*See orders on remand issued June 16, 1965, 33 FPC 1268 and November 10, 1965, 34 FPC 1284.

Superior contends in its application for rehearing that interest should be required on the total amount payable by Trunkline to it. Superior claims *inter alia*, that Trunkline's tender of amounts in accordance with its petition for a declaratory order rather than the amounts properly due as decided in our March 9 order rendered the alleged tender totally ineffectual. Superior asserts in light thereof that it is entitled to interest on the total amount due.

We think it clear from an examination of the pertinent portions of the Trunkline letters transmitting its remittance that Superior could have accepted Trunkline's tender of payment without endangering its position that a larger amount was due either as a contractual matter or under the provisions of the Natural Gas Act. In this regard the covering Trunkline letters state:

> The acceptance of the enclosed check will not in any respect prejudice the payee's rights with respect to the amount payable for the gas to which such check relates.

Superior, however, contends that Trunkline's tender was rendered uncertain and equivocal by the provisions on the checks that they are "paid in accordance with the Petition for Declaratory Order filed October 25, 1963," and "If not correct return without alteration." We cannot agree with Superior's position. The first phrase quoted above obviously relates to the method utilized by Trunkline in computing the amount it believed owing to Superior. The latter phrase relates to the correctness of the computation using Trunkline's basis. Neither of these phrases in our opinion rendered the tender a conditional one. Under these circumstances we conclude that it would not be appropriate or in the public interest to extend the interest requirement provided in our April 15 order as requested by Superior. We shall therefore deny Superior's application for rehearing.

The Commission orders:

The application for rehearing filed by Superior on May 13, 1964, in the above-entitled proceedings is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NOS. RP61-21, RP63-2, CP63-13; MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP63-12

ORDER DEFERRING ACTION ON MOTION, GIVING NOTICE OF INTENT TO AMEND AND WITHDRAW APPLICATIONS, AND CONTINUING PROCEEDING, AND PRESCRIBING PROCEDURE AND SETTING DATE OF FURTHER HEARING

(Issued June 9, 1964)

On May 27, 1964, the above-named applicants filed a motion captioned, "Motion for Approval of Stipulation and Agreement, Termination of Rate Proceedings, and Issuance of Certificate in Docket No. CP63-12 as Amended in Accordance with such Stipulation." Attached to said motion was a document titled "Stipulation and Agreement Dated March 12, 1964, as Revised May 6, 1964."

By the above referred to Stipulation Agreement and Applicants would settle out the issues presented in Docket Nos. RP61-21 and RP63-2 and thereby terminate those proceedings, contingent, however, upon the amending of the application in Docket No. CP63–12 and withdrawal of the application in Docket No. CP63–13 so as to conform with the proposed Stipulation Agreement, as amended, and further contingent upon the issuance of a certificate of public convenience and necessity to Mississippi Transmission in Docket No. CP63–12, as amended. The consolidated proceeding in these latter two dockets, now before a Presiding Examiner for hearing, has been indefinitely postponed upon the request of Applicants. The proceeding in Docket No. RP63–2 is presently before this Commission upon exceptions taken to an Examiner's decision. The proceeding in Docket No. RP61–21, now pending before a Presiding Examiner for hearing, has also been postponed.

The applications in Docket Nos. CP63–12 and CP63–13 were filed pursuant to Section 7 of the Natural Gas Act. Parties in opposition to the proposals contained therein who have not agreed to the grant of the applications as proposed to be amended and withdrawn were permitted to intervene and participate in the proceedings held thereon to date. Accordingly, any action on the motion to the extent it seeks approval of the proposed settlement agreement is premature; acceptance or rejection of the proposed Stipulation and Agreement, as amended, must await our disposition of the matters presented in Docket Nos. CP63–12 and CP63–13, which in turn must be based on the formal record and evidence related to those applications that shall ultimately come before us. We are, however, in a position to take action here to establish the appropriate further procedures in the certificate proceedings so that this matter may be promptly presented to us for our consideration.

The Commission orders:

(A) Notice is hereby given of the Applicants' intent to amend the application in Docket No. CP63–12 and withdraw the application in Docket No. CP63–13 so as to conform with Applicants' proposals in its proposed Stipulation and Agreement, as amended.

(B) Leave is hereby given to the Applicants' to file a formal amendment to the application in Docket No. CP63–12 and a request for withdrawal of the application in Docket No. CP63–13, in full compliance with the Commission's Rules of Practice and Procedure.

(C) In the event that such amendments are filed as provided in ordering clause above by June 15, 1964, and by that date the Applicants serve, upon all parties to the proceeding in those dockets, copies of said filings along with copies of any additional testimony and exhibits to be submitted in the proceeding in support of said filings, as well as all workpapers in support of such testimony and exhibits, the hearing on such applications or application as amended shall resume on July 6, 1964, with a cross-examination to immediately follow introduction of any such additional direct presentation by the parties. If the amended application, additional testimony or exhibits and workpapers are filed and served at any time after June 15, 1964, the date for the resumed hearing shall be postponed for an equivalent period. In the event no such filings are made by July 15, 1964, the hearing on the applications as originally presented shall resume on July 22, 1964.

Commissioner Black *dissenting in part.*

BLACK, Commissioner, *dissenting in part:*

I dissent to the procedures adopted by the majority in this matter, because it would defer Commission action in the Mississippi River rate case, Docket No. RP63–2.

The instant motion requests the Commission's approval of a proposed settlement of various rate and certificate matters involving Mississippi River Fuel and Mississippi River Transmission. One of the essential features of the settlement is the disposition of RP63-2, a rate case in all respects ripe for decision by the Commission, and one involving $4.4 million subject to refund and potential rate reductions of $3.3 million per year. The effect of the majority action is to preclude Commission action on this rate case until a contested certificate matter, essentially unrelated to the issues of the rate case, is litigated. This will necessarily involve a complete hearing, filing of briefs, a comprehensive examiner's decision, exceptions, and possibly oral argument before the Commission and court review.

While I concur with the procedures established for the hearing in the certificate case, I would reject the settlement offer so that the rate case could be speedily determined. Section 4(e) of the Act states quite clearly:

> [T]he Commission *shall* give the hearing and decision of such questions (rate increase filings) preference over other questions pending before it and decide the same as speedily as possible. [Emphasis supplied.]

In my opinion, the procedure adopted by the majority does not comport with this statutory duty, and will undoubtedly deprive the consumers of substantial refunds and rate reductions for an indefinite period of time. I am satisfied that the public interest considerations which dictate a speedy resolution of these rate proceedings far outweigh any benefits contemplated by the settlement offer.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PENDLETON COUNTY WATER DISTRICT, DOCKET NO. CP64-23

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 10, 1964)

On July 24, 1963, as amended on November 26, 1963 and February 17, 1964, Pendleton County Water District (Applicant) filed in Docket No. CP64-23 an application pursuant to Section 7 (a) of the Natural Gas Act for an order of the Commission directing Kentucky Gas Transmission Corporation (Kentucky Gas) to establish physical connection of its natural gas transmission system with the facilities proposed to be constructed by Applicant in Pendleton County, Kentucky and to sell and deliver natural gas to Applicant for resale and distribution in the area on the perimeter of the Cincinnati Metropolitan area including the communities of Falmouth, Butler and East Side Park and their environs, all as more fully set forth in the application and open to public inspection.

Applicant proposes to construct and operate approximately 17.5 miles of 4-inch transmission line to connect with distribution systems in the communities above mentioned. The estimated cost of the project is $643,250, and is to be financed by sale of revenue bonds and customer connection fees.

The application shows the estimated annual and peak day requirements of natural gas in Mcf to Applicant are as follows:

	First year	Second year	Third year
Annual (Mcf)	90,140	110,131	130,123
Peak day (Mcf)	828	1,014	1,201

Applicant has received appropriate authorization from the cities of Falmouth, Butler and East Side Park to include them within the boundaries of the said Pendleton County Water District for the purpose of being served natural gas in their distribution systems.

On August 29, 1963, as supplemented on December 19, 1963, Kentucky Gas filed its answer to the application stating that it had no objection to the granting thereof.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 21, 1964, (29 F.R. 5365). No protest or petition to intervene in opposition to the granting of the application has been filed.

The Commission finds:

(1) Kentucky Gas Transmission Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 9, 1956, in Docket No. G-9689 (16 FPC 437).

(2) Applicant, Pendleton County Water District is a Municipality of the State of Kentucky organized and existing under the laws of that State and is authorized to engage in the business of distributing and selling natural gas within its boundary area.

(3) It is necessary and desirable in the public interest that Kentucky Gas be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver the required volume of natural gas to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant shall be prepared to receive natural gas from Kentucky Gas within one year from the date of issuance of this order.

(5) The requirement that Kentucky Gas serve Applicant, as proposed, will not place any undue burden upon Kentucky Gas nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Kentucky Gas Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 1,201 Mcf of natural gas per day to Applicant as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Kentucky Gas within one year from the date of issuance of this order.

(C) The order issued herein is conditioned to require Applicant to obtain such necessary approval for its proposal as may be required from the State of Kentucky.

(D) Kentucky Gas shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

LONG ISLAND LIGHTING COMPANY, DOCKET NO. E-7158

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued June 10, 1964)

Long Island Lighting Company (Long Island), incorporated under the laws of the State of New York, and doing business in that State with its principal business office at Mineola, New York, filed an application on March 18, 1964, as supplemented on April 20, 1964, seeking authority to acquire, merge and consolidate with its facilities, all of the facilities of The Patchogue Electric Light Company (Patchogue), a New York corporation with its principal business office at Patchogue, New York. Long Island is a gas and electric utility company; it generates, transmits and distributes electricity to about 650,000 customers in an area of approximately 1,000 square miles in the Counties of Nassau and Suffolk and in the Fifth Ward of the Borough and County of Queens, on Long Island, New York, with the exception of the Incorporated Villages of Rockville Centre and Freeport in Nassau County and Greenport in Suffolk County as well as the service area of Patchogue in Suffolk County. It transmits and distributes natural gas in the same general area and in the Patchogue service area. Long Island had total assets and other debits as of December 31, 1963, in excess of $757,000,000 and had gross electric operating revenues in 1963 of approximately $131,145,000.

Patchogue is an electric utility, purchasing all of its electric power requirements from Long Island, and distributing it to about 28,000 customers in the service area of approximately 200 square miles which includes the Incorporated Villages of Patchogue and Bellport, and southerly portion of the Town of Brookhaven and the westerly portion of the Town of Southampton, all in Suffolk County. Patchogue had total assets and other debits as of December 31, 1963, in excess of $9,600,000 and its gross operating revenues in 1963 were approximately $4,255,000.

Patchogue and Long Island entered into an Agreement of Consolidation dated as of January 30, 1964, which was arrived at through arm's-length negotiation between Long Island and the principal stockholders of Patchogue. Under the Agreement, upon the filing of a certificate of a Certificate of Consolidation with the Secretary of State of the State of New York, 225,000 shares of Long Island Common Stock, $5 par, will be issued and exchanged for 90,000 outstanding shares of Patchogue Common Stock, no par, or 2½ shares of Long Island Common for one of Patchogue Common. This exchange ratio, according to the application, has been based on the relationships between book values, earnings, and dividends of the respective companies.

The outstanding Common and Preferred Stock of Long Island on the consolidation date will not be converted or exchanged as a result of the consolidation, but all such Common and Preferred Stock of Long Island will continue unchanged and will be Common and Preferred Stock of the surviving corporation, and all such Common and Preferred Stock outstanding on the consolidation date will remain outstanding, fully paid and non-assessable.

Immediately prior to the filing of the Certificate of Consolidation with the Secretary of State of the State of New York, Patchogue's presently outstanding 750 shares of 4.75% Preferred Stock, $1,000 par, will be redeemed at 102% of par value, plus accrued dividends. Long Island will provide redemption funds of $765,000, plus estimated funds of $8,906 for accrued dividends. None of the 750 shares of Patchogue's Preferred Stock is presently owned by Long Island.

The outstanding indebtedness of both Long Island and Patchogue as of the consolidation date will constitute the indebtedness of the surviving corporation, with the exception of Patchogue's indebtedness for electric energy purchased from Long Island.

On the consolidation date, the existence of Patchogue will cease, and the existence of Long Island will continue unaffected and unimpaired and all rights, privileges, franchises and interests of each of the constituent corporations and all of the property, real and personal, and all the debts due either of them, and all things in action, belonging to either of them, and every other interest of the constituent corporations will vest in Long Island as the surviving corporation.

According to the application, Patchogue's electric peak load and annual sales have been increasing at a rapid pace in recent years with the increase in construction of residences, commercial and industrial buildings in Patchogue's territory as available land in Nassau County and western Suffolk County disappears. A similar growth pattern has been experienced in Long Island's territory adjacent to that of Patchogue. Such growth patterns are expected to accelerate in the future and will require considerable expansion of facilities and increased capital by both companies. Patchogue's peak load in 1960 was 25,000 kw; in 1963 it was 38,000 kw; by 1974, it is estimated to be 95,000 kw. The application states that coordination of such construction by an integrated system will eliminate cost duplication of the transmission facilities in the two areas. The application also states that the ability of the consolidated company to meet substantial future capital requirements in Patchogue's territory on economical basis will be considerably enhanced as a result of the transaction.

Long Island contemplates that it will utilize the present Patchogue headquarters in the Village of Patchogue as a District Commercial and Line Headquarters. Long Island will then be able to provide in the more heavily populated portions of the Patchogue territory emergency crews on around-the clock duty; at present such personnel must be called out from their homes. Other improvements in existing practices designed to improve service to customers will be initiated according to the applicant. Such improvements include programs for more comprehensive maintenance of substations and pole line equipment, reinforcement of distribution circuits so that two circuits can be tied together in the event of outages and other improvements to prevent transmission outages. Other efficiencies will be introduced such as combining meter reading of each company and the elimination of duplicate billing facilities.

Patchogue's gross rates under the schedule that applies to most of its residential consumers are higher than Long Island's rates, but it offers a discount for prompt payment, and the net rates after allowance for the discount are lower than Long Island's. Long Island has reduced its rates twice in recent years and has proposed another rate reduction subject to approval by the New York State Public Service Commission. If the reduction is granted, Patchogue's net rate would be slightly higher than the new Long Island rate to the extreme low and high use consumers but slightly lower to consumers using between 130 kwh and 980 kwh per month. The maximum differential would be 23 cents per month.

Under present commercial rate schedules, Patchogue's charges vary from about 20% higher to about 20% lower than Long Island's depending upon the energy consumption and demand. The recently proposed reduction in Long

Island's rates would tend to close the present gap between the commercial rates of the two systems.

Long Island states that no change in rates to consumers in the present Patchogue service area is contemplated as a result of the proposed consolidation. Although further rate reductions are anticipated, if any increases were necessary they would be borne proportionately by both rate zones.

The Consolidation Agreement also provides that the present full time employees of Patchogue will be employed by Long Island without loss of seniority, and with no reduction in rate of pay or benefits.

By order of May 26, 1964, the State of New York Public Service Commission approved the joint petition of Long Island Lighting Company and The Patchogue Electric Light Company for authority to consolidate into the former company as the surviving corporation.

Written notice of the application has been given to the Public Service Commission of the State of New York and to the Governor of that State. Notice has also been given by publication in the Federal Register on April 2, 1964 (29 F.R. 4755), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before April 14, 1964, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, Long Island, is the owner of facilities used for the transmission of electric energy generated outside the State of New York and consumed therein, which facilities are in addition to, and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter. Long Island is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, as described above, Long Island will acquire and merge or consolidate with its facilities subject to the jurisdiction of the Commission, all of the facilities of Patchogue, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of Patchogue's facilities by Long Island will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

(4) The period of public notice herein is reasonable.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of facilities of Patchogue by Long Island, all as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Long Island shall record the transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7161

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

(Issued June 10, 1964)

Sierra Pacific Power Company (Applicant), incorporated under the laws of the State of Maine and qualified to do business as a foreign corporation in the States of California and Nevada, with its principal place of business in Reno, Nevada, filed an application on April 22, 1964, as amended May 8, 1964, for authorization pursuant to Section 204 of the Federal Power Act to issue and sell at competitive bidding, $7,000,000 Principal Amount of First Mortgage Bonds ----%, Series due June 1, 1994; and to issue and sell at competitive bidding, 100,000 shares of Preferred Stock, par value $50 per share.

Applicant proposes to issue the Bonds under its Indenture of Mortgage, dated as of December 1, 1940, and the Eighth Supplemental Indenture heretofore filed with the Commission and to be further supplemented and modified by a Ninth Supplemental Indenture to be dated as of June 1, 1964, to New England Merchants Bank of Boston and Fletcher C. Chamberlain, Successor Trustees.

The Applicant proposes to issue 100,000 shares of new Preferred Stock, Series B, par value $50 per share, total par value $5,000,000. The new Preferred Stock will be issued under and pursuant to the applicable provisions of the Applicant's by-laws, to be amended by an appropriate amendment thereto creating the new series and establishing its distinctive characteristics. The new Preferred Stock will be entitled to dividends when and as declared by the Board of Directors which dividends will be cumulative from June 1, 1964, and payable quarterly on March 1, June 1, September 1 and December 1 of each year.

Applicant further proposes, on or about June 17, 1964, to invite written bids for the purchase of the proposed Bonds and Preferred Stock.

Each bid, whether made by a single bidder or a group of bidders, must be for the purchase of all the Bonds or all the Preferred Stock, and must be in writing on the Form of Bid provided by the Applicant. Each bid for the Bonds must specify: (1) the coupon rate to be borne by the Bonds, which rate shall be a multiple of ⅛ of 1%; (2) the price, exclusive of accrued interest to be paid to Applicant for the Bonds, which price shall be expressed as a percentage of the principal amount of the Bonds and shall not be less than 100% nor more than 102¾% thereof; and (3) that Applicant shall be paid the amount of accrued interest on the Bonds from June 1, 1964, to the date of payment thereof and delivery thereof. Each bid for the Preferred Stock must specify: (1) the dividend rate which shall be a multiple of $.04; and (2) the price to be paid to the Applicant, which price shall not be less than $50 nor more than $51.50 per share. Each bid for the Bonds and for the Preferred Stock must be accompanied by a certified check in the amount of $150,000.

Unless postponed, all bids for the purchase of the proposed Bonds or the Preferred Stock must be received by Applicant before 11:00 a.m. Boston time on Wednesday, June 24, 1964 at 49 Federal Street (8th Floor) Boston, Massachusetts. Unless Applicant rejects all bids for the proposed issuance of Bonds and all bids for the proposed issuance of Preferred Stock (which it reserves the right to do) or excludes a bid or bids for reasons specified in the invitation for Bids, it will accept the bid which provides it with the lowest cost of money to Applicant as defined in the bidding papers.

The Applicant proposes to apply and use the net proceeds to be obtained from the sale of the First Mortgage Bonds and Preferred Stock to retire bank loans totaling $6,800,000 (Docket No. E-7042) to reimburse the Treasury of Applicant for construction expenditures heretofore made and together with cash from operations, to carry out Applicant's construction programs contemplated and now in progress for 1964 and 1965. These programs jointly will require approximately $25,650,000 and provide for expenditures of approximately $19,393,800 for electric facilities, $4,193,200 for water facilities and $2,063,000 for gas facilities. Principal items in Applicant's electric program are: $4,700,000 in 1964 and $2,702,000 in 1965 for Tracy Steam Unit No. 2 (17 miles east of Reno); $216,000 in 1965 for Tracy Steam Unit No. 3; $204,000 in 1964 and $1,037,000 in 1965 for Geothermal Plant (20 miles east of Battle Mountain); $471,300 in 1964 for the purchase of Bolster Plant Site (6 miles north of Yerington); $100,000 in 1964 and $380,000 in 1965 for Tracy-Steamboat 120 kv line; $62,000 in 1964 for Buckeye-Tahoe Valley 120 kv line; $32,900 in 1964 for Mt. Rose Substation 120 kv additions; $314,900 in 1964 for Meyers 120 kv Substation and 14.4 kv feeders; $216,200 in 1964 for Tracy Substation additions and Wadsworth line; $40,000 in 1965 for Tracy-Winnemucca 120 kv Transmission Improvements; $140,000 in 1965 for Buckeye Substation; $288,000 in 1964 for Spanish Spring Substation.

Written notice of the application has been given to the Public Service Commission of Nevada and the Public Utilities Commission of California, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on May 5, 1964 (29 F.R. 5919), stating that any person desiring to be heard or to make any protest with reference to the application should on or before May 15, 1964, file a petition or protest with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued December 13, 1963, *Sierra Pacific Power Company*, Docket No. E-7134.

(2) The proposed issuance and sale of First Mortgage Bonds and the proposed issuance and sale of Preferred Stock, all as described above, will constitute issuances of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State commission within the meaning of Section 204 (f) of the Act; and the proposed issuances of First Mortgage Bonds and Preferred Stock are therefore not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of First Mortgage Bonds and the proposed issuance and sale of Preferred Stock, all as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of First Mortgage Bonds and the proposed issuance and sale of Preferred Stock, all as described above upon the terms and conditions and for the purposes specified in the application as amended are authorized subject to the provisions of this order.

(B) The proposed issuance and sale of First Mortgage Bonds and Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission shall have approved by a further order, the interest rate and the price to be received by Applicant for the proposed issuance of First Mortgage Bonds and the dividend rate and the price to be received by Applicant for the proposed issuance of Preferred Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

GULF STATES UTILITIES COMPANY, AND CENTRAL LOUISIANA ELECTRIC COMPANY, INC., DOCKET NO. E-7162

ORDER AUTHORIZING DISPOSITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued June 10, 1964)

Gulf States Utilities Company (Gulf States), incorporated under the laws of the State of Texas and qualified to do business in the State of Louisiana, with its principal place of business at Beaumont, Texas, filed an application on April 23, 1964, as amended on May 12, 1964, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the sale of certain electric transmission facilities to Central Louisiana Electric Company, Inc. On May 15, 1964, Central Louisiana Electric Company, Inc. (CLECO), joined in the application. CLECO is incorporated under the laws of the State of Louisiana, does business in that State, and maintains its principal business office at Alexandria, Louisiana.

Gulf States is engaged principally in the business of generating, distributing and selling electric energy in southeastern Texas and south central Louisiana. Gulf States sells electric energy at retail in 289 communities and surrounding territory; and sells for resale, electric energy to 11 municipal systems, 10 rural electric cooperatives and two other utilities. It also distributes natural gas in the City of Baton Rouge, Louisiana and vicinity. Gulf States had net plant of $461,222,000 as of December 31, 1963, and it received total operating revenues of $110,799,000 in the year 1963.

CLECO is engaged principally in the business of generating, distributing and selling electric energy in 127 communities in 21 parishes in central Louisiana. CLECO also distributes natural gas and water in portions of its electric service area. It has net plant of $89,216,000 as of December 31, 1963, and it received total operating revenues of $25,278,000 in the year 1963.

Gulf States proposes to sell and CLECO proposes to acquire two short sections of 69 kv electric transmission line. One section of 69 kv electric transmission line (Gulf States No. 263) is a 3.68 mile portion of a tieline between Gulf States and CLECO extending southerly from CLECO's existing 69 kv metering station to Gulf States Riverside power generating station at Westlake, Louisiana. Another 2.72 mile section of 69 kv line (Gulf States No. 264) branches off of the above line to a substation near DeQuincy, Louisiana. The portion of Gulf States No. 263 to be transferred constitutes a portion of the transmission line used for the interchange of electric power between Gulf States and CLECO at a point near DeQuincy, Louisiana. Gulf States No. 264, which is to be transferred, has been used by Gulf States for the sale of electric power of wholesale to the Beauregard Electric Cooperative, Inc., at a point of delivery near DeQuincy, Louisiana. After the transfer of the facilities, said facilities will continue to be used for the same purposes but there will be a new metering point for the interchange of power between Gulf States and CLECO, and CLECO will serve Beauregard Electric Cooperative at wholesale. According to the application, such service will be at the same rate, terms and conditions existing under the present contract between Gulf States and Beauregard Electric Cooperative, which expires July 1, 1965 which will be assigned to CLECO.

CLECO states that it owns and operates the electric facilities in the City of DeQuincy, Louisiana near the metering point and has manpower and equipment available there which will enable better service to the Cooperative. Gulf States has no other customers or distribution facilities near DeQuincy.

The transmission facilities are to be transferred from Gulf States to CLECO for a cash consideration of $57,065, as of December 31, 1963 subject to adjustment for additional depreciation to the date of closing. The consideration as of April 30, 1964, would have been $56,583. The consideration of $57,065, as of December 31, 1963 was $5,978 less than net plant of $63,943, as of the same date and represents a deficiency in the provision for depreciation previously applied to the facilities.

Gulf States, as of December 31, 1963, would have recorded the disposition of the transmission facilities by a debit of $57,065 to Account No. 131, Cash; a debit of $13,198 to Account No. 108, Accumulated Provision for Depreciation of Electric Plant In Service; a debit of $5,978 to Account 435, Miscellaneous Debits to Surplus; and an offsetting credit of $76,241 to Account No. 101, Electric Plant In Service—Transmission Plant.

CLECO, as of December 31, 1963, would have recorded the acquisition of the transmission facilities by a debit of $76,241 to Account No. 101, Electric Plant In Service—Transmission Plant; and offsetting credits of $19,176 to Account No. 108, Accumulated Provision for Depreciation of Electric Plant in Service and $57,065 to Account 131, Cash.

Written notice of the application has been given to the Louisiana Public Service Commission, the Texas Railroad Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on May 15, 1964 (29 F.R. 6419), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before May 27, 1964 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Gulf States, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued December 20, 1962, *Gulf States Utilities Company*, Docket No. E-7074 (28 FPC 1077).

(2) CLECO, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commisssion as heretofore described and set forth in the Commission's order issued July 8, 1955, *Gulf States Utilities Company and Central Louisiana Electric Company, Inc.*, Docket No. E-6622 (14 FPC 846).

(3) By the proposed transaction, Gulf States will dispose of a portion of its facilities subject to the jurisdiction of this Commission which have a value in excess of $50,000 and CLECO, in acquiring such facilities will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Gulf States, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed disposition of facilities by Gulf States and the proposed acquisition or merger and consolidation of such facilities by CLECO, all as described above will be consistent with the public interest as described in Section 203 of the Federal Power Act.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The disposition of facilities by Gulf States and the acquisition and merger or consolidation of such facilities by CLECO, all as described above, be and the same hereby are authorized and approved upon the terms and conditions set forth in the application of Gulf as joined in by CLECO, subject to the provisions of this order.

(B) Gulf States and CLECO shall account for the proposed transaction in the manner described above and in accordance with the provisions of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions hereby authorized and approved are consummated within 90 days from the issuance of this order.

(D) The foregoing authorization and approval shall be without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service accounts, valuations, estimates, or determinations of cost, or any other matter whatsoever which may come before this Commission or any other regulatory body, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G-11217, G-14115*, G-18417*, G-18418*, G-13734*, G-15314*, G-15315*, G-18206*, G-18207*, AND G-18215*

ORDER DENYING APPLICATION FOR REHEARING

(Issued June 10, 1964)

Phillips Petroleum Company (Phillips) on May 1, 1964, filed an application for rehearing of the Commission's order issued April 3, 1964, in the above-entitled proceedings. By that order we accepted for filing certain decreased rates which we found reflected the current contractual effect on its spiral-escalation and favored-nation rates of the El Paso Natural Gas Company (El Paso) rate settlement in Docket No. G-4769, *et al.* approved by our order issued December 4, 1963. We also required Phillips to refund to El Paso all amounts collected subject to refund in excess of the tendered decreased rates, together with simple interest from the date of receipt of such amounts by Phillips to the date of refund.

Phillips contends, among other things, that the Commission erred in requiring it to make refunds "with interest to the date of refund." Phillips claims that the interest obligation should be terminated as of February 28, 1964, because of Phillips' tender to El Paso on February 24, 1964, of principal and interest, which was refused by El Paso.

Upon approval of the El Paso rate settlement, Phillips requested El Paso to furnish its calculation of the refund due, and on February 11, 1964, El Paso furnished such calculations. By letters dated February 24, 1964, Phillips tendered to El Paso two checks in the amounts shown by the El Paso calculations. Accompanying each check were two letters with provision for acknowledgment by El Paso. The first check in the amount of $5,276,660.48 and the accompanying letter stated: "This check constitutes the refund of principal and interest computed by El Paso set forth in the tabulation transmitted to me by Mr. M. C. Norwood's letter of February 11, 1964, with respect to Docket Nos. G-11217, G-14115, G-18417 and G-18418. This check is in the amount set forth in said tabulation and covers the total refund to El Paso for the time periods as set forth therein under such dockets." The second letter set forth recomputed rates under each of the dockets set forth in the first letter and provided: "It is agreed that the rates set forth above under the heading "Recomputed Rates" constitute the proper contract rates inclusive of applicable tax reimbursement." Similar letters accompanied a refund of $35,005.84 under other rate schedules involved in Docket Nos. G-13734, G-15314, G-15315, G-18206, G-18207, and G-18215. El Paso refused to execute the acknowledgments made a part of the letters or to accept the checks tendered therewith.

Phillips argues, in effect, that El Paso having furnished the calculations on which the tendered refund was based and the Commission ultimately approving the tendered amount as a proper calculation of the refund amounts, the tender of that amount terminates Phillips' interest obligation. Phillips further argues that the Commission has no function to perform under the Natural Gas Act since it may only permit refunds under the contracts and cannot change Phillips' obligations. While it is correct that the contractual

---

*These proceedings are consolidated in Docket No. AR61-1, *et al.*

provisions determine the amount of the refunds, such refunds are being made under Section 4(e) proceedings before the Commission and the amounts thereof must be approved in those proceedings, and Phillips cannot foreclose Commission determination through prior tenders.

We agree that a seller in a situation like Phillips found itself must have a vehicle for eliminating unnecessary running of interest. This it could have done by tendering payment to El Paso in a manner which clearly would not have forestalled the buyer's rights to secure greater amounts should the Commission so determine. See our order issued in *Trunkline Gas Company* v. *The Superior Oil Company*, Docket No. RI64–273, *et al., Supra*, p. 1511. But we think the clear import of the language of the Phillips' letters of February 24 was that the acceptance by El Paso of the tendered checks would finally determine the applicable rates under the various dockets therein referred to and the total refund dollars due to El Paso under those Commission proceedings. In these circumstances El Paso properly refused to accept the refunds on the tendered basis as an attempt to foreclose Commission determination of the proper calculation of refunds, and the alleged tender did not terminate Phillips' interest obligations.

Phillips also questions our refusal to terminate these Section 4(e) cases because further refunds may be required as a contractual matter. Phillips admits that the rates in these proceedings, with the exception of Docket No. G–11217, are subject to a determination as to their justness and reasonableness under Section 4(e). As Phillips also points out, the order complained of does not at this time undertake to require any further refunds. We therefore consider it appropriate to defer action on these matters.

The Commission finds:

The application for rehearing filed by Phillips on May 1, 1964, in the above-entitled proceedings sets forth no new facts or legal considerations which were not fully considered prior to the issuance of the April 3 order, or which now having been considered, warrant modification of said order.

The Commission orders:

The application for rehearing filed by Phillips on May 1, 1964, in the above-entitled proceedings is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–13018; EL PASO NATURAL GAS COMPANY, DOCKET NO. G–13019

ORDER DENYING PETITION TO SET ASIDE ORDER ISSUING TEMPORARY AUTHORIZATION

(Issued June 10, 1964)

On May 4, 1964, the People of the State of California (California) petitioned to set aside this Commission's order of July 2, 1962, issuing temporary authorization to El Paso Natural Gas Company (El Paso) to operate the facilities of its Pacific Northwest Division, formerly the facilities of Pacific Northwest Pipeline Corporation (Pacific). California argues that as a result of the decisions of the United States Supreme Court in *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651, No. 94, October Term, 1963, decided April 6, 1964, and *California* v. *Federal Power Commission*, 369 U.S. 482

(1962), the issuance of the temporary authorization was an abuse of the Commission's discretion and should be set aside. California further requests that the Commission require that El Paso file and serve upon all of the parties to these proceedings such plan or plans as it may have to comply with the directive of the Supreme Court in *United States* v. *El Paso Natural Gas Company*, *supra*, and that the Commission "exert its jurisdiction in the matter of divestiture to the end that there shall not be imposed upon any of the customers of ratepayers of El Paso any financial costs, burdens, charges or expenses of any kind which should be borne by El Paso's stockholders."

The divestiture ordered by the Supreme Court has not yet been consummated. Until such time as a new corporation is created capable of serving the Pacific Northwest area, as contemplated by the Court, service to the consumers in that area must be maintained. Section 7(c) of the Natural Gas Act provides that "the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate." Under the decision in *California* v. *Federal Power Commission*, *supra*, further action by this Commission was to await the decision of the courts in the Clayton Act proceeding pending in the United States District Court for the District of Utah. Accordingly our further action in this matter was stayed. In the meantime, public interest dictated that service to the Pacific Northwest area be maintained. The action which California seeks would result in the existing active transmission company in that area, El Paso, being legally divested of authority to serve the area and would create a hiatus in the continuity of service. No valid public interest would be served by this action. We shall, of course, take action at the earliest possible moment to assure that, in accordance with the Court's decision, service is continued in the area by a legally constituted natural gas company capable of rendering the service at proper rates.

As to the request that we order El Paso to serve any proposed plans of divestiture upon all parties to the proceeding, at this time the matter is properly before the District Court for its initial determination. Such action as California would have us take would be improper. However, by our letter order dated October 11, 1962, we required that El Paso maintain existing service on its Pacific Northwest Division under the existing temporary authorization until further order of the Commission, subject to certain conditions, including a requirement that it file a comprehensive statement setting forth (a) the changes in operation which took place in the Pacific Northwest part of its system as a result of the merger of the companies; (b) the additions to the Pacific Northwest part of the system since the merger; and (c) those gas purchase contracts made subsequent to the merger which are or will be utilized to provide gas to customers on the Pacific Northwest portion of its system. We deem it advisable that El Paso should now present an up-to-date picture of these items and will, accordingly, order that this be done at this time.

The Commission orders:

(1) California's petition to set aside the Commission's order issuing temporary authorization is hereby denied.

(2) El Paso shall submit to the Commission within thirty days a comprehensive statement setting forth (a) any changes in operation which took place in the Pacific Northwest part of its system as a result of the merger in addition to those changes previously reported by El Paso in response to our letter order of October 11, 1962; (b) the additions to the Pacific Northwest

portion part of the system since the merger, other than those previously reported in response to the October 11, 1962, letter order; and (c) those gas purchase contracts made subsequent to the merger which are or will be utilized to provide gas to customers on the Pacific Northwest portion of its system, other than those previously reported in response to the October 11, 1962, letter order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

J. WES JOHNSON, D/B/A TOWER OIL AND GAS COMPANY OF TEXAS, DOCKET NO. G-18852; W. A. MOREL (OPERATOR), ET AL, (SUCCESSOR TO J. WES JOHNSON, D/B/A TOWER OIL & GAS COMPANY OF TEXAS), DOCKET NO. CI64-867; J. WES JOHNSON, D/B/A TOWER OIL & GAS COMPANY OF TEXAS, JEANNE KERBS, AND W. A. MOREL (OPERATOR), ET AL., DOCKET NO. RI60-276[1]

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AMENDING ORDER ISSUING CERTIFICATE, MAKING SUCCESSOR IN INTEREST CO-RESPONDENT, REDESIGNATING PROCEEDING, ACCEPTING FPC GAS RATE SCHEDULE FOR FILING, AND ACCEPTING AGREEMENT AND UNDERTAKING FOR FILING

(Issued June 10, 1964)

On February 3, 1964, W. A. Morel (Operator), *et al.* (Applicant) filed in Docket No. CI64-867 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce for resale to El Paso Natural Gas Company from the Spraberry Field, Reagan County, Texas, all as more fully set forth in the application.

Applicant proposes to continue in part the sale initiated by J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas, which was authorized in Docket No. G-18852.

Applicant proposes to sell natural gas pursuant to a contract dated May 1, 1959, as supplemented and amended, which has heretofore been designated as J. Wes Johnson, d/b/a, Tower Oil & Gas Company of Texas, FPC Gas Rate Schedule No. 1 and which will also be designated as a rate schedule of Applicant. The rate proposed to be collected by Applicant under said contract is in effect subject to refund in Docket No. RI60-276. Applicant has requested to be made a co-respondent in said proceeding and has filed an agreement and undertaking to assure the refund of any amounts collected above the amount found to be just and reasonable in said proceeding.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed. As pointed out by the dissenting statement to this order, the contract for this sale, which was executed on May 1, 1959, contains indefinite escalations of the type proscribed by Section 154.93 of our regulations for contracts executed after April 2, 1962. However, these regulations would not apply to the contract presented to us by this application, which was executed prior to April 2, 1962, and is not affected by the succession of a new seller. We believe this application is covered by the policy announced in the *Graridge* case, Opinion No. 408, issued October 31, 1963, 30 FPC 1156, of placing the successor in the same position as the predecessor. For the reasons set forth therein, we believe it would not be in the public interest to use the occasion of a routine succession transaction to work a fundamental change in the underlying contract.

---

[1] Consolidated with Docket No. AR61-1.

At a hearing held on June 3, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, W. A. Morel (Operator), *et al.*, will be engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and therefore will be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of service authorized herein.

(2) The sale of natural gas as hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should be joined as a co-respondent in the rate proceeding pending in Docket No. RI60–276, that said proceeding should be redesignated accordingly, and that the agreement and undertaking submitted by Applicant should be accepted for filing.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity in Docket No. G–18852 to J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas, should be amended by deleting therefrom authorization to sell natural gas from the properties assigned to Applicant.

(7) The contract dated May 1, 1959, as supplemented and amended, heretofore designated as J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas, FPC Gas Rate Schedule No. 1, should also be designated as an FPC gas rate schedule of Applicant.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural

Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) Applicant be and it is hereby joined as a co-respondent with J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas, and Jeanne Kerbs in the pending rate proceeding in Docket No. RI60-276; said proceeding is redesignated accordingly; the agreement and undertaking submitted by Applicant in said proceeding to assure refund of any amounts collected above the amount found to be just and reasonable in said proceeding be and it is hereby accepted for filing, provided, however, that said agreement and undertaking shall be applicable only to sales made by Applicant on and after June 1, 1963, from the properties assigned to Applicant by J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas.

(E) Applicant shall comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder, and Applicant's agreement and undertaking filed in Docket No. RI60-276 shall remain in full force and effect until discharged by the Commission.

(F) The order issuing a certificate of public convenience and necessity in Docket No. G-18852 be and it is hereby amended by deleting therefrom authorization to sell natural gas from the properties assigned to Applicant, and in all other respects said order shall remain in full force and effect.

(G) The following contract, as supplemented and amended, is accepted for filing as an FPC gas rate schedule of Applicant, effective June 1, 1963, and is designated as follows:

Description and date of instrument	Rate schedule	Supplement
Contract 5-1-59	1	------------
Amendatory agreement 10-26-59	1	1
Supplemental agreement 2-16-60	1	2
Change in rate 3-25-60	1	3
Letter 10-8-63	1	4

Commissioner Black *dissenting*.

BLACK, Commissioner, *dissenting:*

The contracts which constitute the rate schedules of applicant's predecessors in interest contain indefinite price escalation clauses which this Commission has unanimously found "to be contrary to the public interest"[1] and "incompatible with a scheme of effective rate regulation."[2] I dissent to the Commission's action in issuing new, unconditioned certificates in these dockets which permit the retention of the indefinite price escalation clauses.

---

[1] Re *Pure Oil Co.*, 25 FPC 383, 388; aff'd 299 F. 2d 370.

The problem here is analogous to an issue raised in the *Graridge* case.[3] I dissented to the majority's decision there, that the scope of review open to the Commission in a so-called successor proceeding was different than that required in any Section 7 certificate case. The Commission in *Graridge* held *inter alia* that price was not an issue in a successor certificate application and decided in effect that our examination should be limited to the very narrow consideration of the successor's personal identity and qualifications. The result reached in this case represents, I suppose, the logical extension of the *Graridge* rationale. There the ruling was that the successor was entitled to the price being *collected* by the predecessor. We are here faced with the question as to the factors which the Commission will permit to effect a *future* price increase.

This Commission has unequivocally renounced the use of indefinite escalation clauses as being totally inconsistent with the public interest. The Supreme Court has recently upheld our authority to reject such clauses.[4] The majority's action in issuing new, unconditioned certificates in these dockets is most unfortunate when we are presented with the clear opportunity to do otherwise.

Commissioner Ross authorized me to state that he joins in this statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 522

ORDER ACCEPTING SURRENDER OF LICENSE (TRANSMISSION LINE)

(Issued June 10, 1964)

Application was filed on June 25, 1963, by Southern California Edison Company, licensee for transmission line Project No. 522, for Commission approval of surrender of the license for the transmission line affecting lands of the United States in Kern County, California.

The subject line, which is an 11,000 volt line known as "Goldtown Electric Distribution Line", extends from a point in the NW¼NW¼, Sec. 32, T. 11 N., R. 12 W., San Bernardino Base and Meridian, to a point in the NE¼-NE¼ of said section. Transmission line Project No. 522 also included as a part of the project works a substation, known as "Goldtown Substation", located at the SW¼SW¼ of the section. The application states that the substation has been abandoned.

The 11 kv line of Project No. 522 is used to distribute power which it receives by means of step-down facilities from Applicant's 69 kv system. Consequently, the line is a distribution facility.

The Bureau of Land Management, Department of the Interior, has issued an easement (Serial No. LA-0170976) to the licensee for the line on lands of the United States for a period of 50 years, effective as of April 15, 1963.

Annual charges under the license for the line have been paid through December 31, 1963, and the license instrument has been returned.

---

[2] Docket R-203, 27 FPC 339, 340 (Commissioner O'Connor not participating).

[3] *Graridge Corp., (Operator), et al.,* Docket No. G-19246, *et al.,* Opinion No. 408 issued October 31, 1963, 30 FPC 1156.

[4] *F.P.C. v. Texaco,* 377 U.S. 33 (1964).

The Commission finds:

(1) The subject transmission line is not a primary line nor part of a "project" as defined in Section 3(11) of the Federal Power Act.

(2) Acceptance of surrender of the license for the line is appropriate.

The Commission orders:

Surrender of the license for transmission line Project No. 522 is hereby accepted, effective as of December 31, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TENNECO OIL COMPANY,[1] DOCKET NO. RI63-433

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued June 10, 1964)

On April 29, 1964, Tenneco Oil Company (Tenneco)submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Texas Eastern Transmission Corporation (TETC). The offer relates to sales made under Tenneco's FPC Gas Rate Schedule Nos. 101, 111, 112 and 113 in Texas and Louisiana. The proposed increased rates were suspended by order of the Commission until October 10, 1963. Tenneco has not filed the required motion to make the proposed increased rates effective.

Under the terms of the offer, Tenneco proposes to eliminate the favored-nation clauses and the present periodic escalation provisions from its rate schedules and to establish the rates set forth on the Appendix hereto. Tenneco also proposes to limit future periodic escalations to 1.0¢ per Mcf on November 1, 1968, and each five year period thereafter.

The proposed settlement is consistent with the provisions of the Second and Seventh Amendments to the Commission's Statement of General Policy No. 61-1, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Tenneco's offer of settlement shall not be construed as constituting approval of any future rate increases that may be filed under the subject rate schedules and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Tenneco's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Tenneco on April 29, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Tenneco on April 29, 1964, is hereby approved in accordance with the provisions of this order.

(B) Tenneco shall file within 30 days from the date of issuance of this order, notices of change in rate providing for the rates specified in its offer of settlement as set forth in the Appendix hereto, and executed contractual amendments to its FPC Gas Rate Schedules Nos. 101, 111, 112 and 113, eliminating the favored-nation clauses, and the present periodic escalation provisions therefrom and substituting therefor periodic escalations as specified in its offer of settlement. The notice of change and contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

---

[1] Successor to Tenneco Corporation

(C) Upon notification by the Secretary of the Commission that Tenneco has compiled with the terms and conditions of the order, the rates and charges, specified in its offer of settlement, and set forth on the Appendix hereto, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated.

(D) The acceptance by the Commission of Tenneco's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Tenneco including area rate or other similar proceedings.

APPENDIX

TENNECO OIL COMPANY, DOCKET NO. RI63-433

FPC gas rate schedule designation	Field, county, and State	Supplement no.	Rates (including tax reimbursement)	
			Filed	Proposed settlement
101	Bethany-Longstreet Field, Caddo & DeSoto, Louisiana	9	*15.75¢ 16.6212¢	[1] 16.3654¢
111	Bethany-Longstreet Field, Caddo & DeSoto, Louisiana	7	*15.75¢ 16.6212¢	[1] 16.3654¢
112	Waskom Field, Harrison, Texas	2	*14.0¢ 15.4¢	14.6¢
113	Bethany-Longstreet Field, Caddo & DeSoto, Louisiana	6	*15.185¢ 16.6212¢	[1] 16.3654¢

*Last effective approved rate; presently being collected without refund obligation.

[1] Includes 1.75¢ per Mcf tax reimbursement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

UNITED FUEL GAS COMPANY (SUCCESSOR TO AMERE GAS UTILITIES COMPANY AND ATLANTIC SEABOARD CORPORATION), DOCKET NO. CP60-123; ASHLAND OIL & REFINING COMPANY (SUCCESSOR TO UNITED CARBON COMPANY AND UNITED PRODUCING COMPANY, INC.), DOCKET NO. CI60-493

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1964)

On June 14, 1960, as amended on November 27, 1962, and May 20, 1963, Amere Gas Utilities Company (Amere) and Atlantic Seaboard Corporation (Atlantic) (now United Fuel Gas Company) filed in Docket No. CP60-123 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 16.5 miles of 10.75-inch gas transmission pipeline and necessary measuring and regulating facilities, and one 800 horsepower compressor unit with appurtenant facilities to enable Amere to receive natural gas to be purchased from Ashland Oil & Refining Company (Ashland) (formerly United Producing Company, Inc.) in the Beckley-Mullins area, West Virginia, and requesting permission and approval for the abandonment of the exchange of natural gas between Amere and Atlantic, all as more fully set forth in said application and amendments.

Temporary certificate authorizations pursuant to the application and amendments in Docket No. CP60-123 were granted on August 10, 1960, and January 4 and August 8, 1963.

On November 21, 1963, United Fuel Gas Company (United Fuel) filed in said Docket No. CP60-123 an application and petition to be substituted for Amere and Atlantic as Applicant for permanent certificate and as holder of temporary certification in said Docket, stating that effective September 30, 1963, United Fuel acquired by merger all interests of Amere and acquired by purchase those interests of Atlantic which were involved in the original application in Docket No. CP60-123. This merger and acquisition were approved by the Commission in its Opinion No. 377 and accompanying order issued January 16, 1963, in Docket No. CP61-107. So much of the original application in Docket No. CP60-123 as requested approval of the abandonment of the exchange of natural gas is rendered moot by this merger and acquisition.

On April 20, 1960, as amended on June 22, 1962, United Producing Company, Inc. (United Producing) (predecessor of Ashland) filed in Docket No. CI60-493 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Amere Gas Utilities Company (now United Fuel Gas Company) from acreage in Kanawha, Fayette, Raleigh and Boone Counties, West Virginia, all as more fully set forth in the application and amendment in said Docket No. CI60-493. Temporary certificate authorizations were granted to United Producing for these services on August 10, 1960, and August 14, 1962.

On January 14, 1963, Ashland Oil & Refining Company and United Carbon Company, jointly, filed an application for certificate authorization "to continue the sale of gas now made by others and motion to be substituted as a party to certain proceedings on applications for certificates of public convenience and necessity." Among the certificate dockets included under this joint application was the pending application of United Producing Company, Inc. in Docket No. CI60-493. United Carbon and Ashland were granted temporary certificate authorization pursuant to said application by letter dated February 8, 1963.

It appears that United Producing was merged into United Carbon Company on February 19, 1963, and that on March 1, 1963, Ashland acquired by purchase all interests of United Carbon, including those involved in the application in Docket No. CI60-493. United Carbon, by letter dated February 25, 1963, advised that it was willing to accept a permanent certificate in said docket at a rate of 28.0¢ per Mcf at 15.325 psia. The related rate schedule, at that time United Carbon Company FPC Gas Rate Schedule No. 63, as supplemented, (formerly United Producing Company, Inc. FPC Gas Rate Schedule No. 36, as supplemented), is now Ashland Oil & Refining Company FPC Gas Rate Schedule No. 140, as supplemented.

The Public Service Commission of West Virginia filed interventions in 1960 in both Docket Nos. CP60-123 and CI60-493 but later advised that its objections would be removed by the merger of Amere into United Fuel and the acquisition of Atlantic's interests by United Fuel.

Due notice of the subject applications has been given by publication in the Federal Register on May 5, 1964 (29 F.R. 5920). No protest, petition to intervene or request for hearing has been filed.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) Applicant, Ashland Oil & Refining Company, a Kentucky corporation having its principal place of business in Ashland, Kentucky, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(3) The facilities hereinbefore described, as more fully described in the application and amendments in Docket No. CP60-123, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the continued operation thereof by United is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The continued operation of the subject facilities by United is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The sale of natural gas by Ashland hereinbefore described, as more fully described in the application and amendment in Docket No. CI60-493, is being made in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and the continuation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The continuation of the subject sale of natural gas by Ashland, together with the continued operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Applicants, United and Ashland, are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate hereinafter issued to United in Docket No. CP60-123 and the rights granted thereunder be conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to United Fuel Gas Company in Docket No. CP60-123 and to Ashland Oil & Refining Company in Docket No. CI60-493, respectively, authorizing the continued operation of facilities and transportation of natural gas by United, and the continued sale of natural gas for resale by Ashland, together with the continued operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore set forth and as more fully set forth in the applications and amendments in the respective dockets in this proceeding.

(B) The certificate issued to United by paragraph (A) above and the rights granted thereunder are conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of said Regulations.

(C) The certificate issued to Ashland by paragraph (A) above is not transferable and shall be effective only so long as Ashland continues the acts or operations hereby authorized, in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate issued to Ashland by paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Ashland. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of said contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(E) Ashland Oil & Refining Company is hereby directed to submit an amendment to the contract comprising its FPC Gas Rate Schedule No. 140 providing for a rate of 28.0¢ per Mcf at 15.325 psia, inclusive of gathering charges, from June 1, 1964, to the end of the initial pricing period, and to file an appropriate related notice of change in rate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-239

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1964)

On April 14, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-239 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of four main line taps and two measuring and regulating stations to be located at various points along its existing pipeline system, and the sale and delivery of additional natural gas to four existing customers in Arizona, New Mexico, Idaho and Washington[1] through the proposed facilities, for distribution and resale, all as more fully set forth in the application.

The estimated total cost of the proposed facilities is $13,400, which will be financed from current funds, supplemented by short term bank loans.

The estimated additional sales to the four customers during the fifth full year of service through the facilities described are 140,239 Mcf annually and 1,188 Mcf daily.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the related transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issue hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the gen-

---

[1] Southern Union Gas Company, Arizona Public Service Company and Washingt Natural Gas Company.

eral terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12-months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

UTAH POWER & LIGHT COMPANY, DOCKET NO. E–7130

ORDER GRANTING REHEARING, VACATING ORDER, AND DISMISSING PETITION FOR DECLARATORY ORDER

(Issued June 11, 1964)

The Utah Power & Light Company (Applicant) on May 15, 1964, filed an application for rehearing upon the declaratory order issued on April 17, 1964, requiring it to apply for a license on its Pioneer project on the Ogden River at Ogden, Utah.

In its application for rehearing, the Applicant contends, among other things, that the Commission's finding that the Pioneer project of the Company utilizes surplus water or water power from a Government dam (which was based on the statement in Applicant's original petition that "power . . . water is delivered from the Pine View Dam") is not based on substantial evidence, is contrary to fact, was made without due process of law, and can only be made as a decision based on a full and complete record of hearing.

We had assumed that the Petition for a declaratory order filed by Applicant on October 11, 1963, was filed pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure which provides that the petition shall include a complete statement of the facts. In view of the statements in the application for rehearing it now appears that the petition for a declaratory order does not qualify under said section 1.7(c), and the petition should be dismissed.

An order may be entered in a separate proceeding instituting an investigation, under the Federal Power Act and the Commission's Regulations, to determine the jurisdictional status of Applicant's Pioneer project.

The Commission finds:

It is appropriate and in the public interest in administering the Federal Power Act that the Utah Power & Light Company's application for rehearing be granted, that the order issued on April 17, 1964, be vacated, and that the petition for a declaratory order be dismissed as hereinafter provided.

The Commission orders:

(A) The Utah Power & Light Company's application filed on May 15, 1964, for rehearing of the order issued on April 17, 1964, is hereby granted.

(B) The Commission's order issued April 17, 1964, is vacated, and the petition for declaratory order in Docket No. E–7130 is dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64-9

ORDER ON QUESTION CERTIFIED BY THE PRESIDING EXAMINER

(Issued June 11, 1964)

On May 25, 1964, the Presiding Examiner certified to the Commission for its determination a question involving the relationship of Continental Gas Producing Company (Continental), formerly Cities Service Gas Producing Company, to the proceedings in this docket. This question was certified after the conclusion of the prehearing conference, during which certain interveners had presented the Examiner with an application for the issuance of a *subpoena duces tecum* directed to Cities Service Gas Company, requiring that company to supply, *inter alia*, certain books and records of Cities Service Gas Producing Company.[1] The applicants for the subpoena state that due to affiliation [which existed during the test period] between Cities Service Gas Company and its supplier, Cities Service Gas Producing Company,[2] it is relevant and material to inquire into the terms of the alleged transaction by which the Cities Service Company had sold its stock interest in the former Cities Service Gas Producing Company.

The Examiner indicated at the conference that he could neither direct a subpoena to Cities Service Gas Company, requiring it to submit the books and records of another company, nor could he direct the subpoena to a person (*i.e.*, Cities Service Gas Producing Company, now Continental Gas Producing Company) not before him as a party to the proceeding. He further stated that if Continental were to be joined as a party, that was a matter for the Commission. And in certifying the question, the Examiner seeks guidance as to whether matters relating to the producing company should be inquired into in the pipeline rate case.

While we express no opinion as to the proper ratemaking effect to be given to the relationship between Cities Service Gas Company and Continental, it appears that this relationship, and hence the information sought by the applicants for the subpoena may be relevant to a proper determination of just and reasonable rates for Cities Service Gas Company. We further note that neither Section 14 of the Natural Gas Act, which authorizes the issuance of subpoenas, nor Section 1.23 of the Commission's Rules of Practice and Procedure, which implements this authorization, make joinder as a party to the proceeding of the person to whom the subpoena is directed a prerequisite to the issuance of the subpoena. We therefore find that the Examiner had ample authority to grant the application presented to him at the prehearing conference.

We note that the application for the subpoena has been withdrawn in view of the fact that certain of the material requested therein is either a matter of public record or is being supplied, voluntarily, by Cities Service Gas Company. The applicants have indicated, however, their intent to submit a new application for the remainder of the material originally sought. Accordingly, we hereby direct the Examiner to consider any further application for subpoena on its merits, without regard to the status as a party to the hearing of the person to whom the subpoena is sought to be directed.

---

[1] At the time the application for subpoena was presented, May 8, 1964, the Commission had not acted upon the application of Continental to amend the certificate of public convenience and necessity previously issued to Cities Service Gas Producing Company by reflecting the change in name. Thereafter, by order issued May 18, 1964, the Commission amended the certificate as requested with the reservation that such action would not "prejudice any future decision with respect to the proper costs to be included in the cost of service for the purchase of natural gas from said properties by Cities Service Gas Company."

[2] Both companies were 100% subsidiaries of a common parent, Cities Service Company.

In view of the fact that Continental Gas Producing Company may have been unaware of its possible interest in this proceeding at the time when petitions to intervene herein were due to be filed, the Commission will permit the late filing of such a petition, should Continental wish to become a party.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

LOUISIANA NEVADA TRANSIT COMPANY, DOCKET NO. CP64-202

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1964)

On March 12, 1964, Louisiana Nevada Transit Company (Applicant) filed in Docket No. CP64-202 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing May 1, 1964, and the operation of minor facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The total cost of the proposed facilities will not exceed a maximum of $200,000, and no single project will exceed a cost of $50,000, which costs will be financed from cash on hand.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas adjacent to said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Louisiana Nevada Transit Company, a Nevada corporation having its principal place of business in Ada, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 20, 1942, in Docket No. G-246 (3 FPC 837).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are

subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing May 1, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Louisiana Nevada Transit Company, to construct during the 12-month period commencing May 1, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing May 1, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended, be granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

COMMISSION LETTER ORDER OF OCTOBER 30, 1963, DIRECTING RESPONSES TO TWO QUESTIONNAIRES:

(I) SUMMARY LISTS OF RESPONDENT'S (1) GAS AND OIL PRODUCTION AND (2) FIELD AND CYCLING PLANTS BY PRICING AREAS—YEAR 1962 AND

(II) COSTS AND STATISTICS PERTAINING TO OIL AND GAS PRODUCTION, EXPLORATION, GAS SYSTEMS, AND FIELD GASOLINE AND CYCLING PLANT OPERATIONS—YEAR 1962

ORDER FURTHER MODIFYING LETTER ORDER REQUIRING FURNISHING OF DATA

(Issued June 12, 1964)

By letter order of October 30, 1963, 30 FPC 1155, as modified, the Commission directed 116 (since reduced to 92) of the largest natural gas producers to complete a questionnaire covering all of the Commission's pricing areas. Responses to the first portion of the modified all-areas questionnaire were required to be filed no later than April 30; responses to subsequent portions are due no later than July 31, August 31, and October 31, 1964. By order of January 9, 1964, reporting requirements for certain items were suspended indefinitely.

A majority of the respondents have filed their responses to the portion of the questionnaire due April 30. (Others have sought and received extensions of time to complete their responses.) A number of respondents, in conjunction with their April 30 filings, have renewed previous general requests that we reduce or defer the reporting requirements for the later-due portions of the questionnaire. We have considered respondents' requests in light of our further study of the timetable for area rate proceedings now under way and our goals for additional proceedings which may employ the questionnaire data which are not yet due.

Our review has identified a number of items of information pertaining to area trends and to gasoline plants and gas systems which can be deferred without delaying hearing or decision in any area rate proceedings. (1) With regard to area trend data, our order of January 9 has already deferred reporting of trends for areas other than the Permian Basin, Southern Louisiana, Hugoton-Anadarko, and Texas Gulf Coast areas. Upon further consideration we will also defer reporting for the Permian Basin and Southern Louisiana areas. For the time being we will confine area trend reporting to the Hugoton-Anadarko and Texas Gulf Coast areas. (2) We will also confine the reporting of gasoline plants and gas systems data to the Hugoton-Anadarko and Texas Gulf Coast areas; reporting of plant data for other areas can be deferred until we are closer to the commencement date for particular proceedings.

The appendix to this order lists the items remaining to be reported together with due dates.

The Commission orders:

(A) Data required by the following questionnaire schedules and sheets, previously required to be reported on or before October 31, 1964, should not be reported until further order of the Commission:

Schedule K	Sheet 1.
Schedule L	Sheets 1 and 2.
Schedule M	Sheets 1, 2, 3, and 9

(B) Data required by the following questionnaire schedules and sheets or portions thereof, previously required to be reported on various dates for a number of areas, should be reported by the prescribed dates only for the Hugoton-Anadarko areas (code numbers 14, 16, 17, and 19) and the Texas Gulf Coast areas (code numbers 07, 08, and 09) and should not otherwise be reported until further order of the Commission:

Schedule D	Sheets 7 through 13.
Schedule H	Sheet 6.
Schedule K	Sheet 2.
Schedule L	Sheets 3 and 4.
Schedule M	Sheets 4 through 8 and 10.
Schedule N	Sheet 1.
Schedule O	Sheets 1 and 2.
Schedule P	Sheets 1 and 2.

and the 1955–1961 portions of

Schedule D	Sheets 4 and 6.
Schedule F	Sheets 3 and 4.
Schedule G	Sheet 2.
Schedule I	Sheets 2 and 4.

(C) In addition to the data originally due April 30, 1964, the items listed on the appendix to this order are still required to be answered on the indicated dates.

APPENDIX

REMAINING REQUIREMENTS AS TO PORTIONS ORIGINALLY DUE JULY 31, AUGUST 31 AND OCTOBER 31

Due July 31:

Schedule H Sheet 5	All.
Schedule H Sheet 6	1962 data, Hugoton-Anadarko areas.
Schedule J Sheet 1	Remainder of schedule.
Schedule K Sheet 2	Hugoton-Anadarko areas.
Schedule L Sheets 3 & 4	Hugoton-Anadarko areas.
Schedule M Sheets 4–8	Hugoton-Anadarko areas.
Schedule N Sheet 1	Hugoton-Anadarko areas.
Schedule O Sheets 1 & 2	Hugoton-Anadarko areas.
Schedule P Sheets 1 & 2	Hugoton-Anadarko areas.

Due August 31:

Schedule D Sheets 4, 6, and 7 through 13.	1955–1961 data, Texas Gulf Coast areas.
Schedule F Sheets 3 & 4	1955–1961 data, Texas Gulf Coast areas.
Schedule G Sheet 2	1955–1961 data, Texas Gulf Coast areas.
Schedule H Sheet 6	1962 data, Texas Gulf Coast areas.
Schedule I Sheets 1 & 3	Remainder of schedule.
Schedule I Sheets 2 & 4	1955–1961 data, Texas Gulf Coast areas.
Schedule J Sheet 3	Remainder of schedule.
Schedule K Sheet 2	Texas Gulf Coast areas.
Schedule L Sheets 3 & 4	Texas Gulf Coast areas.
Schedule M Sheets 4–8	Texas Gulf Coast areas.
Schedule N Sheet 1	Texas Gulf Coast areas.
Schedule O Sheets 1 & 2	Texas Gulf Coast areas.
Schedule P Sheets 1 & 2	Texas Gulf Coast areas.

Due October 31:

Schedule H Sheet 6	1955–1961 data, Hugoton-Anadarko areas. 1955–1961 data, Texas Gulf Coast areas.
Schedule M Sheet 10	1955–1962 data, Hugoton-Anadarko areas. 1955–1962 data, Texas Gulf Coast areas.
Schedule Q	All.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-63

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 12, 1964)

On September 14, 1962, as supplemented on May 3, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-63 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery to Northern Natural Gas Company (Northern), on an exchange basis, of up to 50,000 Mcf of natural gas per day (at 14.65 psia) in addition to the presently authorized daily volumes of up to 475,000 Mcf being exchanged pursuant to Applicant's FPC Gas Rate Schedule Z-1, FPC Gas Tariff, Third Revised Volume No. 2, and the construction and operation of certain natural gas facilities, all as more fully set forth in the application and supplement.

The proposed facilities for which authorization is sought herein are:

(a) approximately 62.6 miles of 20-inch O.D. pipeline and appurtenances, looping that portion of Applicant's Dumas Line extending from Milepost 68.7 to Milepost 131.3, in Yoakum, Cochran, Hockley and Lamb Counties, Texas;

(b) approximately 2.5 miles of 10¾-inch pipeline and appurtenances, looping Applicant's sales lateral serving Southwestern Public Service Company in Lamb County, Texas;

(c) 10¾-inch O.D. pipeline crossover assembly and necessary valves and regulators, between Applicant's Fullerton Plant discharge pipeline and the Goldsmith-to-Plains transmission line in Andrews County, Texas;

(d) a single additional 1,800 horsepower compressor unit and necessary appurtenances at Applicant's Plains Compressor Station in Yoakum County, Texas;

(e) modifications on five existing 1350 horsepower compressor units at Applicant's Dimmit Compressor Station in Lamb County and four 1000 horsepower compressor units at Applicant's Dumas Compressor Station in Moore County, both situated on Applicant's Dumas Line;

(f) two additional 880 horsepower compressor units and necessary appurtenances at Applicant's Fullerton Compressor Station in Andrews County; and

(g) one additional 3400 horsepower compressor unit and necessary appurtenances at Applicant's Goldsmith Compressor Station in Ector County.

The total estimated cost of the foregoing project, including overhead and contingency provisions, is $5,872,000, which is to be financed from Applicant's current working funds.

Applicant proposes to utilize existing sources of gas supply in the Permian Basin area for rendition of additional gas service to Southwestern Public Service Company (Southwestern), an existing direct industrial customer. The proposed deliveries to Northern are to be made on an exchange basis, hence no change in Applicant's net gas reserves will result therefrom.

Temporary certificate authorization was granted to Applicant pursuant to the subject application on April 10, 1963, and amended on June 7, 1963.

Due notice of this application was given by publication in the Federal Register on May 2, 1964. No protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, as supplemented, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The proposed transportation and delivery of additional natural gas by Applicant to Northern Natural Gas Company on an exchange basis, and the proposed construction and operation of facilities, as hereinbefore described and as more fully described in the application and supplement in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed transportation and delivery of natural gas, and construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to El Paso Natural Gas Company authorizing the transportation and delivery to Northern Natural Gas Company of up to 50,000 Mcf of natural gas per day on an exchange basis, and the construction and operation of certain natural gas facilities, all as hereinbefore described and as more fully described in the application and supplement in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of said Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TOWN OF UTICA, MISSISSIPPI, DOCKET NO. CP64–146

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 12, 1964)

On December 24, 1963, as amended on April 6, 1964, the Town of Utica, Mississippi, (Applicant) filed in Docket No. CP64–146 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern) to establish physical connection of its transmission facilities with the facilities to be constructed by the Applicant and to sell natural gas to Applicant for resale and distribution in Utica and environs, all as more fully set forth in the application, as amended.

Applicant proposes to construct approximately 12.3 miles of 4-inch pipeline extending from the point of interconnection with the facilities of Texas Eastern in Copiah County, Mississippi, to the town limits, together with a distribution system, and to sell and distribute natural gas to consumers in the area.

The estimated cost of Applicant's proposed facilities is $315,000 which cost will be financed by the sale of revenue bonds. Firm bid proposals for the bonds and firm contract proposals for construction of the facilities have been secured, according to Applicant's statements.

The application, as amended, shows the daily peak day and annual requirements, after the third year of service, to be 581 Mcf per day and 42,702 Mcf per year, respectively.

Texas Eastern has filed its answer to the application stating that it will abide by whatever decision the Commission may make on the merits of said application.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on May 15, 1964 (29 F.R. 6420). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Texas Eastern Transmission Corporation is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(2) Applicant, Town of Utica, is a municipality organized and existing under the laws of the State of Mississippi, and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas within the municipality.

(3) It is necessary and desirable in the public interest that Texas Eastern be directed to establish physical connection of its natural gas transmission system with the facilities proposed by Appplicant and to sell and deliver up to 581 Mcf of natural gas per day to Applicant as set forth in the application, as amended, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(5) The requirement that Texas Eastern serve Applicant, as proposed, will not place an undue burden upon Texas Eastern nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) The Texas Eastern Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transmission system with the facilities proposed by Applicant and to sell and deliver up to 581 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application, as amended, herein.

(B) Applicant shall be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order and a service agreement between the parties shall be executed and filed with the Commission in accordance with the Commission's Regulations.

(C) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-216

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 12, 1964)

On March 25, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-216 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain natural gas facilities consisting of a positive meter station used to deliver gas to J. M. Huber Corporation at a point on the 8-inch Orange City Gate No. 2 line in Orange County, Texas, all as more fully described in the application on file with the Commission and open for public inspection.

By order of the Commission issued October 10, 1960, in Docket No. CP61-13, Applicant was authorized to install the facilities herein sought to be abandoned and has been selling gas to J. M. Huber Corporation for use in certain gas lift compressors located in Orange County, Texas, but by letter agreement between these parties the related gas sales contract was cancelled on November 1, 1963. It appears that further use of the said facilities is not required presently or in the future.

The original cost of the facilities involved herein was $1,012.35. Removal of the same will enable Applicant to install them at some other location on its pipeline system when needed.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by United Gas Pipe Line Company of the facilities hereinbefore described be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP64-247

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 12, 1964)

On April 21, 1964, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP64-247 an application pursuant to Sections 7(c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities, and for permission and approval to abandon facilities, as follows:

(1) To construct approximately 11.26 miles of 12¾" O.D. main pipeline to loop 11.26 miles of existing 12¾" O.D. main pipeline in Fallon County, Montana. The flow efficiency of the existing line segment (constructed with pipe purchased in 1928) has deteriorated to the extent that it can no longer be significantly improved by cleaning. Additionally, the design operating pressure has now been attained. Looping will increase the reliability of service to the South Dakota markets.

(2) To construct approximately 2.36 miles of 4½" O.D. pipeline and 0.47 mile of 8⅝" O.D. pipeline to replace an existing 3.41 miles of 8⅝" O.D. pipeline, all located in Valley County, Montana. Increasing maintenance costs and leakage require the replacement of the original line and decreasing requirements at the Fort Peck Federal townsite make possible substitution by smaller diameter pipe.

(3) To install two 330 HP gas engine compressors, including foundations, piping and related facilities at the Baker Compressor Station located at Baker, Fallon County, Montana. These two compressor units (which will be moved from the Little Buffalo station[1] in Hot Springs County, Wyoming) will replace two obsolete 170 HP units installed in 1930. The total horsepower of the Baker Station will be increased from 2,470 to 2,790 HP.

The total estimated cost of the proposed facilities to be constructed is $595,400, which will be financed through internally generated funds and short-term bank loans.

The specific facilities for which Applicant seeks authorization to abandon, remove and retire are:

(1) Approximately 3.41 miles of 8⅝" O.D. pipeline and one valve setting, all in Valley County, Montana, and

(2) Two 170 HP gas engine-driven compressors at the Baker Compressor Station.

The total estimated charge to retirement reserve of the facilities proposed to be abandoned is $74,699.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

---

[1] Use of the Little Buffalo Station was discontinued February 1, 1961. Re: *Pan American Petroleum Corporation*, Docket No. G-18704 and *The Ohio Oil Company*, Docket No. G-18803.

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 23, 1946, in Docket Nos. G–220 and G–420 (5 FPC 64).

(2) The facilities proposed to be constructed, as hereinbefore described and as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the related transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co., to construct and operate facilities and to transport and deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Applicant, Montana-Dakota Utilities Co., of the facilities hereinbefore described, be and the same are hereby granted.

(D) Applicant shall advise the Commission of the date of removal of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2320

ORDER ISSUING LICENSE (MAJOR)

(Issued June 12, 1964)*

Application was filed on September 7, 1962 by Niagara Mohawk Power Corporation (Applicant) of Syracuse, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2320, known as the Raquette River Project, located on the Raquette River in St. Lawrence County, New York.

Project No. 2320 consists of four developments known respectively as Higley, Colton, Hannawa and Sugar Island. Hannawa has been in operation since 1902. The Sugar Island, Colton and Higley developments commenced operations in 1925. Applicant states that the original structures of the developments remain today basically unchanged. The developments are situated on the Raquette River between its mouth and a point downstream from Piercefield. In Docket No. DI-179, *In the Matter of Central New York Power Corporation*[1] (Successor to Northern Development Corporation), the Commission in its Opinion No. 185, issued November 22, 1949, found that the "Raquette River, from its confluence with the St. Lawrence River to at least Piercefield at about mile 91 is a navigable waterway of the United States." (8 FPC 390)

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 and Order issuing license to Public Service Company of New Hampshire for Project No. 2288 (27 FPC 830), the license herein granted shall have an effective date of November 1, 1949 and a termination date of December 31, 1993.

The Secretary of the Army and the U.S. Corps of Engineers, Department of the Army, have reported that the plans of the project structures affecting navigation are considered satisfactory, and the plans were approved pursuant to the provisions of Section 4(e) of the Act.

The Department of the Interior recommended for inclusion in any license issued for the project certain conditions in the interest of the Department.

The Commission finds:

(1) The project is located on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New York and has submitted satisfactory evidence of its compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license.

(3) Public notice of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power develop-

---

*See Opinion No. 481, issued November 15, 1965, 34 FPC 1298.

[1] Central New York Power Corporation was consolidated with two other companies on January 5, 1950 and the survivor became Niagara Mohawk Power Corporation.

ment, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(6) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 61,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The transmission facilities described in paragraph (B) below, and which were included as part of the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The following described transmission facilities which were not included in the application for license are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license as hereinafter provided:

(a) At the Higley plant, the generator leads, the 4.8/115 kv transformer, the 4.8/13.2 kv transformer, and associated facilities;

(b) At the Colton plant, the 115 kv leads to the Colton 115 kv substation, and appurtenant facilities; and

(c) At the Hannawa plant, the 23 kv bus tie line about 800 feet long to the Sandstone substation, and appurtenant facilities.

(9) The exhibits designated and described in paragraph (B) below, which were included in the application for license, conform to the Commission's rules and regulations, and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Niagara Mohawk Power Corporation (Licensee) under Section 4(e) of the Act for a period effective as of November 1, 1949 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2320 located on the Raquette River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2320 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2320–1) General Location Map.

Exhibit K: (6 sheets) Detail Maps—1 (FPC No. 2320–2) Sugar Island; 2 (FPC No. 2320–3) Hannawa, 3 (FPC No. 2320–4) Colton, 4 (FPC No. 2320–5) Colton, 5 (FPC No. 2320–6) Higley 6 (FPC–7) Higley.

(ii) Project works consisting of:

> *Higley Development*: located about 47 miles upstream from the Raquette River's confluence with the St. Lawrence River and about 4 miles downstream from the South Colton development (FPC License No. 2084), consisting of a concrete gravity dam 34 feet high and 207 feet long; a reservoir having an area of about 700 acres with a normal pool

elevation of 883.6 feet (USGS datum); an open concrete flume; a reinforced concrete powerhouse containing three hydroelectric units with a total generating capacity of 4,480 kw; and appurtenant electrical and mechanical facilities;

Colton Development: located 2 miles below the Higley development, consisting of a concrete gravity dam 27 feet high and 205 feet long; a reservoir having an area of 152 acres with a normal pool elevation of 837 feet; a steel pipeline; a surge tank; steel penstocks; a brick and structural steel powerhouse containing three hydroelectric units with a total generating capacity of 29,520 kw; three 13.8/115 kv transformers; and appurtenant electrical and mechanical facilities;

Hannawa Development: located 6 miles below the Colton development, consisting of a stone and concrete-gravity dam 40 feet high and 215 feet long; a reservoir having an area of 168 acres with a normal pool elevation of 552 feet; an open canal; steel penstocks; a stone and structural steel powerhouse containing two hydroelectric units with a total generating capacity of 7,200 kw; an outdoor 4.8/23 kv transformer; and appurtenant electrical and mechanical facilities; and

Sugar Island Development: located 1 mile below the Hannawa development, consisting of a concrete-gravity dam 37 feet high and 181 feet long; a reservoir having an area of 29 acres with a normal pool elevation of 470 feet; a steel pipeline; a surge tank; steel penstocks; a brick and structural steel powerhouse containing two hydroelectric units with a total generating capacity of 4,800 kw; an outdoor 4.8/115 kv transformer; and appurtenant electrical and mechanical facilities;

the location, nature and character of which are more specifically shown and described by the exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (8 sheets) Plans, Elevations and Sections—1 (FPC No. 2320-8) Higley; 2 (FPC No. 2320-9) Colton, General; 3 (FPC No. 2320-10) Colton, Dam & Intake; 4 FPC No. 2320-11) Colton, Surge Tank & Powerhouse; 5 (FPC No. 2320-12) Hannawa, Dam, Canal & Intake; 6 (FPC No. 2320-13) Hannawa, Forebay, Penstocks & Powerhouse; 7 (FPC No. 2320-14) Sugar Island, General; 8 (FPC No. 2320-15) Sugar Island, Dam, Surge Tank & Powerhouse.

Exhibit M: A cover sheet entitled *Exhibit "M", Raquette River Project*, five typewritten sheets giving a general description of mechanical and electrical equipment, and the following four drawings:

No. 24197 Sugar Island, Operating Diagram
No. 20246 Hannawa, Operating Diagram
No. 20335 Colton, Switching Diagram
No. 20669 Higley, Operating Diagram

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised November 1, 1963), entitled "Terms and Conditions of

License for Constructed Project Affecting Navigable Waters of the United States (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (61,300 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 30. The Licensee shall within six months from the date of issuance of this license, file with the Commission an application for amendment of this license to include the following transmission facilities:

1. At the Higley plant, the generator leads, the 4.8/115 kv transformer, the 4.8/13.2 kv transformer and appurtenant facilities;
2. At the Colton plant, the 115 kv leads to Colton 115 kv substation and appurtenant facilities;
3. At the Hannawa plant, the 23 kv bus tie line about 800 feet long to the Sandstone substation and appurtenant facilities.

Article 31. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 32. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States, of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalities specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOUTHEASTERN PUBLIC SERVICE COMPANY, DOCKET NO. RI63-361

ORDER DENYING REHEARING AND STAY

(Issued June 15, 1964)

On May 21, 1964, Southeastern Public Service Company filed an application for rehearing and stay of our Opinion No. 425 and accompanying order issued April 21, 1964, in the above docket. In that opinion we found that Southeastern had not justified a rate increase to 25.25 cents per Mcf for sales from the South Section 28 Field in Southern Louisiana and ordered the rate increase dismissed with refunds of all amounts collected above the prior effective rate.

In its application Southeastern argues that our use of an acquisition cost of service was improper if the rate could have been justified on an original cost basis. Southeastern also argues that its rate should not continue to be subject to our area rate proceeding since a separate proceeding has now been completed.

We find no merit in the arguments of Southeastern. The presiding examiner's initial decision in this proceeding amply demonstrated that the rate could not be justified on an original cost basis and by using the acquisition cost we were giving Southeastern the maximum amount of allowable cost in testing the justification of its rate. As to Southeastern's argument that its rate should not be subject to the area proceeding, we simply note that it is our policy to make all rates in an area subject to adjustment at the conclusion of an area proceeding whether the presently effective rate is in effect subject to refund, has been finally determined in a settlement order, or even if it has never been the subject of any prior rate proceeding.

With regard to Southeastern's request for a stay of our requirement that it immediately file a reduced rate and make refunds, our opinion made clear that this 25.25 cent rate would have a detrimental effect on other prices in the area. We find nothing in the arguments of Southeastern which would lead us to conclude that the granting of a stay would not be detrimental to the public interest.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in Southeastern's petition filed on May 21, 1964 present no facts or principles of law which were not considered by the Commission when it issued its opinion and order in this proceeding or which now having been considered warrant any further change or modification of the opinion and order.

(2) The petition for a stay of our order should be denied.

The Commission orders:

(A) The petition for rehearing filed by Southeastern Public Service Company on May 21, 1964 in this proceeding is hereby denied.

(B) The petition for a stay of the order is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CAROLINA PIPELINE COMPANY, COMPLAINANT, v. SOUTHERN NATURAL GAS COMPANY, RESPONDENT, DOCKET NO. RP63-4

ORDER ON APPEAL FROM RULING OF SECRETARY AND DENYING APPLICATION FOR REHEARING AND FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

(Issued June 16, 1964)

By letter dated May 15, 1964, the Secretary notified the York, Lancaster and Chester County Natural Gas Authorities (Authorities) that their application for rehearing of Commission Opinion No. 423, issued March 30, 1964, had been rejected on the ground that the document was received by the Commission after the expiration of the 30-day statutory period prescribed by Section 19 (a) of the Natural Gas Act.

By letter filed May 22, 1964, and here treated as an appeal from the ruling of the Secretary under Section 1.7 of the Commission's Rules of Practice and Procedure, the Authorities describe the mailing of the application at Rock Hill, South Carolina, on Tuesday April 28, 1964; state their expectation that it would be delivered to the Commission on the following day, April 29, within the prescribed filing period, and urge acceptance of the application for filing as having been a timely made, constructive filing in the circumstances.

The Authorities present in support of their appeal, affidavits of their attorney and his secretary showing that the application was placed in the custody of the United States Post Office on April 28, and the affidavit of the Postmaster at Rock Hill, South Carolina, attesting to the mailing of the document on April 28 at a time which should have placed the application in the Washington, D. C., Post Office for delivery to the Commission by Noon on April 29, within the 30-day period for filing. The 14 copies mailed to the Secretary were stamped in the Commission's mailroom with April 30, 9:13 a.m., 1964, as the date of receipt. There is no independent recollection by mail clerks or other personnel as to the actual date of delivery.

In the light of the new evidence submitted with the Authorities' appeal from the Secretary's ruling, we now find that the application for rehearing was received by the Commission on April 29, 1964, and that the application was timely filed. There is a rebuttable presumption that the document arrived on April 29. *Arkansas Motor Coaches* v. *C.I.R.*, 198 F. 2d 189 (CA8, 1952); *Central Paper Co.* v. *C.I.R.*, 199 F. 2d 902 (CA6, 1952); *Shultz* v. *United States*, 132 F. Supp. 953 (C. Cls., 1955); *Helman* v. *Fruit Growers Express Co.*, 200 F. Supp. 234 (D.N.J., 1961). This presumption is not rebutted by the stamped date of receipt under the present circumstances.[1]

Authorities' application which contains no new facts or contentions relative to grounds for rehearing, is a counterpart of the application for rehearing filed by Carolina Pipeline Company (Carolina) on April 24, 1964, and denied by order issued May 22, 1964. That portion of the Authorities' application requesting leave for Carolina to adduce additional evidence, corresponds in substance with a pleading for the same objective filed by Carolina and denied by us on April 3.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in Authorities' application filed herein, are a repetition of contentions and alleged facts presented by Carolina for the same objective. No facts or principles of law which were not considered by the Commission when it issued its Opinion No. 423 and accompanying order, or which, having now been considered warrant any change in, modification of, or rehearing of such Opinion and order.

(2) Applicants' request that Carolina be permitted to adduce additional evidence should be denied.

The Commission orders:

The application for rehearing and for grant of leave to Carolina to adduce additional evidence, filed by the Authorities in the above-entitled proceeding, is hereby denied.

MEMORANDUM OPINION

ANNUAL CHARGES PRESCRIBED FOR LICENSEES UNDER THE FEDERAL POWER ACT. DOCKET NO. R-228

ORDER NO. 272-A

MEMORANDUM OPINION AND ORDER ON REHEARING

(Issued June 18, 1964)

Syllabus

1. **Commission *finds* that prior to 1935 amendments it had no statutory *duty* to provide for adjusting annual charges to licensees for reimbursing United States for costs of administering Part 1 of the Power Act—and could legally provide for a fee which could not be modified for life of license. P. 1558.**
2. **Commission *concludes* it had the power to specify in Union Electric's 1925 license that it would not increase annual charges; and under Section 6 of the Power Act such provision cannot be superseded without licensee's agreement. P. 1558.**

---

[1] **The presumption would not prevail against a clerk's positive recollection of out-of-time receipt. *Shultz* v. *United States*, 132 F. Supp. 953, 955 (C. Cls., 1955).**

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

The issue before us concerns our authority to adjust annual charges to licensees for reimbursing the United States for its costs in administering Part I of the Federal Power Act (16 U.S.C. 791–823), which before 1935 was the Federal Water Power Act of 1920 (41 Stat. 1063). We are required to fix these charges by subsection 10(e) (16 U.S.C. 803(e)).

Union Electric Company, licensee for the Bagnell Project, Project No. 459, on the Osage River, Missouri, filed an application on December 20, 1963, for rehearing of Order No. 272, issued on November 20, 1963, (30 FPC 1333, 28 F.R. 9648) which establishes a new system for fixing annual charges.[1] We granted rehearing on January 19, 1964, to permit consideration of this application.

Union Electric's license, issued on February 25, 1926, states in article 21:

> The licensee shall pay to the United States reasonable annual charges for the purpose of reimbursing the United States for the costs of the administration of the Act. . . . Such charges shall be determined in accordance with the provisions of Regulation 14 [of the Commission's Rules and Regulations]. . . .

Regulation 14, adopted in 1921, provided:

> . . . After the maximum rates hereinabove prescribed have become effective with respect to any license, they shall thereafter continue without change with respect to such license unless or until the commission or Congress shall make reductions in such rates of charge.

Union Electric contends that Order No. 272, under which its annual charges would be higher than under Regulation 14, imposes a new condition upon its license in contravention of section 6 of the Federal Power Act (16 U.S.C. 799), stating that "Licenses . . . may be altered . . . only upon mutual agreement between the licensee and the Commission. . . ."

The original subsection 10(e), as adopted in 1920 and in existence as of the time the license for Project No. 459 was issued, read like the present section except that the final phrase relating to adjustment of charges then applied specifically only to charges for the expropriation of excess profits and not to annual charges for reimbursing the Government for administrative costs.[2] However, the 1935 Amendments to the Federal Water Power Act clarified the

---

[1] Before Order No. 272, annual charges generally were fixed by assigning a charge per power unit, either horsepower or horsepower and kilowatt-hours. Order No. 272 substituted a system of distributing the actual annual costs of administering Part I among the licensees in the proportion of each licensee's horsepower and kilowatt-hours to all licensees' horsepower and kilowatt-hours.

[2] A comparative print of subsection 10(e)'s 1935 amendment reads:

> (e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this *Part;* for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and *any such* charges **[**for the expropriation of excessive profits**]** may be adjusted from time to time by the Commission as conditions may require . . . [italicized words are additions; words in black brackets are deletions.]

Commission's authority by providing that *any* charges may be adjusted.[3] Thus, the issue here is not whether the Commission has authority to adjust annual charges in any license issued after enactment of the 1935 Amendments.[4] And the issue is not whether the Commission had authority prior to 1935 to prescribe for adjustment of annual charges in licenses. Rather, the issue is the significance of the Commission's action in issuing a license to petitioner which clearly proscribed any upward adjustment in annual charges.

The legislative history of the Federal Water Power Act reveals several important efforts to include a provision enabling the Commission to adjust annual charges. Initially, Rep. Sherley of Kentucky succeeded in amending H.R. 16053, 63rd Cong., 2d Sess. (1914) to provide:

> The Secretary of War may provide as a condition of such approval for the payments to the United States of reasonable annual charges for the benefits that accrue to the grantee by the authority given under this act, and *at the end of twenty years, and every ten years thereafter, the Secretary of War may readjust the annual charges as may then be just and reasonable.* [Emphasis added.][5]

When the House was considering H.R. 3184 which, as amended, became the Federal Water Power Act, the Sherley Amendment had its sequel in the unsuccessful Little Amendment. Representative Little of Kansas proposed to amend the bill to allow adjustment of all annual charges at these intervals.[6] He said that an annual charge which was reasonable at the beginning of the license would be nothing, comparatively, at the end.

Representatives Small of North Carolina and McArthur of Oregon opposed the Little Amendment in debate on the ground that it would discourage investment in the hydroelectric industry. Representatives Ferris of Oklahoma and Sims of Tennessee argued that since the Commission could provide for adjusting annual charges in the licenses, the Little Amendment was unnecessary. Representative Sims made abundantly clear that adjustment was not possible without a license provision allowing it:

> MR. LITTLE. But they have to do it when they issue the license or they forever forfeit any chance to adjust the charges to changing conditions.
>
> MR. SIMS. They have to put it in the license.[7]

The Little Amendment was rejected, and H.R. 3184 was passed and sent to the Senate.

The Senate report on the bill[8] proposed an amendment which, while it would have confined the purposes for which annual charges could be fixed, would have permitted their periodic adjustment:

> That the licensee shall pay for the license herein granted such reasonable annual charges as may be fixed by the Commission, for the purpose of reimbursing the United States for the cost of the administration of the Act in relation to water powers developed under its jurisdiction, in the proportion that the water power developed by the project covered by

---

[3] The rather bare legislative history of this amendment indicated that it was introduced by the Commission to make the Commission's authority to adjust all 10(e) charges "explicit" (Hearings before House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. at 390) and "express" (House Report No. 1318, 74th Cong., 1st Sess. 24). See also Hearings before the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. at 237, S. Report No. 621, 74th Cong., 1st Sess. 45.

[4] Since January 1, 1937, the Commission has pursued a policy of providing in licenses that annual charges for administrative costs are adjustable.

[5] 51 Cong. Rec. 12759 (1914)

[6] 58 Cong. Rec. 2221 (1919)

[7] 58 Cong. Rec. 2223 (1919)

[8] S. 180, 66th Cong., 1st Sess. (1919)

> said license bears to the total water power developed by all projects under the Act, and for that purpose *such charges may be readjusted from time to time, not oftener than once in two years.* . . . [Emphasis added.]

The Senate in approving H.R. 3184 adopted this amendment.[9] The House being in disagreement with the Senate amendments, the bill was referred to conference committee, in which the underlined language was omitted and the language as finally enacted in subsection 10(e) was worked out. The conference committee did not offer any explanation of the language finally adopted.

The legislative history thus shows that Congress rejected the two proposals which would have expressly authorized the Commission to adjust annual charges, even though both proposals contained a minimum period for successive adjustments.

As indicated, we do not here have to decide whether in the light of such history the Commission prior to the 1935 amendment might have had the *power* to provide for adjusting such fees. We need only find that the Commission had no statutory *duty* to provide for adjusting fees and could legally provide for a fee which could not be modified for the life of the license.

In the light of the foregoing legislative history, we conclude that the Commission had the power to specify in Union Electric's 1925 license that it would not increase the fees for administering the Act during the term of the license, and that, under the statutory scheme, this provision cannot be superseded without petitioner's agreement.

Upon consideration of the entire record in this proceeding,

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act that Order No. 272 be amended as hereinafter provided.

Acting pursuant to the authority granted by the Federal Power Act, particularly subsection 10(e) and section 309 thereof (16 U.S.C. 803(e), 825(h)),

The Commission orders:

(A) Section 11.20 of the Commission's Regulations under the Federal Power Act, Subchapter B, Chapter I of Title 18 of the Code of Federal Regulations is amended as follows:

1. Insert in paragraph (a) of Section 11.20 a new subparagraph (5). Section 11.20(a) then will read in full as follows:

§ 11.20 Costs of Administration.

Reasonable annual charges will be assessed by the Commission against each licensee to reimburse the United States for the costs of administration of Part I of the Federal Power Act as follows:

(a) For licensees, other than State or municipal, of projects of more than 2,000 horsepower of installed capacity:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees, from which shall be deducted such administrative costs allocated by the Commission to minor part licenses for which administrative charges are waived under section 10(i) of the Act and those fixed by the Commission in determining headwater benefit payments.

(2) For each calendar year the costs of administration determined under subparagraph (1) shall be assessed against such licensee in the proportion

---

[9] 57 Cong. Rec. 1573 (1919)

that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses.

(3) The annual charge factor for each such project shall be its authorized installed capacity (horsepower); plus 150 times its annual energy output in kilowatt-hours divided by one million.

(4) To enable the Commission to determine such charges annually, each such licensee shall file with the Commission, on or before February 1 of each year, a statement under oath showing the gross amount of power generated (or produced by non-electrical equipment) by the project during the preceding calendar years, expressed in kilowatt hours.

(5) No licensee under a license issued prior to August 26, 1935, shall be required to pay annual charges in an amount greater than that prescribed in such license.

2. Amend Section 11.20(c) to read as follows:

(c) For licensees of projects of 2,000 horsepower or less of installed capacity the charge for costs of administration shall be 5 cents per horsepower with a minimum charge of $5 per annum for each such license except for those licenses for which administrative charges are waived under section 10(i) of the Act. No licensee under a license issued prior to August 26, 1935, shall be required to pay annual charges in an amount greater than that prescribed in such license.

[Secs. 10(e) and 309 (16 U.S.C. 803(e), 825(h))]

(B) The amendments prescribed herein will be effective retroactively to January 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. CP64-73

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On September 26, 1963, United Fuel Gas Company (United) filed an application in Docket No. CP64-73, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing, the installation and operation of a new delivery point and interconnection of facilities with Gas Transport, Inc. (Gas Transport), the sale and delivery of natural gas to, and the exchange of natural gas with Gas Transport at the new delivery point, and the utilization of existing transmission pipeline facilities in connection therewith, all as more fully set forth in the application on file with the Commission.

United and Gas Transport are presently utilizing an uncertificated point of interconnection located near Sandyville, in Jackson County, West Virginia, for the exchange of 1500 Mcf of natural gas daily, which point of interconnection is proposed to be discontinued and the exchange point transferred to a proposed point of interconnection near United's Rockport Compressor Station in Wood County, West Virginia. United further proposes to transport, sell and deliver to Gas Transport at the new point of interconnection 6500 Mcf of natural gas daily, utilizing existing measuring and regulating equipment to make the sale.

United states it now seeks Commission authorization for the exchange of gas with Gas Transport because such exchange deliveries will be made through its interstate facilities instead of being made through what it considered to be gathering facilities in the Wood-Wirt area and not requiring Commission authorization. Upon issuance of authorization United will file its copy of the new exchange and transportation agreement dated August 29, 1963, as a special rate schedule, and Gas Transport will file superseding sheets to its presently effective FPC Rate Schedule X-1.

The estimated cost of United's proposed interconnection is $850, which will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of September 9, 1958, in Docket No. G-13372 (20 FPC 347).

(2) Gas Transport, Inc., a Delaware corporation having its principal place of business in Lancaster, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 28, 1941, in Docket No. G-213 (2 FPC 1079).

(3) The proposed installation and operation of the new delivery point and interconnection, the exchange of natural gas, and the transportation, sale and delivery of natural gas by United to Gas Transport, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed installation and operation of a new delivery point and interconnection, the exchange of natural gas, and the transportation, sale and delivery of natural gas by United to Gas Transport are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) United is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest that United file an appropriate rate schedule covering the exchange of natural gas with Gas Transport, and that appropriate superseding sheets be filed by Gas Transport to its presently effective FPC Rate Schedule X-1.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to United in this proceeding authorizing the installation and operation of a new delivery point and interconnection with Gas Transport, the exchange of natural gas with, and the sale and delivery of natural gas to Gas Transport, as hereinbefore described, and as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) United and Gas Transport shall file their respective rate schedule and superseding tariff sheets within 15 days of the issuance of this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64–88

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On October 8, 1963, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64–88 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a main line meter station on Applicant's 22-inch main line in Sweetwater County, Wyoming, all as more fully set forth in the application.

The proposed facility will enable Applicant to receive delivery of natural gas from Western Transmission Corporation (Western) which Western has been authorized to sell to Applicant by Opinion No. 429 and accompanying order issued on May 26, 1964, in Docket No. CP63–329. Western will provide 5,967 Mcf of peak-day gas at 14.65 psia, to Applicant with an additional 24,000 Mcf per day of emergency stand-by gas for the next three winters.

The estimated cost of the proposed facility is $17,930 which will be defrayed from current working funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the proposed meter station and to take natural gas from Western Transmission Corporation as hereinbefore described, as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facility hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within thirty days from the date on which this order issues.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP64-203

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On March 10, 1964, as supplemented on March 12, 1964, South Texas Natural Gas Gathering Company (Applicant) filed in Docket No. CP64-203 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the fiscal year July 1, 1964, to July 1, 1965, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application, as supplemented.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,000,000, with no single project to exceed a cost of $250,000, which costs will be financed from funds on hand, from cash generated from operations and from internal sources.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, South Texas Natural Gas Gathering Company, a Delaware corporation having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order in Docket No. G-18907, issued August 30, 1962, accompanying Opinion No. 362 (28 FPC 401, 418).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the fiscal year July 1, 1964, to July 1, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, South Texas Natural Gas Gathering Company, to construct during the fiscal year July 1, 1964, to July 1, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the fiscal year July 1, 1964, to July 1, 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,000.000, with no single project to exceed a cost of $250,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended, is hereby granted.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP64-217

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On March 30, 1964, Michigan Gas Storage Company (Applicant) filed in Docket No. CP64-217 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new delivery point in Washington Township, Gratiot County, Michigan, for the delivery of natural gas to Consumers Power Company (Consumers) and the construction and operation of necessary metering and regulating facilities at said proposed new delivery point, all as more fully set forth in the application.

The purpose of the new delivery point is to enable Consumers to render natural gas service to: (1) the Village of Ashley and adjoining areas in the Townships of Elba and Washington, Gratiot County, Michigan, and (2) the unincorporated community of North Star and adjoining areas in the Township of North Star, Gratiot County, Michigan.

The total cost of Applicant's proposed facilities is estimated to be $22,000, which cost will be financed from funds on hand.

Applicant states that the proposed deliveries to Consumers at the new point will not require any increase in annual or peak day deliveries to Consumers since adjustment will be made, as necessary, by changing delivery pattern at other points on Applicant's system.

The estimated third year peak day and annual requirements for the two communities and environs is approximately 297 Mcf and 40,281 Mcf, respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 30, 1956, in Docket No. G–10341 (16 FPC 882).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-219

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On March 30, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-219 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery, on an interruptible and firm basis, of natural gas, by means of existing facilities, to California-Pacific Utilities Company (California-Pacific) for transportation to and resale and distribution by California-Pacific in the communities of Imbler and Elgin, Oregon, their respective environs, and intervening and adjacent areas, all as more fully set forth in the application.

The application shows that deliveries of natural gas to California-Pacific will be made at the outlet of Applicant's existing La Grande, Oregon, meter station and that California-Pacific will transport said gas to points of resale and general distribution. The total cost of transmission and distribution facilities to be constructed by California-Pacific is estimated to be $447,334.

The application shows the total estimated third year peak day and annual requirements for the proposed service to be 1,155 Mcf and 213,296 Mcf, respectively. The total estimated fifth year peak day and annual requirements are shown to be 1,192 Mcf and 285,314 Mcf, respectively.

The proposed sale of natural gas to California-Pacific will be made in accordance with the rates contained in Applicant's FPC Gas Tariff, Original Volume No. 3.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1964, in Docket No. G-288 (4 FPC 486).

(2) The proposed transportation and sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–227

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1964)

On April 6, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP64–227 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing August 7, 1964, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000 and no single project will exceed a cost of $500,000, which costs will be financed from cash on hand or which will be available from current operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing August 7, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct during the 12-month period commencing August 7, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 175.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

CITY OF PETERSBURG, ALASKA, PROJECT NO. 2432

ORDER ISSUING PRELIMINARY PERMIT

(Issued June 19, 1964)

Application was filed on December 10, 1963, by the City of Petersburg, Alaska (Applicant) for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2432, to be known as the Kupreanof Hydroelectric Project, to be located on Towers and Hamilton Creeks, 17 miles west of the City of Petersburg, and affecting lands of the United States within the Tongass National Forest.

The Secretary of the Army and the Chief of Engineers have stated that there is no objection to the issuance of a preliminary permit for the project.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit for the project certain conditions in the interest of fish and wildlife and archeological values.

The Department of Agriculture, in commenting on the application, recommended for inclusion in any preliminary permit for the project, certain conditions for the protection of the National Forest land and resources.

The Department of Health, Education and Welfare, in commenting on the application, advised that the proposed project is not expected to have any adverse effects on water supply or pollution control in the area, and suggested that Applicant consult with the Alaska Department of Health and Welfare respecting possible mosquito problems associated with the proposed impoundment.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9(b) of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit.

While Applicant did not specify any period for the permit, it appears appropriate that the initial period of the permit should be 24 months as hereinafter provided.

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Alaska.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The proposed project will affect lands of the United States but will not affect any Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to the City of Petersburg, Alaska (Permittee) for a period of 24 months, effective as of June 1, 1964, for the sole purpose of maintaining priority of application for license of Project No. 2432, affecting lands of the United States within the Tongass

National Forest, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2432, to be constructed in three phases, would consist of: *Phase One*—comprising: (1) a dam on Towers Creek 1.5 miles from its entrance into Towers Bay (elevation 150) and forming Towers Lake Reservoir at elevation 265 with provision for future increase to elevation 280; (2) various related project works including an overflow channel, a small diversion dam, forebay, and provisions for the care of anadromous fish; (3) one intake structure on Towers Lake and a 1.5 mile long penstock to Towers Bay; (4) a powerhouse on Towers Bay containing generating equipment of 7,200 kilowatt capacity with provisions for future expansion; and (5) a transmission line from the powerhouse to the City of Petersburg and to the Town of Kake. *Phase Two*—will provide for the expansion of the project to include the drainage basin of Hamilton Creek and the installation of the following additional generation capacity: (1) a dam on Hamilton Creek 3.5 miles above its entrance into Hamilton Bay forming Hamilton Lake—adjoining Towers Lake—and subsequently forming one reservoir at elevation 280; (2) a spillway for the combined drainage basins at Hamilton Creek Dam; (3) fish ladder facilities for upstream and downstream fish migration; (4) additional generating capacity as required, estimated at a 14,400 kilowatt total; and (5) adjustment of the transmission system. *Phase Three*—involves a future diversion of two additional drainage areas located to the north and west of the Hamilton and Towers Creek areas into the drainage basin of the combined system by construction of small dams and canals. The power plant would be increased in capacity to approximately 21,600 kilowatts by the addition of a third generating unit and expansion of the transmission facilities accordingly.

(C) This permit is also subject to the terms and conditions set forth in Form P–1, entitled "Terms and Conditions of Preliminary Permit." (16 FPC 1303–1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, consult with the Alaska Department of Health and Welfare concerning possible mosquito problems associated with the impoundment.

Article 11. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester at Juneau, Alaska, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the Forest Service, Department of Agriculture, during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of National Forest resources insofar as they are affected by the proposed project.

Article 12. The Permittee shall, during the period of project planning, cooperate with the U. S. Fish and Wildlife Service and the Alaska Department of Fish and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of or damage to these resources, and (3) to develop and improve those resources where practicable.

Article 13. The Permittee shall, during the period of project planning, consult with the Department of Anthropology, University of Alaska, College, Alaska, regarding a projected archeological survey and salvage in the event of project construction.

Article 14. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

Article 15. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" which is required for the filing of an application for license pursuant to Section 4.41 of the Commission Regulations under the Federal Power Act.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgement of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

KODIAK ELECTRIC ASSOCIATION, INC., PROJECT NO. 2434

ORDER ISSUING PRELIMINARY PERMIT

(Issued June 19, 1964)

Application was filed on December 23, 1963, by Kodiak Electric Association, Inc. (Applicant) for a preliminary permit under Section 4 (f) of the Federal Power Act (Act) for proposed Project No. 2434 to be known as the Terror Lake project, to be located on Terror River at the outlet of Terror Lake, in the Falls Creek and Shotgun Creek drainage basins, and Kizhuyak Canyon, Borough of Kodiak Island, Alaska, and affecting lands of the United States within the Kodiak National Wildlife Refuge and other lands of the United States.

The Secretary of the Army and the Chief of Engineers have stated that there is no objection to the issuance of a preliminary permit for the project.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit for the project certain conditions in the interests of fish and wildlife and archeological values.

The Department of Health, Education and Welfare, in commenting on the application, advised that the proposed project is not expected to have any adverse effects on water supply or pollution control in the area, and suggested that Applicant consult with the Alaska Department of Health and Welfare respecting possible mosquito problems associated with the proposed impoundment.

Applicant requests a preliminary permit for a period of 30 months. It appears appropriate, however, that the initial period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 (b) of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Alaska.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The proposed project will affect lands of the United States but will not affect any Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to Kodiak Electric Association, Inc. (Permittee) of Kodiak, Alaska, for a period of 24 months, effective as of June 1, 1964, for the sole purpose of maintaining priority of application for license for Project No. 2434, affecting lands of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2434 would consist of: (1) a rock-fill dam at the outlet of Terror Lake; (2) a reservoir (maximum pool elevation about 1,350 feet); (3) a spillway; (4) an unlined horizontal tunnel, about 16,800 feet long and 9 feet in diameter, from Terror Lake to Shotgun Creek surge pond and balancing reservoir; (5) ultimately a diversion dam on Falls Creek and a diversion tunnel, about 2,000 feet long, to Shotgun Creek surge pond and balancing reservoir; (6) a pressure tunnel, about 5,500 feet long, from Shotgun Creek surge pond and balancing reservoir to the powerhouse in Kizhuyak Canyon; (7) a powerhouse and substation, at elevation of about 200 feet, with 15,000 kw initial capacity (7,500 kw to be added later); (8) about 27 miles of 69 kv transmission line from the powerhouse to Kodiak; and (9) two substations, one at Kodiak and one near the U.S. Navy base.

(C) This permit is also subject to the terms and conditions set forth in Form P-1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303-1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Alaska Department of Fish and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish and wildlife resources; (2) to mitigate and compensate for the loss or damage to those resources; and (3) to develop and improve those resources where practicable.

Article 11. The Permittee shall, during the period of project planning, consult with the Department of Anthropology of the University of Alaska, College, Alaska, to determine the extent of any archeological survey and salvage excavations that may be necessary prior to any construction activities.

Article 12. The Permittee shall, during the period of project planning, consult with the Alaska Department of Health and Welfare to determine any necessary mosquito control measures.

Article 13. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission's regulations under the Federal Power Act.

Article 14. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgement of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission 60 days from the date of issuance of this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross, and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER SCHEDULING INITIAL PRE-HEARING CONFERENCE AND ADDING RESPONDENTS

(Issued June 22, 1964)

By order of November 27, 1963 (30 FPC 1354; 28 Fed. Reg. 12645) we instituted proceedings in Docket Nos. AR64–1 and AR64–2, to determine the just and reasonable rate or rates for the sales, subject to the Commission's jurisdiction, of natural gas produced in the geographical areas described in such order. Our initial order of November 27, 1963, did not provide for the procedures to be adhered to in these two proceedings nor did it fix dates for the holding of conferences or hearings. While Docket Nos. AR64–1 and AR64–2 are separate and distinct proceedings and ultimately are to be decided as such, there are matters of procedure and of substance common to both, and there is reason to believe that the convenience of the participants, the expedition of the proceedings and the public interest could benefit from a limited consolidation of the two proceedings. Limited consolidation might save time by eliminating duplications and by permitting hearings to start early on matters common to both proceedings.

In order to afford an opportunity for discussion and consideration of the possibile advantages of such limited consolidation and the desirability and feasibility thereof, we are by this order instituting a preliminary consolidated prehearing conference. We do not now otherwise consolidate the two proceedings and shall not decide whether or to what extent to do so, until the record of the initial conference, together with the report thereon of the presiding examiner, has been certified to us.

This is not to be construed, however, as a limitation upon the matters which may be considered at such prehearing conference, nor the powers and responsibilities of the Presiding Examiner as set out in Order No. 217 and Paragraph 1.18 of the Commission's Rules of Practice and Procedure with respect thereto. Specifically there should be explored devices and techniques by which uncontroverted data may be stipulated, repetitive and cumulative presentations may be avoided and joint evidentiary showings may be made. The conference should also consider problems of data collection and compilation action the parties or by our staff, procedures for early cooperative action by and between the participants, and to the extent possible, the number and order of presentation of witnesses. The Commission contemplates that a subsequent conference, or conferences, may be found necessary before dates can be settled upon for the service of evidence and the appearance of witnesses.

Our order of November 27, 1963, made respondents to these proceedings all persons making sales of gas in interstate commerce from those geographical areas, and consolidated for disposition herein all proceedings involving increased rate filings suspended by the Commission applicable to sales of natural gas therein. It is necessary to indicate additional respondents in each of these proceedings for the following reasons: Panhandle Eastern Pipe Line Company and Colorado Interstate Gas Company are pipeline-company producers in the Hugoton-Anadarko area making off-system sales to non-affiliated purchasers. Since such sales are to be reviewed in area rate proceedings,[1] these two companies would normally be named respondents. Both have intervened in the Hugoton-Anadarko proceedings, however, so it is not necessary to designated them formally as respondents. Moreover, we believe that all purchasers under independent producer rate schedules in the relevant areas should be parties to these proceedings. Many of the pipeline companies or other purchasers have already been named as respondents or have intervened. Some buyers have not intervened, however, and it is appropriate that they, too, be made parties.[2] The appendix to this order lists and classifies those additional buyers who are now made parties but have not heretofore been named as such.

The Commission orders:

(A) All persons named in the appendix hereto, who are purchasers under FPC gas rate schedules for sales of gas produced in the Hugoton-Anadarko or Texas Gulf Coast areas, are made respondents in Docket No. AR64-1 and Docket No. AR64-2, respectively, as indicated in the appendix.

---

[1] See Opinion 414-A, *Union Producing Co.*, 31 FPC 503.

[2] See *Area Rate Proceeding* (Permian Basin Area), 29 FPC 737.

(B) A consolidated prehearing conference will be held in these proceedings pursuant to this order and the Commission's Rules of Practice and Procedure, particularly Section 1.18 thereof, at 10:00 a.m. E.D.T. on July 28, 1964, in a hearing room of the Federal Power Commission, at Conference Room B, Departmental Auditorium, Constitution Avenue, Northwest, between 12th and 14th Streets, Washington, D.C., for the purposes set out herein and set forth in said section of such Rules, and to afford all interested persons an opportunity to be heard with respect to the procedures to be followed in expeditiously determining the issues to be tried in the proceedings in Docket Nos. AR64-1 and AR64-2. The conference proceedings shall be recorded by the official reporter, and shall be recessed and reconvened at the discretion of the Presiding Examiner. Upon completion of the conference, the Presiding Examiner shall certify to the Commission the transcript of the conference and his report thereon, including such recommendations with respect thereto as he may deem appropriate.

(C) A copy of this order shall be published in the Federal Register and served on each of the persons listed in the appendix hereto.

(D) All additional parties, first designated as respondents by this order, who desire to receive copies of filings made herein by other parties shall, on or before July 13, 1964, so notify the Secretary of the Commission by filing an original and three copies of a notice naming one specific representative to be served on their behalf. Thereafter, the Secretary of the Commission shall promptly advise all participants in the two rate proceedings of all such additional names of representatives to be served by issuing supplements to the Secretary's original service lists issued March 12, 1964, pursuant to paragraph (B) of the Commission's order of January 30, 1964, herein.

(E) Edward B. Marsh, a duly qualified and appointed (as provided by Section 11 of the Administrative Procedure Act) hearing examiner, or his successor legally qualified, appointed and designated, is designated to preside at the consolidated prehearing conference hereinbefore ordered (including all sessions thereof whether continuous or adjourned) and is authorized and directed, in so doing, to exercise all of the functions and authority prescribed by the Administrative Procedure Act and this Commission's Rules of Practice and Procedure thereunder.

Appendix: Additional purchasers, now designated as respondents, who have not heretofore been named as respondents and are not intervenors.

Hugoton-Anadarko Areas—Docket No. AR64-1—Arkansas Louisiana Gas Company, J. C. Wynn d/b/a The Bering Company, El Paso Natural Gas Company, High Plains Natural Gas Company, Kansas Colorado Utilities, Inc., Transwestern Pipeline Company, Western Gas Service Company, Wunderlich Development Company, Zenith Gas System, Inc.

Texas Gulf Coast Areas—Docket No. AR64-2—J. C. Adair, Ben Bolt Gathering Company, Chelletex Corporation, Florida Gas Transmission Corporation, Gas Gathering Corporation, Gulf Resources, Inc., Hydrocarbon Transportation Company, Iroquois Gas Corporation, Lone Star Gathering Company, Manufacturers Light & Heat Company, South Texas Natural Gas Gathering Company, Syljo Gas Company, Texas Gas Pipe Line Corporation.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-257 (PHASE II)*

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 22, 1964)

Take notice that on March 30, 1961, as amended on May 19 and October 30, 1961, and September 10, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP61-257 (Phase II) an application pursuant to Section 7 (b) of the Natural Gas Act for permission and approval to abandon by sale to Illinois Power Company (Illinois Power) certain facilities in the State of Illinois, all as more fully set forth in the application, as amended.

Specifically, Applicant proposes in Phase II to abandon 121,422 feet of the 8-inch Galesburg lateral together with its Galesburg meter station. Illinois Power will pay Applicant the depreciated original cost of the subject facilities adjusted to the approximate date of transfer.

Applicant states that the subject proposals are essentially a request to alter the delivery point between Applicant and Illinois Power in order to serve the convenience of both companies.

On August 13, 1962, Central Illinois Electric and Gas Co. filed a petition to intervene in this proceeding; however, on January 28, 1963, said petition was withdrawn.

On August 23, 1962, Illinois Power filed a petition to intervene in this proceeding, however petitioner does not request formal hearing herein and does not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on the intervention petition of Illinois Power appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application (Phase II) has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is

---

*This application is divided into two Phases. The subject order pertains exclusively to Phase II. By the Commission's order issued January 3, 1964, (Phase I) in this proceeding, Applicant was authorized to abandon certain other lateral pipelines and metering facilities, all located in the State of Illinois, and, further, to construct and operate new measuring and regulating stations made necessary by the authorized abandonment, 31 FPC 11.

subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as amended, in this proceeding (Phase II), be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–134

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 22, 1964)

On March 3, 1964, El Paso Natural Gas Company (El Paso) filed in Docket No. CP64–134 an application to amend the order of the Commission issued February 18, 1964, in Docket No. CP64–134, granting a certificate of public convenience and necessity authorizing among other things the installation and operation of one (1) 330 Hp compressor unit at its Tunstill Compressor Station. El Paso now seeks authorization to install and operate a 495 Hp compressor unit at the Tunstill station in lieu of the 330 Hp unit originally authorized, all as more fully set forth in the application to amend.

El Paso has determined that a suitable 330 Hp compressor unit is not available, and that the nearest rating which can be obtained is a 495 Hp unit which can be installed within the total estimated out-of-pocket project cost of $1,318,500.

Due notice of the filing of the application to amend and opportunity for hearing has been given by publication in the Federal Register on April 9, 1964 (29 F.R. 4982). No protest, petition to intervene or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64–134, granting El Paso certain certificate authorizations, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1964, in Docket No. CP64–134 be and the same is hereby amended by authorizing El Paso to install and operate a 495 Hp compressor unit in lieu of the 330 Hp unit originally authorized, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

UNITED NATURAL GAS COMPANY, DOCKET NO. CP64-223

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 23, 1964)

On April 2, 1964, as supplemented on April 6 and April 20, 1964, United Natural Gas Company (Applicant) filed in Docket No. CP64-223 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 31 miles of 20-inch pipeline from the northern terminus of its 20-inch Line N-Extension near Ellwood City, Pennsylvania, to a point near the junction of its three lines in the vicinity of Mercer, Pennsylvania, all as more fully set forth in the application, as supplemented.

Applicant states that it proposes to purchase from Texas Eastern Transmission Corporation an additional 10,000 Mcf per day starting January 1, 1965, and a further additional 15,000 Mcf per day commencing January 1, 1966,* in order to meet the anticipated increased requirements of its existing wholesale and retail customers. Further, Applicant alleges that its existing transmission system capacity is inadequate to handle these increased purchases of natural gas and that the proposed construction will provide the additional needed capacity.

The application shows the total estimated cost of the proposed facilities to be $2,335,184, which cost will be financed from construction funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G-328 (3 FPC 959).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

---

*By Commission order issued December 19, 1963, in Docket No. CP64-5 Texas Eastern was authorized to sell such additional volumes to Applicant, 30 FPC 1559.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully set forth in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G-18419; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. RP64-38

ORDER ACCEPTING PROPOSAL TO REDUCE RATES

(Issued June 23, 1964)

On May 4, 1964, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) and American Louisiana Pipe Line Company (American Louisiana) jointly tendered for filing a proposal to reduce their rates and charges. Briefly summarized, the proposal provides that:

(1) Effective as of April 1, 1964, Michigan Wisconsin will reduce the rates contained in Rate Schedules ACQ-1, SGS-1 and OS-1 to reflect the reduction in its suppliers' rates resulting from the decrease in Federal income tax. The reduction results in decreased rates to jurisdictional customers of approximately $310,000 per annum.

(2) Michigan Wisconsin will reduce the above rates by an additional $310,000 should the Commission authorize Michigan Wisconsin's proposed sale to Wisconsin Public Service Corporation's Weston Generating Station, in Docket No. CP64-109.

(3) Michigan Wisconsin will review its rates in effect on January 1, 1965, to determine whether the reduced Federal income tax which becomes effective on that date necessitates an additional rate reduction at that time.

(4) Both Michigan Wisconsin and American Louisiana shall file such tariff sheets as are necessary, to be effective as of October 1, 1965, to give

effect to the Commission's determinations in Opinion No. 417, *Alabama-Tennessee Natural Gas Company*, 31 FPC 208, issued February 3, 1964, subject to the following terms and conditions:

(a) For the purpose of such filings, the balance in Account No. 282 shall be the amount which is reflected on the companies' books as of October 1, 1965, and the amount attributable to current utilization of liberalization shall be that amount, if any, by which the tax deduction for liberalized depreciation exceeds straight-line depreciation based on the twelve month period ending October 1, 1965;

(b) Should the companies elect to return to straight-line depreciation for tax purposes, they will not have any rate reduction obligation predicated upon the "flow-through" aspect of Opinion No. 417, but the aforementioned treatment of accumulated balances in Account No. 282 in accordance with the provisions of Opinion No. 417, in no way, shall be contingent on the companies' utilization of liberalized depreciation on or after October 1, 1965;

(c) The companies will be entitled to reflect in the filings required by this section, offsetting changes in their costs of service, on an annualized basis, using the twelve month period ending October 1, 1965, as the test period; and

(d) The companies may defer the filings provided for in this section until 20 days after such time as Opinion No. 417 has been affirmed and is no longer subject to judicial review, in which event the companies will make refunds to their customers for the period from and after October 1, 1965, until the date on which the refunds are actually made of the difference between the amounts collected during that period under their effective rates and the amounts collectible under the revised tariff sheets reflecting the principles of Opinion No. 417.

The companies also reserve their rights under the Natural Gas Act including the right to contest the applicability of the principles of Opinion No. 417 to them. Michigan Wisconsin states that it will file tariff sheets to give effect to the rate reduction referred to in Paragraph (1) above within 30 days after approval of the proposal. It is noted that the proposal does not provide for interest on refunds which the companies may choose to defer under Paragraph (4) above. The companies should be required to pay interest on such amounts at the rate of 7 percent per annum as is hereinafter ordered.

The Michigan Public Service Commission, the City of Milwaukee, Wisconsin, Milwaukee Gas Light Company and Wisconsin Public Service Corporation have urged the Commission's approval of the proposal.

The Commission finds:

(1) The proposal filed herein on May 4, 1964, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective subject to the terms and conditions herein provided and ordered.

(2) Good cause exists for the Commission to waive its applicable rules and regulations under the Natural Gas Act in order that the tariff sheets to be filed under the proposal may become effective as of April 1, 1964, as hereinafter ordered.

The Commission orders:

(A) The proposal filed herein by Michigan Wisconsin and American Louisiana on May 4, 1964, is hereby approved subject to the following terms and conditions.

(B) This order shall not be deemed to release Michigan Wisconsin or American Louisiana from any obligation with respect to refunds or rate reductions under any order now outstanding.

(C) Within 30 days from the issuance date of this order, and subject to the approval of the Commission, Michigan Wisconsin shall file revised tariff sheets to reflect the reduced rates provided for in Paragraph (1) of the proposal and shall refund to its customers the difference between the revenues actually collected pursuant to its currently effective tariff sheets and the amounts which would be collectible pursuant to such revised tariff sheets for the period from and after April 1, 1964, to the date the revised rates are given effect in the bills rendered to their customers.

(D) Michigan Wisconsin and American Louisiana are hereby directed to make such rate reductions and to make such refunds as are required by the provisions of the proposal and to the extent they choose to defer the making of refunds required to be made pursuant to Paragraph (4) of the proposal, they shall pay interest at the rate of seven percent per annum on such refunds from and after October 1, 1965, to the date on which such refunds are actually made.

(E) This order is without prejudice to any findings or orders which have been, or may hereafter be made, by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Michigan Wisconsin, American Louisiana, the Commission Staff, or any other party affected by this order, in any proceeding now pending or any proceeding hereafter instituted by or against Michigan Wisconsin or American Louisiana or any other person or parties affected by this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP64-117, ET AL.

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND TERMINATING CERTIFICATES

(Issued June 24, 1964)

On November 26, 1963, as supplemented on February 3 and March 31, 1964, Atlantic Seaboard Corporation (Applicant) filed an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities and the activation and operation of a proposed storage field (Storage Field X-77) in Randolph and Pocahontas Counties, West Virginia, and, further, for authority to abandon certain facilities, all as more fully set forth in the application, as supplemented.

The proposed Storage Field X-77 contains an approximate area of 57,200 acres and Applicant proposes to acquire it, together with field facilities and remaining gas reserves, by purchase from Hope Natural Gas Company, Columbian Carbon Company and Columbian Carbon Company, Operator.

Further, Applicant proposes herein: (1) to construct and operate approximately 2.5 miles of 24-inch pipeline; (2) to convert a 1,000 horsepower compressor unit proposed to be acquired herein for the initial storage operation; (3) to construct and operate a 3,960 horsepower compressor station, consisting of three 1,320 horsepower gas engine driven compressor units; (4) to recondition 22 existing wells for utilization in storage operations, and (5) to drill 25 new wells. Applicant also proposes to abandon by retirement the above-described 1,000 horsepower compressor, together with the adjacent measurement facilities, upon completion of construction of the 3,960 horsepower station herein proposed. Further, Applicant will abandon by retirement in 1964 certain well and field lines, measurement facilities and well equipment proposed herein to be acquired.

The application indicates that the proposed field will have top storage capacity of 12,195,000 Mcf and maximum daily withdrawal potential of 240,000 Mcf, when fully developed by 1970.

Applicant states that the estimated market requirements of its existing customers indicate its load factors for gas purchased from its primary supplier, United Fuel Gas Company, will be improved with the activation and operation of proposed Storage Field X-77. Applicant states further that its proposed storage project is necessary to meet the increasing gas requirements of its customers by the most economical and feasible method.

The estimated total cost of the proposed project is shown to be $19,090,818. This amount includes $8,528,070 acquisition costs. The proposed abandonment will result in a total estimated net debit to retirement of $683,583. Financing for the proposed project will be secured through the parent company, The Columbia Gas System, Inc.

In Docket Nos. G-16869, G-17390 and G-16678, Hope Natural Gas Company, United Fuel Gas Company and Columbian Carbon Company, respectively, were issued certificates authorizing the sale and/or exchange of natural gas with Applicant. Such gas was produced from the leases herein proposed to be acquired by Applicant. Therefore, said certificates issued in the aforementioned dockets should be terminated.

A number of petitions to intervene have been filed herein by various interested companies. In all cases, the burden of such filings has been that the petitioners did not request formal hearing in this proceeding and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on the various intervention petitions appears necessary.

On April 29, 1964, the Washington Gas Light Company filed a petition to intervene; however, on May 27, 1964, said petition was withdrawn.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 17, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Atlantic Seaboard Corporation, a Delaware corporation, having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1955, in Docket No. G-6500 (14 FPC 692).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, acquisition and operation

thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction, acquisition and operation of the subject facilities and the proposed storage operations by Applicant, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity. and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4), (d) (2), (d) (3), and (e) of Section 157.20 of such Regulations.

(8) It is appropriate and in the public interest that Applicant should be required to submit semi-annual reports as hereinafter ordered.

(9) Maximum storage pressure of 2,050 psig for the proposed field should not be exceeded without further authorization by the Commission.

(10) Public convenience and necessity require that the certificates heretofore issued in Docket Nos. G-16869, G-17390 and G-16678 should be terminated.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Atlantic Seaboard Corporation, to construct, acquire and operate the subject facilities, as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4), (d) (2), (d) (3) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized to be acquired, constructed and operated shall be acquired, constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is hereby conditioned as follows:

(1) Applicant shall submit semi-annual reports, coinciding with the termination of input and withdrawal cycles, showing total volumes of natural gas injected and withdrawn from the proposed storage field and the stabilized shut-in wellhead pressure of each observation and active storage well. Reports shall be filed until Applicant has completed two injection and withdrawal cycles after the average shut-in pressure approximates the original reservoir pressure of 2,050 psig.

(2) Maximum storage pressure of 2,050 psig for the proposed field shall not be exceeded without further authorization by the Commission.

(E) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(F) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

(G) The certificates heretofore issued in Docket Nos. G-16869, G-17390 and G-16678 are hereby terminated.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

EL PASO ELECTRIC COMPANY, DOCKET NOS. E-6886, E-6933, E-6994

SUPPLEMENTAL ORDER AMENDING ORDERS AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued June 24, 1964)

By orders issued from time to time in the above entitled matter, the Commission, pursuant to Section 204 of the Federal Power Act, authorized El Paso Electric Company (Applicant) to issue up to 101,860 shares of Applicant's unissued no par Common Stock, pursuant to an Employee Stock Purchase Plan. As of May 11, 1964, Applicant had remaining 95,909 shares of unissued Common Stock, no par, reserved for the purpose of the Plan.

In the initial order of the Commission, dated June 18, 1959, in Docket No. E-6886, 21 FPC 837, issuance of Common Stock pursuant to the Plan was limited to the period specified in the Plan, ending June 30, 1964. On May 11, 1964, the Board of Directors of the Applicant extended the termination date of the Plan to June 30, 1969, and Applicant now seeks authority to continue the Plan until that date. No increase in the number of shares to be issued has been requested. According to the application, however, the Employee Stock Purchase Plan has been amended to comply with applicable requirements occasioned by the Revenue Act of 1964.

By order issued May 28, 1964, the New Mexico Public Service Commission approved Applicant's request to extend its Stock Purchase Plan as Amended to June 30, 1969.

As indicated in the previously mentioned orders of the Commission, issued June 18, 1959 and May 11, 1960, notice of this proceeding has been given to the Railroad Commission of Texas and the New Mexico Public Service Commission and to the Governor of each of those States. Notice of the application was also given at the time by publication in the Federal Register (24 F.R. 4676, 25 F.R. 3496). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

Good cause has been shown and it is necessary and appropriate for the purposes of the Act, that paragraphs (A) and (C) of the Commission's order issued June 18, 1959 as heretofore amended be modified as hereinafter provided.

The Commission orders:

Paragraphs (A) and (C) of the Commission's order issued June 18, 1959 in Docket No. E-6886 as amended are further amended to read as follows:

(A) The proposed issuance and sale of Common Stock upon the terms and conditions in the Amended Employee Stock Purchase Plan and for the purposes specified in the application, as described above are hereby authorized, subject to the provisions of this order.

(C) This authorization shall not extend beyond June 30, 1969.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP64–39

ORDER ACCEPTING PROPOSAL TO REDUCE RATES

(Issued June 24, 1964)

Midwestern Gas Transmission Company (Midwestern), on May 11, 1964, tendered for filing a proposal to reduce its rates effective as of March 1, 1964, to reflect the reduction of the Federal Income Tax from 52 percent to 50 percent. The tender proposes a reduction in the commodity component of all rate schedules with the exception of the two-part rate schedules applicable to the Southern System. As to these two-part rate schedules (CD–1 and CDX–1) Midwestern proposes to reflect the change in the demand component of the rate. Midwestern's proposal states that to effectuate the aforementioned reductions it will credit the monthly bill to each customer (beginning with April 1964) by an amount equal to the product of the indicated unit reduction multiplied by the billing demand or commodity volume for each customer for such month.

It is noted that as a result of a settlement agreement in Docket No. RP63–11 which was approved by the Commission by order issued October 30, 1963, Midwestern is currently crediting its customers' bills in a manner similar to that sought here. That order provides that for the period from and after September 30, 1963, Midwestern's reduction of purchase gas from Tennessee shall be reflected "by means of monthly credits on the customers' bills, in effect refunding a portion of the previous month's payments. The monthly credits shall continue until such time as a change in Midwestern's rate level becomes effective."

On May 11, 1964, The Peoples Gas Light and Coke Company (Peoples), a customer of Midwestern's Southern System, filed comments with respect to the proposal herein and stated that the concept of "flowing through" the reduction of purchase gas cost from Tennessee by way of crediting monthly bills as permitted by the October 30, 1963, order, and the concept of "reduction in rates" as set out in the Notice of the instant proceeding, are "two forms of reflection of billing reduction which are distinct concepts under the gas purchase adjustment clause of Peoples' tariff." Peoples requests that if the billing reductions are effectuated and are to be made in the form of reductions of rate, then the billing reductions made by reason of the above mentioned order of October 30, 1963, should also be made in the form of reductions in rates.

It would appear that the instant reduction is the type of a "change in Midwestern's rate level" contemplated by the order of October 30, 1963, and Midwestern therefore should be required to file revised tariff sheets to reflect the decreased rates. It is our further view that Peoples suggestion has merit and that the impact of the crediting of monthly bills permitted by the order issued October 30, 1963, should likewise be required to be reflected in the revised tariff sheets.

The Commission finds:

(1) The proposal filed herein on May 11, 1964, by Midwestern is appropriate and in the public interest in carrying out the Natural Gas Act, and should be approved and made effective subject to the terms and conditions herein provided and ordered.

(2) Good cause exists for the Commission to waive its applicable rules and regulations under the Natural Gas Act in order that the tariff sheets herein required to be filed may become effective as of March 1, 1964, as hereinafter ordered.

The Commission orders:

(A) The aforementioned proposal is hereby approved subject to the terms and conditions herein set out.

(B) Within 30-days from the issuance date of this order, Midwestern shall file revised tariff sheets, subject to the approval of the Commission, to be effective as of March 1, 1964, reflecting the rate level as of that date as a result of the order issued October 30, 1963, in Docket No. RP63-11 and this order.

(C) Concurrently with the filing of the revised tariff sheets required by Paragraph (B) hereof, Midwestern shall file a tabulation setting out all the credits to its customers' bills made pursuant to the aforementioned Commission order issued October 30, 1963, and under the proposal herein approved.

(D) This order is without prejudice to any findings or orders which have been, or may hereafter be made by the Presiding Examiner or the Commission in Docket Nos. RP61-19, RP62-7, and RP63-6.

(E) This order is also without prejudice to any findings or orders which have been or may hereafter be made, by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Midwestern, the Commission Staff or any other party affected by this order, in any proceeding now pending or any proceeding hereafter instituted by or against Midwestern, or any other person or parties affected by this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-14

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 25, 1964)

On January 21, 1964, as supplemented on February 19, 1964, United Gas Pipe Line Company (Applicant) filed an application to amend further the Commission's order issued August 11, 1960, in Docket No. CP60-14, as amended, by authorizing Applicant to transport and deliver a total maximum daily volume of 30,500 Mcf of natural gas to Escambia Chemical Corporation (Escambia) in lieu of the 26,500 Mcf heretofore authorized by said order, as amended, all as more fully set forth in the application to amend, as supplemented.

The order of August 11, 1960, as amended, authorized Applicant, among other things, to construct and operate certain facilities and to increase to 26,500 Mcf the maximum daily deliveries of natural gas to Escambia.

The application, as supplemented, indicates that natural gas is used by Escambia in its chemical processing plant near Floridatown, Florida. The total proposed volumes will be used for process purposes in the ammonia and methanol plants, in direct fired units and for steam generation for process purposes.

It appears that there is sufficient capacity in the presently authorized facilities to render the proposed increased service.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 20, 1964 (29 F.R. 6574). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 11, 1960, in Docket No. CP60-14, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 11, 1960, in Docket No. CP60-14, as amended, be and the same is hereby further amended by authorizing Applicant to transport and deliver a total maximum daily volume of 30,500 Mcf of natural gas to Escambia Chemical Corporation in lieu of the 26,500 Mcf heretofore authorized by said order, as amended, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7161

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

(Issued June 25, 1964)

By order issued June 10, 1964, in the above-entitled matter, the Commission authorized Sierra Pacific Power Company (Applicant) to issue and sell at competitive bidding $7,000,000 principal amount of First Mortgage Bonds ——%, Series due June 1, 1964, and to issue and sell at competitive bidding 100,000 shares of Preferred Stock, par value $50 per share, subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of First Mortgage Bonds and Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission shall have approved by a further order, the interest rate and the price to be received by Applicant for the proposed issuance of First Mortgage Bonds and the dividend rate and the price to be received by Applicant for the proposed issuance of Preferred Stock.

Applicant, on June 24, 1964, filed an amendment, pursuant to the requirements of the aforementioned Commission, in which it states, among other things, (1) that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Stone & Webster Securities Corporation and Dean Witter & Co. to purchase the proposed issuance of $7,000,000 principal amount of Bonds, at the price of 100.64 of principal amount, with an interest rate of 4¾% per annum; and (2) that it proposes to accept as representing the lowest cost of money, the bid of Eastman Dillon, Union Securities & Co. to purchase the Preferred Stock, par value $50 per share at a price of $50.02 per share and an annual dividend of $2.36.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued June 10, 1964, in the above-entitled docket; and under the respective bids it proposes to accept for the issuance of Bonds and Preferred Stock (a) the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable; and (b) the price per share to be received by Applicant for the Preferred Stock and its dividend rate are reasonable.

(2) The proposed issuance and sale of Bonds and Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof, and the price per share to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereof, are approved as reasonable.

(B) The proposed issuance and sale of Bonds and Preferred Stock referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (C), (D) and (E) of the Commission's order issued June 10, 1964, in the above docket.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

MORGAN MINERALS CORPORATION (OPERATOR), ET AL.

ORDER ACCEPTING OFFER OF SETTLEMENT, AND REQUIRING FILING OF CONTRACT AMENDMENT

(Issued June 26, 1964)

On May 28, 1964, Morgan Minerals Corporation (Operator), *et al.* (Morgan) submitted offers of settlement pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve proposed increased rates for sales of natural gas made to Valley Gas Transmission Inc. by Morgan. The offer relates to sales made under Morgan's FPC Gas Rate Schedule Nos. 4, 5, and 6 in Duval County, Texas (Texas R.R. Com. District #4). Under the terms of the offers, Morgan proposes to eliminate the periodic escalation provisions from its rate schedules and to establish a 15¢ per Mcf rate for the subject sales. No protests or objections have been filed to the offers.

Concurrently, Morgan filed notices of change in rates to 15¢ per Mcf under each of the subject rate schedules to be effective June 28, 1964.

The proposed settlements are consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, 29 FPC 589, and their acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Morgan's offers of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Morgan's rates and rate schedules.

The Commission finds:

The proposed settlement, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Morgan on May 28, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Morgan on May 28, 1964, are hereby approved in accordance with the provisions of this order.

(B) Morgan shall file, within 30 days from the date of issuance of this order, executed contractual amendments to its FPC Gas Rate Schedule Nos. 4, 5, and 6, eliminating the periodic escalation provisions therefrom. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notices of change in rates filed May 28, 1964, under Morgan's FPC Gas Rate Schedule Nos. 4, 5, and 6, are hereby accepted for filing, subject to the terms and conditions of this order.

(D) Upon notification by the Secretary of the Commission that Morgan has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offers of settlement shall be effective as of June 28, 1964.

(E) The acceptance by the Commission of Morgan's offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Morgan, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EQUITABLE GAS COMPANY, DOCKET NO. CP62–186

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 26, 1964)

On June 1, 1964, as supplemented on June 23, 1964, Equitable Gas Company (Applicant) filed an application to amend the Commission's order issued

June 29, 1962, in Docket No. CP62-186 so as to extend to June 29, 1965, the time in which to complete and place in actual operation the facilities authorized by said order, all as more fully set forth in the application to amend, as supplemented.

The order of June 29, 1962, authorized Applicant to construct and operate certain facilities for the operation of a proposed storage field, the Mobley Storage Field, located in Wetzel County, West Virginia. Among other facilities, Applicant was also authorized to construct and operate 9 miles of 12-inch pipeline extending from a point of connection located at Applicant's Logansport Storage Pool to a point of connection with its present transmission system. All of the authorized facilities were to be completed and placed in actual operation within 24 months from the date on which the subject order issued.

Applicant states that it has completed and placed in actual operation all of the authorized facilities except the above-described 12-inch line. Applicant states further that in its opinion the construction of said line should not be commenced until the geological data with respect to the Mobley Field, particularly as they relate to well pressures and daily input and withdrawal rates, are more nearly complete. Accordingly, Applicant requests a one year extension of time to June 29, 1965.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 29, 1962, in Docket No. CP62-186 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued June 29, 1962, in Docket No. CP62-186 be and the same is hereby amended to extend to June 29, 1965, the time in which to complete and place in actual operation the facilities heretofore authorized in this proceeding, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64-218 (PHASE I)

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 26, 1964)

On March 30, 1964, as supplemented on May 1, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP64-218 (Phase I) an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon in place 90.5 miles of 24-inch line, known as its Kentucky No. 1 Line, and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, all as more fully set forth in the application, as supplemented, (Phase I).

Applicant states that it desires to abandon the Kentucky No. 1 Line because said line was constructed in 1944 and since that time Applicant has experienced difficulty due to excess corrosion of the pipe.

Applicant states further that to obtain the same design day capacity as currently exists with the Kentucky No. 1 Line, it requests authorization to construct and operate the following facilities:

(a) Approximately 50.76 miles of 30-inch pipeline between Compressor Station 110, near Morehead, Kentucky, and Compressor Station 114, near Catlettsburg, Kentucky,[1] and

(b) Approximately 23 miles of 36-inch pipeline loop around Compressor Station 110.

Additionally, Applicant proposes to construct and operate an additional river crossing of the Mississippi River in East Carroll Parish, Louisiana, and an additional river crossing of the Cumberland River in Cheatham County, Tennessee. Applicant states that these two river crossings are necessary to provide greater assurances of continuity of service to its customers.

The estimated cost of the proposed facilities in Phase I is approximately $13,225,700, which cost will be financed by the use of revolving credit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding (Phase I), are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

---

[1] These facilities will be in lieu of 50.76 miles of 26-inch line authorized in Docket No. G-11107, but not yet constructed.

(6) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP64-218 (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP64-218 (Phase I), be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E-7090

ORDER GRANTING MOTION

(Issued June 26, 1964)

By order dated April 16, 1963, the Respondent was requested to show cause why it should not file certain of the Company's wholesale rates pursuant to Section 205 of the Federal Power Act. A hearing, initially scheduled for June 24, 1963, has been postponed from time to time and is now scheduled for June 29, 1964.

By Motion for Postponement filed June 16, 1964, Respondent indicates that while the Company believes that the afore-mentioned rates are not jurisdictional, it proposes to undertake to file rate schedules therefor in the event that this proceeding results in jurisdictional determinations adverse to the Company's contentions, and states that it proposes to tender the rates at issue as initial rates. Respondent cites Commission Order No. 282 (issued April 21, 1964) and requests a postponement of this proceeding until September 9, 1964 to complete work antecedent to those submittals. Respondent supports its request citing additional time needed to "prepare the contracts, rate schedules, related billing data and other data required by the Commission's Regulations" under the Federal Power Act. Respondent further notes that Commission staff has completed a proposed form of stipulation (together with exhibits) of factual data bearing upon the issues here before the Commission. Respondent states that in the event the parties are able to resolve any of the factual issues in such manner the hearing will be materially shortened, but in any event the Company does not propose to seek further continuances of this matter beyond September 9, 1964.

In view of the fact that a proposed stipulation of fact in this case was served by staff upon petitioner on June 19, 1964, which if agreed to in whole or in part would materially shorten the hearing, we believe the requested postponement is appropriate. Nor will the prospective filing of petitioner's rate schedules together with a reservation of jurisdiction in accordance with Order No. 282, in any way moot the proceeding or deprive petitioner of a right to court review.

The Commission further finds:

It is appropriate for the purposes of the Federal Power Act that the hearing in this matter be postponed as hereinafter ordered.

The Commission orders:

The hearing previously scheduled for June 29, 1964, is hereby adjourned to commence on September 9, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. G-12193, ET AL., AND G-12401

ORDER FURTHER AMENDING ORDER APPROVING RATE SETTLEMENT PROPOSAL

(Issued June 26, 1964)

By order issued May 5, 1964, as amended by order issued May 28, 1964, we approved a rate settlement proposal filed in these proceedings by Socony Mobil Oil Company, Inc. (Socony) on March 30, 1964. Based thereon Socony is required to refund approximately $12 million to its various purchasers within sixty days of the May 5 order. Under the terms of paragraphs (E) and (F) of the order Socony is also required within sixty days to make the rate filings necessary to effectuate the terms of the settlement and to file a report of the amount of refund made to each of its purchasers, together with releases from its purchasers showing receipt of refunds.

Socony on June 23, 1964, requested an extension of thirty days from July 6, 1964, within which to comply with the provision of the May 5 order. In support thereof Socony states that the required contract amendments have not yet been finalized and the detailed accounting work involved in computing amounts to be refunded cannot be accomplished within the allotted time. Under the circumstances, we think good cause exists for granting Socony's request for additional time within which to comply with our May 5 order.

Under the refund provisions of our May 5 order, Socony is required to refund certain sums of monies to United Gas Pipe Line Company (United).

United, in turn, is required to flow through under outstanding Commission orders such refunds to its purchasers. Some of United's pipeline purchasers may take the position that they are not under obligation to flow through to their jurisdictional customers their proportionate share of the amount they will receive from United. For the reasons set forth in our order in *Hunt Oil Company*, Docket No. G-9065, *et al.*, issued July 16, 1963, 30 FPC 220, we shall require Socony to retain the refunds due United, subject to further order of the Commission, and shall (in a separate order to be later issued), require United's pipeline purchasers to submit a report setting forth their intentions with respect to any refunds they may receive, and, if they do not intend to pass such sums on to their customers, why they believe they are entitled to receive such funds.

Socony may elect, at its option, to either use these funds in its business and pay 6¢ interest thereon or to deposit such funds in a special escrow account for the sole benefit of the ultimate owners of such refunds and credit all interest actually earned thereon to the escrow account.

The Commission orders:

(A) For the reasons set forth above, Socony is hereby granted an additional thirty days from July 6, 1964, within which to comply with the provisions of ordering paragraphs (E) and (F) of the order issued May 5, 1964, in the above-entitled proceedings.

(B) The order issued May 5, 1964, in these proceedings hereby is amended so as to require Socony to retain the refund together with the interest thereon, due to United, pending Commission action and further order respecting such monies. The amount of such refunds shall be computed in accordance with Paragraph (F) of the May 5 order.

(C) If Socony elects to commingle these funds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from August 5, 1964, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(D) If Socony elects to deposit the refunds due to United in a special escrow account, Socony shall tender for filing on or before August 5, 1964, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon United. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof the Escrow Agreement shall deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Socony and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Socony, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or

in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL.

ORDER ENLARGING ISSUES

(Issued June 29, 1964)

Notice is hereby given that the Commission intends to enlarge the issues to be considered in the above-proceeding to include consideration of the extent to which, if any, the rates or cost allowances for pipeline gas production should be regulated on an area basis.

In pipeline company rate cases now arising under Sections 4 and 5 of the Natural Gas Act the Commission determines the allowance for the on-system supply produced by the pipeline or its affiliates on an individual company cost-of-service basis. See *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC), certiorari denied, 352 U.S. 829; *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (CADC), certiorari denied, 355 U.S. 904.

The area rate proceedings now under way involve all rate issues pertaining to off-system sales of gas produced by pipeline companies or their affiliates. The Commission has reserved for decision in such proceedings contentions that such off-system sales should be treated otherwise than in the manner applicable to independent producer sales. Opinion 414-A, *Union Producing Co.*, 31 FPC 503 (March 6, 1964).

It has been repeatedly urged upon the Commission that it would be in the public interest to determine the allowance for all pipeline production, on-system as well as off-system, on an area basis and that the comprehensive records in area rate proceedings now in progress will provide legal basis for any such determination within the meaning of the *City of Detroit* and *Mississippi River Fuel* cases, *supra*. The Commission's consideration of the legal and policy considerations underlying such contentions would be greatly aided by a full record made in an appropriate proceeding.

While we have given consideration to initiating a new and separate proceeding for this purpose, we have concluded that proposals to change the present policy can most appropriately and expeditiously be considered in the Hugoton-Anadarko area rate proceeding (Docket No. AR64-1). This will provide us with a factual context for our determination in an area which, because it has long been associated with pipeline gas production, is peculiarly useful for evaluating the various problems presented by any shift to an area rate method of treating pipeline production. Proponents and opponents of a change and all interested parties may there present reasons supporting or opposing (i) area rate treatment of all pipeline production on a basis identical with that afforded independent producers; (ii) area rate treatment of all pipeline production on a basis recognizing some differences as compared with the treatment afforded independent producers; (iii) area rate treatment for some pipeline production, such as "new vintage" gas, but not all pipeline production; (iv) area rate treatment for "off-system" but not "on-system" pipeline production or (v) individual cost of service treatment for "off-system" as well as "on-system" pipeline production. The foregoing list is not intended to circumscribe the consideration of other policies which may be urged by the parties. We do not, of course, prejudge any of these issues; the Commission has not arrived at a new policy, even tentatively; rather we invite a thorough development of the facts and ventilation of the issues on this record so that we may better formulate policy in the future.

In view of the broadening of the issues we will accept new petitions to intervene (denominating the nature of the parties' interest) filed on or before July 16, 1964. The question as to the best way in which evidence and briefs on pipeline production can be fitted into the over-all area proceeding we shall leave for consideration at the prehearing conferences in this proceeding for which we have separately provided.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7164

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE SINKING FUND BONDS

(Issued June 29, 1964)

Montana-Dakota Utilities Co. (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of Minnesota, Montana, North Dakota, South Dakota and Wyoming, with its principal business office at Minneapolis, Minnesota, filed an application on May 18, 1964, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $12,000,000 principal amount of First Mortgage ——% Sinking Fund Bonds, Due July 1, 1984.

Applicant proposes to issue the new Bonds under the provisions of its Indenture of Mortgage to The New York Trust Company (now Chemical Bank New York Trust Company) and A. C. Downing, (succeeded by John H. Baile), as trustees, dated as of May 1, 1939, as heretofore supplemented and amended and as to be further supplemented by a Twenty-fourth Supplemental Indenture to be dated July 1, 1964.

Applicant proposes, on or about July 7, 1964, to invite sealed, written bids for the proposed issuance of $12,000,000 First Mortgage ——% Sinking Fund Bonds, by distribution of a Form of Proposal, together with a Statement of Terms and Conditions relating thereto and a form of Purchase Contract. Each bid, whether made by a single bidder or a group of bidders, must be for the purchase of all the $12,000,000 First Mortgage ——% Sinking Fund Bonds, and must be in writing on the Form of Proposal provided by the Applicant and each bid will be accepted or rejected in its entirety. Each bid must specify: the coupon rate, which shall be a multiple of ⅛ of 1% to be borne by the Bonds and the price, exclusive of accrued interest, to be paid to the Company for the Bonds, which price shall be expressed as a percentage of the principal amount of the Bonds, not, however, less than 99% thereof; and that the Applicant shall be paid the amount of the accrued interest from July 1, 1964 to the date of payment therefor and delivery thereof. Each bid must be accompanied by a certified or bank cashier's check or checks, payable in New York Clearing House funds to the order of Applicant, in an aggregate amount equivalent to 3% of the principal amount of Bonds to be purchased by it.

Unless postponed, all the bids for the purchase of the $12,000,000 First Mortgage ——% Sinking Fund Bonds must be received by the Applicant prior to 11:00 a.m., New York Time, on July 15, 1964, at the Offices of Chemical Bank New York Trust Company, Tenth Floor, 20 Pine Street, New York 15, New York. The Applicant reserves the right to reject all bids or to accept a bid for the $12,000,000 First Mortgage ——% Sinking Fund Bonds, and to exclude a bid or bids for reasons specified in the Statement of Terms and Conditions. Applicant will accept the bid for the Bond Issue which provides it with the lowest annual cost of money.

The net proceeds from the proposed issuance of Bonds will be used (1) to provide for the payment of $6,500,000 of promissory notes due in 1964, which were issued in 1963 to provide temporary financing for part of the cost for constructing additions to Applicant's gas and electric facilities during the year 1963, as authorized in Docket No. E-7105, and (2) to provide for part of the cost of Applicant's 1964 construction program. Applicant's 1964 construction budget totals $10,000,000 of which $5,000,000 is estimated for electric facilities, $4,600,000 for gas, and $400,000 for common utility property. Of the $5,000,000 scheduled for electric facilities, $300,000 has been budgeted for production plant, $2,500,000 for transmission facilities, $2,100,000 for distribution facilities and $100,000 for general plant.

Authority to construct certain of the gas facilities under the Natural Gas Act has been granted heretofore (Docket Nos. CP64-247 and CP63-110). The other facilities requiring approval will not be constructed until authority has been granted under the Natural Gas Act.

According to the application, internally, generated funds will provide at least $5,000,000 towards Applicant's 1964 construction program leaving a balance of approximately $5,000,000 to be provided from the sale of proposed Bonds. Applicant states that any excess funds available from the sale of the Bonds (after paying the short-term loans of $6,500,000 and applying approximately $5,000,000 to the 1964 construction program) will be added to the general funds of the Company.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, Montana Board of Railroad Commissioners, North Dakota Public Service Commission, South Dakota Public Utilities Commission, Wyoming Public Service Commission, and to the Governors of those States. Notice has also been given by publication in the Federal Register on June 3, 1964 (29 F.R. 7257), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before June 11, 1964, with the Federal Power Commission, Washington, D.C. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued April 26, 1962, *Montana-Dakota Utilities Co.*, Docket No. E-7027.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuances of securities are, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(5) The period of public notice herein is reasonable.

The Commission orders:

(A) The proposed issuance and sale of $12,000,000 First Mortgage ——% Sinking Fund Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-209

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1964)

El Paso Natural Gas Company (El Paso) filed in Docket No. CP64-209 an application on March 23, 1964, pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities, the acquisition of other facilities from Southern Union Gas Company (Southern Union), the transportation of natural gas, and the sale and delivery of natural gas in interstate commerce to Southern Union for resale in the area of Mineral Park, Mohave County, Arizona, all as more fully set forth in the application on file with the Commission.

El Paso proposes (1) to construct and operate a dual 4½-inch O.D. orifice-type measuring station, and necessary appurtenances adjacent to its San Juan Mainline in the SE¼ of Section 13, Township 21 North, Range 16 West, G. & S. R. M., Mohave County, Arizona, (2) acquire from Southern Union and operate approximately 5.34 miles of 6⅝-inch and 7.05 miles of 4½-inch pipeline out of a total of approximately 21.5 miles of 6⅝-inch and 4½-inch pipeline proposed to be constructed by Southern Union, and extending from El Paso's measuring station to the Mineral Park area of Mohave County, Arizona, and (3) transport, and sell natural gas in interstate commerce to Southern Union for further transportation and sale to Citizens Utilities Company (Citizens) and the Duval Corporation (Duval) for electric generating and processing purposes, respectively.

The deliveries of natural gas by El Paso to Southern Union will be made at the terminus of the pipeline segment to be acquired by El Paso. The maximum daily and annual gas requirements of Southern Union for the Citizens and Duval service are estimated to be 2200 Mcf and 800,000 Mcf and 260 Mcf and 100,000 Mcf, respectively.

El Paso and Southern Union have undertaken the project leading to the introduction of natural gas into the Mineral Park area, at a cost of approximately $200,000 to El Paso, to be defrayed from El Paso's current funds or short-term bank loans if necessary and $116,500 to Southern Union.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed acquisition of facilities from Southern Union, the construction and operation of facilities, the transportation, and sale of natural

gas in interstate commerce, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed acquisition of facilities, construction and operation of facilities, transportation, and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) El Paso is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to El Paso in this proceeding authorizing the acquisition of facilities, from Southern Union, the construction and operation of facilities, and the transportation, and sale of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities and acquisition authorized by paragraph (A) above shall be effected, constructed and placed in operation within 12 months from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP64-235

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1964)

On April 13, 1964, Florida Gas Transmission Company (Applicant) filed in Docket No. CP64-235 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing July 1, 1964, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission system, said construction not to exceed a maximum total cost of $1,500,000, with no single project to exceed a cost of $300,000, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Applicant proposes to finance the cost of the subject facilities out of short-term bank loans in the event the required funds are not available from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G-9262 and G-9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in Paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing July 1, 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct during the 12-month period commencing July 1, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Florida Gas Transmission Company.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing July 1, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–242

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1964)

On April 16, 1964, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP64–242 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing July 13, 1964, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which may be purchased from producers in the general area of its existing transmission system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The application states that the total cost of the proposed facilities will not exceed $3,000,000, and no single project will exceed a cost of $500,000. The facilities are to be financed with cash generated out of operations, and it will not be necessary to undertake any new financing for this purpose.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as hereto-

fore found by the Commission in its order of November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) actual final costs, (b) description of the project or projects, (c) location of facilities constructed or relocated, and (d) reason for such work to be performed.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing July 13, 1964, and the total expenditures for facilities so constructed should be limited to a maximum of $3,000,000 with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Wisconsin Pipe Line Company, to construct during the period commencing July 13, 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the period commencing July 13, 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CIMARRON TRANSMISSION COMPANY, DOCKET NO. CP64-264

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1964)

On April 29, 1964, as amended on May 21, 1964, Cimarron Transmission Company (Applicant) filed in Docket No. CP64-264 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing on the date of issuance of such authorization and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application, as amended.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $100,000, with no single project to exceed a cost of $20,000, which costs will be financed from funds on hand, from cash generated by operations, from internal sources and from financing already arranged.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, as amended, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cimarron Transmission Company, a Delaware corporation having its principal place of business in Tulsa, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued December 17, 1959, in Docket No. G-17014 (G-16911, *et al.*, 22 FPC 1059, 1066).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date on which this order issues and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000, with no single project to exceed a cost of $20,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cimarron Transmission Company, to construct during the 12-month period commencing on the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure, as amended.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted by paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $100,000, with no single project to exceed a cost of $20,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended, is hereby granted.

OPINION NO. 433

BLACK HILLS POWER AND LIGHT COMPANY, DOCKET NO. E-7046

OPINION AND ORDER DENYING AUTHORITY FOR ISSUANCE OF COMMON STOCK

(Issued June 30, 1964)

*Syllabus**

1. Under Section 204(a) of the Power Act, Commission must give first consideration to object or purpose of stock issue; secondly to its use as means of accomplishing same. P. 1608.

---

*Initial Decision appears on P. 1619.

2. **Respecting object or purpose of stock issue, Commission must determine that: (1) it is lawful; (2) it is within corporate purposes of applicant; (3) it is compatible with public interest; and (4) it is necessary, appropriate for, or consistant with, proper performance by applicant of service as public utility and will not impair its ability to perform such service - - respecting use of such issue as means of accomplishing that object or purpose, Commission must determine it is reasonably necessary or appropriate to that end. PP. 1608, 1609.**
3. **Instant record raises serious questions of compatibility of stock option plans of public utilities with responsibilities of a regulated enterprise under Power Act. P. 1611.**
4. **Commission is not of opinion that executive stock options are prohibited by Section 305(a) of Power Act - - public utility is free to apply for approval thereof if it believes proposal can be justified under Section 204(a). P. 1611.**
5. **Applicant's plan fails to meet plain purpose of Section 204, which is to prevent issuance of securities which might impair company's financial integrity or its ability to perform its public utility responsibilities. P. 1611.**
6. **Electric utilities are public service companies serving under franchises and certificates granted by government agencies; they possess power of eminent domain and other special privileges not available to ordinary companies. P. 1611.**
7. **Function of regulatory agencies is to exercise positive influence on welfare and growth of electric industry by controlling rates and profits and focusing attention of management on its public service responsibilities. P. 1611.**
8. **Incentives under stock option plans, tend naturally to divert management from its public responsibilities and to focus its attention on maximizing prices and earnings in order to push stock quotations ever higher. P. 1611.**
9. **In non-regulated industry ostensible reason for stock option plans is simple - - to maximize profits. P. 1611.**
10. **Goal of regulated industry must be effectiveness in performance of public service; measure of its executive endeavor is and must remain not judgment of stock market on present and future profits, but success in providing service upon which entire economy is dependent. P. 1612.**
11. **An over-riding personal stake in stock market is doubtfully compatible with public service responsibilities of public utility management - - stock option plans do not lend themselves to a balanced management attitude. P. 1612.**
12. **Record here affords no basis for concluding that there is any positive relationship between companies in vanguard of electric power industry on technology and policy levels and those which have adopted stock option plans. P. 1612.**
13. **Evidence showing consensus of judgment within industry that stock options are not necessary or appropriate for public utilities is to be respected and weighed against management's views here. P. 1612.**
14. **Stock option plans for public service company are objectionable since they: (1) disguise extent of managerial compensation and thus make it easy for top managers to receive excessive compensation; (2) usually prefer top executives and ignore important role of lower and middle management group; (3) lead to executive compensation which is often**

irrational; erratic and unrelated to executive performance; (4) tend to make management focus more on common stock prices than on company's service obligations; and (5) impact is to dilute equity of company." PP. 1612, 1613.

15. General rule for regulated companies is that each generation of consumers pays its own way as costs are incurred — consumers of today should not pay for services provided in past nor later generations of consumers pay for current services. PP. 1613, 1614.

16. Stock options are form of deferred compensation which impose share of burdens of compensating present management upon stockholders and consumers at later date when options are exercised. P. 1614.

17. Commission concern here is limited to determination of whether stock option plan meets standard set by Section 204(a) of Power Act. P. 1614.

18. Evidence here fails to establish applicant's case for restricted stock option plan. P. 1614.

19. Use of stock option as device for executive compensation is not consistent with proper performance by utility of its public service obligation since they, (1) involve "no-cost" method of accounting; (2) actual costs are hidden from shareholders and consumers; (3) reward may have little, if any, relationship to value of executive performance; (4) conflict of interest may be created in duty of those optionees who establish company's rate policy and (5) normal option growth tends to dilute company equity. P. 1614.

20. In proceeding under Section 204 of the Federal Power Act, Commission *denies* restricted stock option plan as not compatible with public interest.

Commissioner O'CONNOR *dissenting*, joined by Commissioner WOODWARD.

H. R. Hanley, for Black Hills Power and Light Company.

Wallace E. Brand and *Leonard Eesley* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SWIDLER, *Chairman:*

This case involves an application by Black Hills Power and Light Company (Black Hills or applicant) for authorization under Section 204 of the Federal Power Act to issue and sell up to 10,000 shares of common stock to executives and key employees under a Restricted Stock Option Plan approved by the Black Hills stockholders in April 1962.[1] In June 1962, options to purchase 7,400 shares were granted to 16 key officers and employees at a price of $37.25. Options on 2,600 shares were reserved for future use.

Briefly, the plan provides for the issuance and sale of up to 10,000 shares of optioned stock prior to February 1, 1982. Options for terms of up to ten years may be granted at any time before February 1, 1972. The price for the optioned shares, which is fixed at the time of issue of the option, is to be not less than 95 percent of the market price of the stock on the date of the grant, the limit provided in the Internal Revenue Code of 1954 for realization of the full tax benefit under Section 421. The options are exercisable only by the grantees during their respective lifetimes (or in the event of death by their heirs within one year); are not exercisable for one year from the date of grant; and are exercisable to the extent of 25 percent of the optioned shares for each year after the first year, provided the grantee remains in the employ of the applicant or a subsidiary. The plan is to be administered by a committee comprised of members of the Board of Directors.[2] This committee will determine when and to which employees options shall be granted.

---

[1] The recent amendments to the Internal Revenue Code, Sections 421–425, 78 Stat. 19, 63–71, placing further limitations on the terms of stock option plans for income tax purposes would necessitate some changes in the instant application.

The application was filed July 23, 1962, in accordance with our rules but without detailed information as to the justification for the plan. The Commission initially disposed of the application without hearing, denying approval of the applicant's plan by a vote of three to two.[3] The Commission found that:

> * * * where a company proposes to sell stock for purposes other than the raising of needed funds, and particularly where the beneficiaries are top management officials of the Company, we should authorize the proposal, if at all, only after a comprehensive showing that the proposal, in its mode of operation as well as basic intent, is reasonably necessary or appropriate to achieve some lawful object of the Company and otherwise compatible with the public interest.[4]

On January 24, 1963, Black Hills applied for rehearing, indicating that it was prepared to show that the criteria of Section 204 had been met. Rehearing was granted February 21, 1963, and a hearing was ordered so that both the applicant and the Commission staff might have an opportunity to introduce comprehensive evidence. The hearing was held in June 1963, and on November 26, 1963, the presiding examiner issued his initial decision (1) authorizing the issuance and sale of 7,400 shares upon condition that the option price be changed from $37.25 per share to not less than $43.60 per share, and (2) denying authorization for the remaining 2,600 shares without prejudice to the filing of further applications at such times as options for such stock are granted. Exceptions to the examiner's decision were filed by staff, and the applicant filed a reply to staff's exceptions.

The issues in this case are framed by the provisions of Section 204 of the Act, under which the Commission is empowered to authorize the issuance of securities by a public utility. Section 204(a) provides:

> No public utility shall issue any security * * * unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue * * * (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.

Under the criteria set forth in the quoted paragraph, the Commission must give consideration first to the object or purpose of the stock issue, and second to its use as a means of accomplishing that object or purpose. With respect to the object or purpose, the Commission must determine the following: (1) that it is lawful; (2) that it is within the corporate purposes of the applicant; (3) that it is compatible with the public interest; and (4) that it is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and will not impair its ability to perform that service. With respect to using a stock issue as a means of accomplishing that object or purpose, the Commission must determine that it is reasonably necessary or appropriate to that end. Unless the Commission can make these statutory findings, the application must be denied.

---

[2] Article III of the plan provides that neither the members of the committee nor any member of the Board of Directors who is not an officer or employee of the company shall be eligible for options under the plan.

[3] 28 FPC 1121 (1962).

[4] *Id.* at 1125.

Although applicant indicates that it will utilize the net proceeds from the stock sales for additions and improvements to its properties, the stock option plan is not designed to secure additional capital. The fundamental and admitted purpose of the issue is to provide for additional compensation for key executives beyond present salaries by allowing optionees to purchase stock, at a discount and under favorable tax conditions, and to share in company profits through dividends and capital gains. The plan purports to provide an incentive for such personnel to remain with the company and for qualified new people to seek employment. The issue in this case is whether this plan is compatible with the public interest within the meaning of Section 204.

The Commission staff raises serious questions with respect to (a) the compatibility of stock options with the public interest, (b) their consistency with the performance of the applicant's services as a public utility, and (c) the reasonable necessity or appropriateness of using stock options to accomplish the stated purpose of the plan. Staff's objections are directed both to Black Hills' specific proposal and to all Restricted Stock Options Plans for regulated public utilities.

The applicant presented three witnesses who urged the approval of stock options as a means of executive compensation. They stated that the option plan was adopted only after prolonged study of the need to retain and attract key personnel and of the possible alternative methods of providing the necessary incentive; and that it was approved at the annual meeting of stockholders held on April 10, 1962. Further, they noted that the plan has since been favorably received by the optionees. They testified that the option plan offers benefits to both the optionees and the company which are absent in increased salary compensation, and that the company is already paying salaries as high as its economics will permit. The witnesses emphasized that Black Hills is a small company, operating in a rugged terrain and in competition with the service furnished by rural cooperatives, as well as with natural gas service; that the company needs an aggressive management to insure its growth and prosperity; that, being a small company, key personnel have broad responsibilities, thus making the company dependent upon their services at the same time that their broad experience made them highly attractive to other companies looking for executive talent; and that Black Hills must compete for managerial and executive talent with companies paying higher salaries and offering employee stock options. They also presented testimony to show that consideration was given to the impact of the stock options on the company's financial situation; that, since the option price exceeds the book value of the outstanding shares, in their view there would be no impairment of the capital structure; and that the number of shares subject to options is small in relation to the number of outstanding shares, thus precluding the possibility of any serious dilution of the per-share earnings or of any substantial adverse impact on the cost of equity capital and the rates charged to the company's utility customers, pointing out that the proposed issue of 10,000 shares represents 2.22 percent of the approximately 450,000 shares currently outstanding.

Staff's presentation, while directed to the specific proposal by Black Hills was designed also to show that public utilities generally should not be permitted to use Restricted Stock Option Plans. The staff witness took the position that the inevitable inability to determine the cost of such plans violates public utility accounting principles and frustrates regulatory supervision and control; and that because of the difficulty of evaluating the dollar impact of such plans, executives may be inclined to a philosophy in which they would be preoccupied with obtaining excessive compensation to the detriment of both consumers and shareholders. He stated that there is no direct relationship between executive efficiency and stock market prices for regulated utilities, so that it cannot be assumed that the stock option type of compensation will encourage such efficiency.

The staff witness emphasized the hidden nature of option costs, the dominance of factors other than managerial efficiency in determining earning power and profits, and the possibilities of dilution as the primary reasons for denial of stock options to regulated utilities. He further testified that these public interest considerations warrant a denial of Black Hills' application even though in this case dilution is not a "particularly significant problem", because of the possibility that approval of one such plan was likely to encourage the filing of more ambitious plans with hidden and cumulative costs equally difficult to appraise.

For these reasons staff argues that such plans are not appropriate to compensate management and would impair the company's ability to perform the services of a public utility and are, therefore, not compatible with the public interest within the meaning of Section 204(a).

The examiner, reviewing the testimony of the applicant's witnesses with respect to the need for the stock option plan and the advantages which prompted the company to adopt the plan, found the plan to be reasonably necessary or appropriate for its intended purpose. He accepted the testimony of the applicant's witnesses that the company is paying salaries as high as its financial situation warrants, making further increases impracticable. He further noted the impossibility of making a meaningful comparison of benefits between stock options and salary increases, since many benefits, other than the additional dollars received, must be considered in connection with the stock options. He concluded that even if it were possible reasonably to calculate the profit possibilities to the optionees and compare them with salary increases, it would be futile if the optionees in fact preferred the options; and in his judgment the evidence revealed that dollar for dollar the stock option plan is more attractive than a pay raise. Also, in terms of benefits to the company, he found that as a device for retaining key people the stock option plan has advantages not matched by a salary increase program of like dimensions.

On the question of dilution, the examiner found that there would be no adverse effect on the average net asset value of the company's stock, which at the end of 1962 was about $25 per share, by the granting of options to purchase new stock at $37.25. However, the possibility of some dilution of the earning power of the company's stock led the examiner to modify the option price to $43.60 as a condition of his approval of the plan. This is the price which he computed would, as new investment, return the same earnings as were realized on the company's rate base for the year 1962, the last year for which figures were available at the hearing. Finding that the company earned 6.33 percent on its rate base in 1962, and that its earnings per share for 1962 were $2.76, he concluded that the option price should be the amount of new investment which at 6.33 percent would produce earnings of $2.76, *i.e.*, $43.60. It was his judgment that at this price the company's stock would continue to hold its value, other things being equal, and the sale of the optioned shares at a discount would not detract from the company's ability to render service. With respect to the 2,600 shares not yet included in option grants, the examiner said that authority to issue and sell such shares should be withheld until such time as the company desires to grant the options, when the proper option price can be determined on the basis indicated above.

Staff's exceptions charge that the examiner misconstrued the issues and that he did not consider the important questions raised by it. Staff is especially concerned with his failure to consider the question of the inability to determine the cost of and the proper accounting for option costs in a regulated industry. Staff also cites his failure to consider the question of the relationship or, rather, lack of relationship between executive service and the stock prices which measure the reward under the option plan.

In our view the record in this case raises serious questions of the compatibility of stock option plans of public utilities with the responsibilities of a regulated enterprise under the Federal Power Act. We are not of the opinion that executive stock options are prohibited by Section 305(a) of the Act which makes it unlawful for officers and directors to benefit from the sale of securities. A public utility is free to apply for approval of such a stock issue if it believes that its proposal can be justified under Section 204(a). Our objections go rather to the merits of the requirements of the Act that security issues must be compatible with the public interest. As we view the evidence the applicant has not made out a case for approval under Section 204(a). As the Commission recently held, "The plain purpose of Section 204 is to prevent the issuance of securities which might impair the company's financial integrity or its ability to perform its public utility responsibilities."[5] It is by this standard that the present application is to be judged and it is by this standard that applicant's plan fails.

Electric utilities are public service companies serving under franchises and certificates granted by agencies of government and possessing the power of eminent domain and other special privileges not available to ordinary companies. While there is an increasing amount of competition between the various forms of energy, electric service maintains a monopoly position for many uses and, even where subject to competition from other energy sources, the rivalry is not of the kind that normally assures reasonable prices for goods and services in a free enterprise situation. For this reason electric utilities are subject to regulation; otherwise they could take advantage of their monopoly position to charge excessive rates and make exorbitant profits. The function of regulatory agencies is to exercise a positive influence on the welfare and growth of this industry which is fundamental to the progress of our entire economy by controlling rates and profits and by focusing the attention of management on their public service responsibilities. The incentives under stock option plans, however, tend naturally to divert management from their responsibilities to the public and to focus their attention on maximizing prices and earnings in order to push stock quotations ever higher.

In non-regulated industry the ostensible reason for stock option plans is simple.[6] It is to maximize profits. Whether they fulfill this purpose is another question, but the purpose is unchallenged. The maximization of profits over the long term is an important management responsibility. Indeed, in those areas where price is controlled by the free interplay of competitive forces, perhaps the outstanding measure of management's competence is to be found in its ability to produce the highest earnings and greatest return on the shareholder's investment. In regulated industry this purpose cannot be accepted. The goal here must rather be effectiveness in the performance of a public service and the measure of executive endeavor is and must remain not the judgment of the stock market on present and future profits but success in providing a service upon which our entire economy is dependent, not at the highest prices which can be obtained but at the lowest rates consistent with the health of the industry and its ability to care for the future needs of its customers. An overriding personal stake in the stock market is doubtfully compatible with the public service responsibilities of the management of a public utility. The electric power industry of today recognizes that it must perform its work with a broad regard for the interests of consumers and the general public, as well as the interests of stockholders and management. Stock option plans do not lend themselves to this balanced management attitude.

---

[5] *Pacific Power & Light Company*, Opinion No. 354, 27 FPC 623, 626.

[6] A rich literature is accumulating on this intriguing subject. See J. A. Livingston, *The American Stockholder* (J. P. Lippincott Company, 1958); "The Mysterious Stock Option," Erwin N. Griswold, Dean, Harvard Law School, in *Tax Revision Compendium*, Nov. 16, 1959, Vol. 2, pp. 1327–1335, House Committee on Ways and Means; "Executive Compensation: Taxation of Stock Options," Vanderbilt Law Review 475 (1960) Leslie Gould, "Directors Responsibility—Two Schools of Thought on One Board," *New York Journal-American*, April 6, 1960; Dean Erwin N. Griswold, "Are Stock Options Getting Out of Hand?", Harvard Business Review, November–December, 1960.

The record made in this proceeding affords no basis for concluding that there is any positive relationship between the companies in the vanguard of the electric power industry on the technology and policy levels and those which have adopted stock option plans. There is also no basis for concluding that such plans either lead to or have evolved from distinguished performance in the public interest. Presumably the lack of or any such relationship is at least one of the reasons that although 57 percent of the companies listed on the New York and American stock exchanges have adopted stock option schemes, only 11 percent of the Class A and B electric companies have employed this device.[7] This evidence of the consensus of judgment within the industry that stock options are not necessary or appropriate for public utilities is to be respected and weighed against the views of the management of the applicant in this case.

The record in this case reveals a number of specific objections to a stock option plan for a public service company. First, such plans disguise the extent of managerial compensation and thus make it easy for the top managers to receive excessive compensation. As the staff showed in this case, there is no practical method of accounting for stock options which will give a clear indication of their cost to the company. Over the years the accounting for costs has been made the foundation of knowledgeable regulatory control. Since there is no disclosure of service costs under these plans in the accounts of the utility, the use of the stock option form of executive compensation distorts the real cost of electric utility service. On the other hand, increases in cash salary payments are immediately evident. Entered into the books of account, they are disclosed and understood by investors, consumers and regulatory officials alike.

Second, stock options usually prefer the top executives and ignore the important role of the lower and middle management group. On a company-wide basis they may create a morale problem for the many which offsets their claimed incentive value to the few.

Third, such plans lead to executive compensation which is often irrational, erratic, and unrelated to the performance of the executive. General market trends and the growth of the economy in the company's market area may play a larger role in determining the value of the options than the efforts of the option-holders themselves.

---

[7] Exhibit No. 12, Schedules 1 and 2.

Fourth, as discussed above, such options tend to make management focus more on common stock prices than on the service obligations of the company.

Finally, the impact of such options is to dilute the equity of the company. It is argued that applicant proposes only a small issue in relation to total capitalization. While initial plans, such as that of Black Hills, may be sufficiently modest to avoid serious dilution, stock options tend to be habit-forming and the first plans are usualy followed by more and bigger ones which cannot be rejected by management or the regulatory agency if future company officials are to be treated like their predecessors. Adoption of this course of supplementary executive compensation is almost irreversible and thus the initial decision is the crucial one, irrespective of the size or impact of the initial plan.

Black Hills' argument that the stock option plan is needed in order to retain top management staff can hardly be accepted since the record shows that without stock options the company has lost no employees with a salary in excess of $7,000 per year except by death or retirement.[8] Of the three options which have been granted for 1,000 shares or more, one of the recipients is 72 years old and one is 66. Of the remaining 13 recipients, five are between the ages of 55 and 65. It could hardly be contended that the options are needed to retain the services of these veterans. Options on only 1,850 shares of stock have been received by employees under the age of 50.[9]

What is clear from this evidence is that since most of the present options are to be granted to older employees additional stock options will soon have to be proposed, and authorizations requested, to attract and retain the services of younger men. Thus, the fact that the initial dilution would be relatively small in this case is not determinative, particularly where the cumulative effect may be substantial. Having once permitted the plan to go into operation, it would be doubly difficult, if not impossible, to find that any future increment was in itself not compatible with the public interest.[10]

The growth and results of the only stock option previously approved by this Commission are instructive. The Montana Power Company's plan which had a limit of 100,000 shares when approved by the Commission in 1956[11] had increased to 750,000 shares by January 1, 1962, equal to ten percent of Montana's common stock. The record shows that if all these options are exercised Montana Power will forego over $9 million in additional capital which the company would have received from the sale of the same stock at the market price rather than the option price.[12]

To illustrate the possible impact of the dilution problem further, the evidence in this proceeding also shows that on the average electric utilities stocks have increased in market value by 150 percent in the last ten years. If the same trend is assumed for the future, an option granted today will be exercised ten years from now at 40 percent of the then market price.

A further problem is presented by the timing factor of the option form of compensation. The general rule for regulated companies is that each generation of consumers should pay its own way as the costs are incurred and that the consumer of today should not be asked to pay for the services provided in earlier years nor should later generations of consumers pay for services performed currently. Stock options are a form of deferred compensation which impose a share of the burdens of compensating present management upon the stockholders and consumers at a later date when the options are exercised. We find nothing in the presentation of Black Hills which indicates that theirs is an exceptional case or in any way immune from the foregoing objections.

---

[8] Exhibit No. 12, Schedule 10. The reply brief of Black Hills indicates that the witness Walrafen resigned from his position as of September 1, 1963. The fact that the applicant has been forced to go outside the record to find one lone employee who, for one reason or another, has left the company only serves to point up the weakness of the company's case.

[9] Exhibit No. 3.

[10] Although the present plan is limited to 10,000 shares, applicant conceded in the hearing that there is nothing in the plan to prohibit their coming in with a supplemental application at any time.

[11] *The Montana Power Company*, 16 FPC 863 (1956).

[12] Exhibit No. 12, Schedule 7, Sheet 5.

We of course are aware that stock option plans have been accorded favorable treatment under the Internal Revenue Code and have been approved by two other Federal regulatory agencies[13] and by the regulatory commissions of sixteen states. We note that at least three state regulatory agencies have refused to approve stock option plans for public utilities.[14] Our concern in this case is limited to a determination whether such plans meet the standard set by Section 204(a) of the Federal Power Act. We find that applicant's actual experience in recruiting and retaining management without stock options, the comparison on the record of its salary scale with that of comparable companies, and the evidence as to the expected future life with the company of those who have received the bulk of the options, all fail to establish applicant's case for a restricted stock option plan. We further find that the fact that stock options involve a "no-cost" method of accounting; that actual costs are hidden from the shareholders and consumers; that the reward may have little, if any, relationship to the value of executive performance; that a conflict of interest may be created in the duty of those optionees who establish the rate policy of the company; and that the normal growth of such options tends to dilute the equity of the company, establish that the use of the stock option as a device for executive compensation is not consistent with the proper performance by a utility of its public service obligation.

On the record in this case we conclude that the Restricted Stock Option Plan of applicant Black Hills is not compatible with the public interest. Accordingly, the application for authority for the issuance of stock will be denied.

The Commission finds:

(1) Black Hills Power and Light Company, a corporation organized under the laws of the State of South Dakota and the applicant herein, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued November 2, 1962, in this docket, 28 FPC 785.

(2) The proposed issuance and sale of up to a maximum of 10,000 shares of common stock, par value $1.00 per share, pursuant to the provisions of the above-described Restricted Stock Option Plan will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance

---

[13] *Chicago & Northwestern Railway Co.*, 295 ICC 277, 454 (1956); *Middle South Utilities Co.*, SEC Release No. 14367, 37 PUR 3d 461 (1961).

[14] *Re Baltimore Transit Co.*, 4 PUR 3d 151 (Maryland PSC, 1954), affirmed 9 PUR 3d 1, 114 A. 2d 834 (1955); *Re South Atlantic Gas Co.*, 13 PUR 3d 230 (Georgia PSC, 1956); *Re The Brooklyn Union Gas Co.*, 24 PUR 3d 445 (New York PSC, 1958), affirmed 29 PUR 3d 388, 187 N.Y.S. 2d 207 (1959).

of common stock, as described above, is, therefore, not exempt by virtue of that subsection from the requirements of Section 204 of the Act.

(4) The proposed issuance of 10,000 shares of common stock pursuant to applicants Restricted Stock Option Plan (a) is not compatible with the public interest, is not necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will impair its ability to perform such service, and (b) is not reasonably necessary or appropriate for the accomplishment of the corporate purposes of the applicant.

The Commission orders:

The application by Black Hills Power and Light Company for authorization to issue 10,000 shares of common stock pursuant to the Restricted Stock Option Plan is denied.

Commissioner O'CONNOR *dissenting.*

Commissioner WOODWARD *dissenting* joins in Commissioner O'CONNOR's statement.

O'CONNOR, Commissioner, *dissenting:*

In the first of this two-stage proceeding I carefully explained what the legislative history and judicial interpretation dictate as the proper criteria for Section 204(a).[1] I strongly urged that the very plan, here again rejected, met those criteria and that the Commission had exceeded its statutory authority in holding to the contrary. I have not altered my views. However, lest the absence of their repetition be misconstrued, I hereby reindorse them.

The thrust of my comments will be toward the highly speculative nature of the majority's statement, and at a significant, and unfortunate, consequence to which it may well lead.

The majority holds that stock options are incompatible with the responsibilities of electric utilities. As a result, they are hereinafter proscribed for those utilities.

The majority fears that options will result in higher power prices. Higher prices, they reason, by producing higher earnings, will ultimately produce higher market demand for common equity. Thus managers can, and would, effect market escalations. Notwithstanding this conclusion's variance with their statement that general market trends and area growth—and not individual efforts—produce market fluctuations, it is emphatically repudiated by the record upon which this opinion ostensibly rests. Testimony reveals that subsequent to the option's adoption by 77% of the Black Hill's shareholders, *i.e.*, at a time when the majority anticipates higher rates, company managers voluntarily reduced rates in one service area, and, at the time of the hearing, had announced a further reduction in its general service rate.[2] The evidence simply will not support any inference that Commission authorization of the Black Hills option woud inevitably have, or tend to have, effects detrimental to the public interest.

Moreover, one legitimately wonders how optionees of well-regulated utilities could violate their public trust to the extent sufficient to create market repercussions. Fallacious surplus accounts, alluring to the unsophisticated investor, are proscribed by our Uniform System of Accounts. Excessive rates of return, productive of larger dividends, are proscribed by the general provisions of Section 205(a). Inflated rate bases, by which reasonable rates of return could produce excessive dollars of return, and reasonable rate bases containing fees paid to controlling interests, are proscribed by Section 3(13). Any violation of the Uniform System of Accounts would be noticed upon the filing of the company's first annual report, and any violation of Section 205(a) would be exposed the first time a company initiated a Section 205(e) proceeding, or the Commission initiated a periodic actual rate of return spot-check. Violations of Section 3(13) would be revealed in either Section 205(e) or 206(a) proceedings. Slight violations of Section 3(13) could escape unnoticed, but slight violations would have absolutely no effect on the market.

---

[1] *Black Hills Power and Light Co.*, 28 FPC 1121, 1134–40 (1962).

[2] Record, Volume 1, p. 129.

The majority also fears that stock option plans disguise their costs, the implication being that disguised costs lead to excessive costs. The majority defines "costs" several ways, one of which is as "capital foregone." "Capital foregone" represents the difference between the option price and the market price on the date of exercise, and is synonomous with "dilution." Referring to this dilution as a cost is more fanciful than accurate because the dilution resulting from the regulated issuance of stock options would cost consumers nothing and shareholders very little.

True costs, in the sense that more capital need be raised to generate the same income, are envisioned by the majority's indication that the exercise of an option will burden future consumers. Deciphered, this is an endorsement of staff's Montana Power Company exhibit whereby they calculated the annual earnings requirement of the "excess shares" issued under the option.[3] Staff's exhibit reasoned that an n shares earned x dollars per share, the issuance of $n+$ shares, where the $+$ constituted excess shares, would continue to earn x dollars per share. The conclusion is fallacious. As staff witness Beidatsch recognized, the initial impact of minor dilution is on shareholders, not consumers.[4] Unlike the issuance of paid-for shares which create an investment and thus a return, a reasonable amount of excess shares would result in a corresponding, but minute, *decrease* in earnings per share. Before earnings could remain constant, *i.e.*, the dollar-impact be shifted to consumers, rates must be increased. Thus, the unfortunate consequence of staff's exhibit is that return on equity becomes directly translated into return on investment for ratemaking purposes. This is a position to which the Commission has not committed itself but one which, if they believe that option-exercise will inevitably burden consumers, is indicated by the majority's statement. Aside from its undesirable consequences, the Montana Power Company exhibit was premised upon assumptions too speculative for even witness Beidatsch to accept.[5] One of its assumptions, *viz.*, that this agency would have authorized the additional 450,000 shares to be optioned, is by itself sufficient to dismiss its dollar-conclusions as meaningless.[6]

Thus, before stock options could create costs borne by consumers, two conditions must exist: First, the equity dilution must be so extensive that the market price of the company's equity is substantially depressed; and second, the applicable regulatory agency must determine that an increased rate of return is needed as compensation. Apparently conceding the desirability of the second condition, the majority indicates its helplessness to prevent the first. The rationale is that stock options are uncontrollable; once an initial application is approved, subsequent applications become impossible to reject. The majority envisions no consideration of degrees; no leeway to accept what is reasonable and to reject what is not. It thus becomes better to proscribe all options—even the unquestionably reasonable Black Hills option—than to attempt to identify and reject only the unreasonable or inappropriate applications.

---

[3] "Excess shares" are defined as being" . . . the number of shares . . . exercised by optionees in excess of the number required to raise on the market on the . . . dates of . . . exercise the equivalent amount of capital contributed by the optionees." Staff Schedule 7, Sheet 1.

[4] Record, Volume 2, p. 330.

[5] Record, Volume 2, at 41–42.

[6] Unmentioned in the majority's statement is that Montana Power Company common stock underwent a 3 for 1 split in 1959.

Their position is totally meritless. There is no legal or practical restriction upon the denial of stock option applications. Whether a particular application be initial or secondary, it may be denied. Clearly, whenever its approval would result in the extent of dilution necessary to impair substantially the cost of capital, it *must* be denied.

The majority seeks to shore-up their position with the suggestion that, due to the age of the Black Hills' optionees, other Black Hills' applications are soon forthcoming. Again they ignore the evidence. Six of the fifteen optionees are under forty-four years of age, which, assuming retirement at age sixty-five, gives them an estimated future employment of from twenty-one to twenty-nine years. These are not veterans soon to retire. Moreover, the present plan is without restriction as to the age, department or length of service requirement for its optionees. The present optionees include Line Superintendents, the General Sales Manager, the Sales Production Manager, the Production Superintendent, the Distribution Engineer, and the Chief Revenue Accountant. Consequently, any intimation that the scope of the present plan is insufficiently narrow is inaccurate. Further still, there are 3,200 unoptioned shares under the present plan. Inasmuch as the average share per optionee below the level of Senior Vice President is 275, this indicates that 12 more options could be granted before another application need be filed. The majority's clairvoyance in the face of this evidence regrettably escapes me.

Commission approval of proposals which involve potential, *de minimis* dilution is neither unusual nor improper when, as here, there are counterbalancing considerations. Examples can be found in financing plans whereby bonds are issued with warrants to convert to common shares. Thus in January of 1960, this Commission approved a financing plan for Midwestern Gas Transmission Company (Midwestern) whereby $1,000 first mortgage bonds were issued with warrants to purchase 4 shares of Midwestern's common stock at $15.00. The warrants could be exercised between 1964 and 1973, and were admittedly "sweetners" added solely to attract potential investors away from more secure investments.[7] Midwestern common is now selling around $19.00 per share.

Other straws to which the majority clings can be disposed of briefly. First, their apprehension that stock options ignore lower and middle management groups is curious in the context of Black Hills which doesn't have such groups. Moreover, it ignores the Employee Welfare and Savings Plan which, although less attractive than the Restricted Stock Option Plan, is open to all employees.[8] More curious, a unanimous Commission approved the Employee Welfare plan even though the shares were to be issued at 90% of their market value on the granting date. Thus, as of the date of issuance, 10% of the market value of the shares is likely to be foregone. Moreover, the majority's concern for the morale of this non-existant group is touching, unconvincing and hardly dispositive, and smacks of their position of rubber-stamping subsequent applications. If a serious morale problem could be shown in any application, either initial or secondary, likely to impair the ability of the company to perform its public utility operations, obviously the application should be denied.

---

[7] Record, Volume 10, p. 1473, *Midwestern Gas Transmission Co.*, Docket No. RP61-19.

[8] Approved 28 FPC 785 (1962).

Their contention of 'compensation unrelated to performance' is unacceptable for two reasons. First, stock values, they say, appreciate because of general market trends and area growth. True. Area growth, however, often appreciates because of readily available sources of cheap power, which, in turn, is often the result of efficient management. The majority has yet to contend that better management won't produce cheaper power. To do so would be astonishing, not only because of its patent invalidity, but also because it would hard-press this Commission to justify its current project to measure the performance of public utility managers. Second, however, and with more ominous implications, cash salaries are no more related to performance than are stock option tax benefits. Thus, although the instant decision purportedly deals only with a method of compensation and not the amount, the 'unrelated compensation' test will inevitably be read as a mandate to prescribe salary levels, and, in fact, the number of personnel a utility may employ. Such far-reaching regulation is ideologically impalatable to most individuals, but it is the inevitable conclusion—in fact, the next short step—from the majority's statement.

Equally weighty is their argument that if industry vanguards have no option plans, no industry component, regardless of how small, can justify one. The rebuttal is obvious: stock options are enticements to attract and keep qualified personnel, and industry vanguards do not need these enticements. Their standing offer of security, prestige, large salaries, and opportunities to work other capable personnel are, in themselves, sufficient attractions. Any speculative elaboration on Black Hills' need is unnecessary, inasmuch as the record itself establishes it. At the time of the Examiner's hearing Mr. L. Duane Walrafen was Vice-President and Secretary-Treasurer of Black Hills. He was also the Chief Accounting Officer, and was described as having "primary responsibility for accounting, rates, financing, budgeting, forecasting, corporate records, stockholder relations, taxes and Commission regulation."[9] He was then thirty-nine years of age, and, although his salary had more than doubled in his seven years at Black Hills, he admitted that he would be compelled to consider other offers. Our public files, of which I take official notice, now reveal that Mr. L. Duane Walrafen is a Vice-President of The Kansas Power & Light Company. Kansas Power & Light has a stock option in effect for its key employees.[10]

The majority's conclusion that all stock options are not prohibited by Section 305(a) of the Federal Power Act does little to conceal their conclusion that all such options *are* prohibited by Section 204. When the generalities relied upon to reject this application are weighed against the applicant's impressive presentation, it becomes clear that no stock option will ever be approved for an electric utility under the jurisdiction of this Commission. No applicant will ever be able to rebut the hazy rationale of this decision. This is a regrettable outcome; one that is compelled by neither law nor reason. It is reached because of a vague apprehension, confirmed by neither the record nor the fabricated supports, that all optionees will inevitably cease functioning in the public interest. It is made with inadequate consideration of the fact that potential optionees can always acquire a personal interest in their company on the open market, and that the compulsory first-offer requirement precludes any "get-rich-quick" scheme.[11] It is directed at the conflict-of-interest of stock owning utility managers, and never pinpoints the evils inherent in stock options. It minimizes the fact that smaller utilities need extra blandishments to attract and retain qualified personnel; that the cost of salaries are unquestionably borne by consumers whereas reasonable stock options seldom are; and that, at any rate, there is evidence that salary increases are seldom as attractive as stock options. In short, it has accentuated the problem faced by public utilities in employing and retaining qualified personnel. It admits the absence of equity dilution in this case, but relies upon an unfounded infirmity to prevent it in subsequent applications. Lastly, by giving Section 204 the most stringent of interpretations, it unquestionably has obstructed the passage of pending legislation S. 1700 and H.R. 6790. These bills would amend Section 12 of the Natural Gas Act to give us the identical security-issuance jurisdiction we now possess under Section 204 of the Federal Power Act. If this legislation is passed, and the instant decision stands, the fate of the pipeline company stock option becomes fixed.

---

[9] Record, Volume 2, p. 216.

[10] The Montana Power Company, which operates in the neighboring states of Montana, Wyoming and Idaho, and The Washington Water Power Company, which operates in Washington and Idaho also have stock option plans in effect.

To a decision by which every one loses, I must respectfully dissent. It is my firm belief that the Black Hills plan should be approved. I would, however, condition it to require the issuance of shares at 100% of their market value on the granting date, in lieu of the 95% price now proposed. This condition would preclude dilution as of this date, and would comply with the Revenue Act of 1964 whereby Congress reiterated its impetus to the adoption of these plans.

Commissioner Woodward joins me in this dissent.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR ISSUANCE OF SHARES

(Issued November 26, 1963)

Fribourg, *Presiding Examiner:*

I. History of the Case up to the Time of Hearing

On July 23, 1962, Black Hills Power and Light Company applied for authorization under Section 204 of the Federal Power Act to sell 20,000 shares of its common stock to its executives and employees (and to those of a subsidiary, Wyodak Resources Development Corp.) under two plans. Authority was granted to sell 10,000 shares under the Employees Savings and Welfare Plan by order of the Commission dated November 2, 1962. We are concerned here with the remaining 10,000 shares, which the company proposes to sell to executives and other key employees under a Restricted Stock Option Plan. Options were granted on June 28, 1962, under the plan at $37.25 per share with respect to 7,400 shares, subject to Commission approval. The remaining 2,600 shares were reserved for possible future option grants.

---

[11] ". . . Shares purchased upon exercise of an option may not be sold or transferred within six months of the date of issue of the certificate therefor, unless they are first offered to the Corporation at the option price of such shares, and the certificate or certificates for such shares shall be endorsed to reflect such restriction." Article V of the Stock Option Plan. This restriction is also contained in Condition 1 of each individual option.

To describe the plan, the examiner can do no better than to take the following paragraphs from the Commission's order of December 27, 1962:

> Under the Restricted Stock Option Plan, up to but not exceeding 10,000 shares will be issued and sold, from time to time prior to February 1, 1982, to executives and other key employees. The period during which options may be granted will terminate on February 1, 1972; the maximum term of any option is ten years. The price for the optioned shares will be not less than 95% of the market price on the date of each grant. Payment in full, in cash, will be made for all shares purchased. Options granted under this plan are exercisable only by the grantees during their respective lifetimes (or in the event of death by their heirs within one year); are not exercisable for one year from the date of grant and are exercisable to the extent of 25% of the optional shares for each year elapsed thereafter, provided the grantee remains in the employ of the Applicant or a subsidiary.
>
> The Stock Option Plan further provides that it shall be administered by a Committee from members of the Board of Directors which shall have authority in its discretion to determine when and to which employees of the Applicant or any subsidiary corporation, options shall be granted. Neither the members of the Committee nor any member of the Board of Directors who is not an officer or employee of the Applicant (or subsidiary corporation) shall be eligible to receive an option under the plan.[2]
>
> Applicant states that the issuance and sale of the additional Common Stock will not be underwritten, and no underwriters' or finders' fees will be paid to any person in connection with such issuance and sale.
>
> * * * * *
>
> The Restricted Stock Option Plan presents a different problem from that of the Employees Savings and Welfare Plan heretofore authorized. To illustrate the matter simply,[3] under a restricted stock option plan a corporation grants its executives and key employees options or rights to buy shares of the Company's stock in the future at 95% of the stock's market value at the time the option is granted. After a minimum one-year period, the employee may exercise his option to purchase stock from the corporation at any time during the nine years following the option date. In this way he may acquire shares of greatly increased value from the corporation, at a price equal to only 95% of their market value on the earlier option date. After holding the shares six months, he may sell and the entire gain (market value on date of sale, minus 95% of market value on option date) is taxed at capital gain instead of at ordinary tax rates.
>
> The proposed stock options thus give the holders thereof the right to purchase authorized but unissued shares of common stock of Applicant at a price which is related not to the market price of the stock at the date the options are exercised, but instead to the market price on the date of the grant of the option. As a consequence, Applicant is placed in the position, at the time it grants the options, of being obligated, on call of the option holders, to sell the requisite number of shares of its common stock at any time over the next eight years, at a potentially large discount from the market price of the stock on the date of sale. The amount of dis-

---

[2] The Restricted Stock Option Plan is designed to meet the requirements of Section 421 of the Internal Revenue Code of 1964.

[3] See 26 USCA 421, and Treasury Regs. thereunder.

> count, of course, is unknown at the date the options are granted, but it must be assumed that the discount could be very large, since the opportunity for capital gains is the great attraction of such plans.

On December 27, 1962, the Commission issued the order from which the foregoing quotation is taken, denying approval of the plan. The order was accompanied by three opinions. The majority said that

> * * * there has been no showing that the Applicant will receive benefits that its present executives would not provide without such options; that Applicant must grant options to retain its executives; or that it could not grant equivalent benefits through salary increases (which would be tax deductible to the Applicant) at less cost.

Since the Applicant had failed to show that the issuance of the option stock was justified by one of the above reasons, or by some other reason providing a basis for finding that the plan is in accordance with Section 204 of the Federal Power Act (*i. e.*, that it is for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest) the application was denied. Commissioner Morgan concurred in the result on the ground that Section 305(a) prohibits Commission approval of stock options.

The minority dissented on the ground that the showing required by Section 204 had been made and that requested authority should therefore be granted.

On January 24, 1963, the company applied for rehearing of the December 27, 1962 order. Rehearing was granted February 21, 1963, in an order in which the Commission noted that the applicant was prepared to show, if permitted to do so, that the plan met the criteria of Section 204. A hearing was ordered so that both the applicant and the Commission's staff might have an opportunity to introduce comprehensive evidence on the basis of which a determination of the propriety of the proposed stock issue could be made.

Hearings took place from June 3 to 6, inclusive, and the last brief was received September 16, 1963.

II. Section 204

In order to approve or disapprove the proposed plan it is necessary to consider the statutory standards by which it must be judged. We consider first Section 204 of the Federal Power Act, 15 U.S.C. 824c. That section prohibits public utilities under FPC jurisdiction from issuing securities unless the Commission by order authorizes them to do so.

> * * * The Commission shall make such order only if it finds that such issue * * * (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. * * *

There is no dispute as to the plan being for a lawful object within the corporate purposes of the applicant. The optionees are engaged to carry on the business authorized by the charter of the applicant (or, in one case, of a wholly-owned subsidiary). Hiring for such purposes is within a corporation's implied powers, and the power to make an agreement as to compensation, including a stock option plan, is incidental to the power to employ, *Gruber v. Chesapeake & Ohio Ry Co.*, 158 F. Supp. 593, 610 and cases there cited.

The Commission set this case for hearing in order to determine whether the applicant (1) would receive benefits that its present executives would not provide without stock options, (2) must grant options to retain its executives and (3) could grant equivalent benefits at less cost through salary increases.

These are all questions which call primarily for business judgments as to company-personnel relations rather than judgments as to the company's ability to perform public utility service. Of course, the latter is involved in any business judgment—any badly-judged expenditure will tend to affect a public utility's ability to serve the public—but the Commission would surely disclaim the right to pass upon every exercise of business judgment on the part of the managements of the companies it regulates. For instance, if Black Hills attempted to obtain for itself through salary increases (or cash bonuses or by furnishing housing or transportation to its officials), the benefits it is here seeking through stock options, the Commission would certainly not consider whether stock options might be a better way of proceeding. The question would never be referred to it. The company would raise salaries or pay bonuses or grant fringe benefits, and that would be that.

However, since the Commission, in setting the case for hearing, has explicitly placed the comparative questions before the presiding examiner for decision, he will attempt to decide them.

As to the first two questions, namely, the receipt by the applicant of benefits that its present executives would not provide without stock options, and the necessity for granting options to retain its executives, it is of course impossible to say that any particular executive would perform his duties any better, or any differently, if he had stock options instead of actual or prospective salary increases, or that he would stay with the company only on condition of receiving options. An officer or employee is expected to do his job as best he can whether his compensation takes one form or another, and there is some salary level at which any of the company's officers would stay with it, options or no options.

The president of the company, Mr. Neil G. Simpson, testified, however, that in his opinion the company has improved its once relatively low salary structure to as high a point as the company's financial and economic situation presently warrants, but that it is having difficulty in attracting and retaining executives of the types it needs. Such personnel are "as much interested in the fringe benefits that the company offers as in the wages paid." Stock options make it easier for them to build an estate and provide for the future. Mr. Simpson expressed the fear that the company, without stock options, would not only be unable to attract new executive management but would lose some of its present key personnel. Therefore, while it cannot be said that the present executives would behave any differently as the result of being given stock options, it is questionable that they would all remain with the company or that new ones woud be attracted to it. In that sense, the record gives reason to believe that the applicant "would receive benefits that its present executives would not provide without stock options." Those remaining in the jobs without stock options would presumably provide the same benefits, but without the options the same people might not be there to provide them.

Whether equivalent benefits could be granted at less cost through salary increases is, in the first place, a question which assumes that salary increases are practicable. The testimony of Mr. Simpson is to the contrary. As we have already seen, it was his opinion that the company is paying a salary scale substantially as high as its economic and financial situation warrants. Mr. L. Duane Walrafen, chief accounting officer of the company, expressed the same opinion in his direct testimony. Partial confirmation of this is found in the testimony of the staff witness, who sponsored an exhibit tending to show that the company's salary scale for principal executives is "favorably in line" with that of comparable companies.[1]

It is not possible to equate the comparative benefits in a meaningful way. As Mr. Simpson's testimony shows, those to whom the options were offered regard them as a way of building up their estates and appear to place a high value on the potential benefits. Mr. Walrafen testified that the employees who have owned stock in the company have a pronounced interest in the options and hold the stock in high regard, so that in his opinion "the stock option plan has a psychological inducement out of proportion to the actual monetary advantage that might be possible." Being selected as a "key employee" through the award of a stock option appears to carry with it a distinction and prestige which a mere salary increase cannot match. Mr. Walrafen further testified that since the adoption of the plan there is less talk among the optionees about possible employment elsewhere.

Thus, even if it were possible to calculate with any reasonable certainty the profit possibilities to the optionees and compare them with hypothetical salary increases not now considered practicable, it does not follow that the attraction of one dollar of the latter would equal that of one dollar of the former. Not all human decisions are made mathematically. The prospect of protection without the sacrifices involved in saving, the lure of a long profit, and the prestige attached to the receipt of a stock option make it more attractive, dollar for dollar, than a pay raise. If the employees prefer the one, it is futile to point out that the other may provide them with equivalent benefits at less cost to the company.

Not only may the providing of "equivalent benefits" to the employees by means of salary increases be less attractive to them, but it may be less effective in attaining the objective sought by the company. The option plan makes it necessary that the optionees stay with the company to gain the full benefits offered them. The options are not exercisable until one year from the date of grant, and then only to the extent of 25 percent of the option each year, and only if the optionee remains with the applicant. The holder of an option who sees the stock go up in the two years after the grant would be entitled at that point to buy 50 percent of the total amount of stock optioned to him. If at that point he changes employment he would forego all the profit on the remaining 50 percent. It is reasonable to conclude that as a device for retaining key personnel the stock option plan has advantages not matched by a salary increase program of like dimensions.

The comparison made by the staff between the costs of the two plans is limited to a comparison of costs to the company. That is, it is grounded upon the assumption (Staff br. p. 25) that at the present 52 percent tax rate the corporation can make a deductible salary payment of $208 at the same cost to itself that would result from a $100 stock option benefit. Assuming this to be true, it omits consideration of the consumer. The staff's method carries with it the assumption that the company's net income would be reduced by $100 if salaries were raised by $208. If, however, the company sought rate increases to make up the drop in net, rates would have to go up by $208 to cover the increase in expenses in order to realize the same net as before. There is no indication that the company is not entitled to earn what it is now earning. Hence salary increases imply rate increases.

---

[1] Cross-examination by able company counsel was directed towards showing that the companies selected for comparison in the exhibit referred to were not truly comparable with Black Hills. However, it does not appear to the examiner that the cross-examination showed such differences between Black Hills on the one hand and the selected companies on the other as to destroy the value of the exhibit (as it was finally modified by the staff) for the purpose for which it was offered.

The staff's calculation is valid as far as it goes, assuming that the increase in salaries would be absorbed by the company and not passed on in the form of higher rates, but when we are faced with a statute which requires the Commission to consider "the proper performance by the applicant as a public utility" it is somewhat remarkable that the staff has ignored the potential impact of salary increases on the consumer. It has in fact looked upon such increases as though there were no such impact.

Yet in considering the dilution effect of a stock option plan the staff argues (Br. p. 45) that although the impact is borne initially by the stockholders it "may be transferred in whole or in part to the consumers of the company." Surely the same is true as to the impact of salary increases. And as far as the consumer is concerned the staff's comparison of $208 of salary benefits with $100 of stock option benefits is inapplicable. The impact on him is dollar for dollar.

The entire argument of the staff to the effect that stock options will result in dilution of book values and earnings is unconvincing.[2] The stock will not be given away. It will be sold. The dilution argument seems to be based on the fact that it will be sold for less than the market price. The dilution shown in Staff Exhibit 12 is based on the difference between the option price and the market price as of the time of the assumed sale.

It is questionable whether this is the proper way to measure dilution. Presumably the proceeds of the optioned stock will be invested in income-producing assets. If the price of each share of stock sold under the option plan exceeds the average net asset value of the shares outstanding at the time of sale, no dilution takes place. On the contrary, the average is increased. The most that can be said on the staff's side of the argument is that a sale at the market would increase the asset value still further.

The record shows that the market price of the stock at the time of the hearing was $48.25 per share. The examiner takes official notice of newspaper reports showing the present price to be about the same.[3] The capital and surplus applicable to the common stock on December 31, 1962, according to the annual report which is Exhibit 4, is around $25 per share. To say that dilution would occur because stock was optioned at $37.25 is to give the word a new meaning.

True, the asset picture would look still better if the market price were $75 so that the stock could be sold at $65 or $70. It is not fair to say, however, that options would dilute the asset value of a common stock if that asset value is less than the option price.

The examiner concludes that although he can make, and does make, the finding that the proposed plan is for a lawful object and within the corporate purposes of the applicant, the question whether it is "compatible with the public interest" cannot be answered by making a comparison with some other plan, such as a salary increase program, which has not been proposed and which the record shows to be of dubious practicability. Nor can a calculation of how much more the company would realize by selling its stock in the open market than by selling it under stock options yield a proper basis for deciding whether the statutory standard has been met. In the examiner's opinion the statutory language calls for a quite different type of decision, and one that should not be made on a comparative basis.

---

[2] The adverse opinion of the staff's witness was based on the view that stock option plans are bad as a matter of regulatory policy because of the dilution factor and because one such plan is likely to lead to another. Under cross-examination, however, he was unable to say that his opinion was applicable to this particular plan which is, of course, the only one under consideration. He admitted (Tr. 470): "If the Black Hills plan was a one-shot deal, and there was assurance of that, then of course all this on dilution would not be applicable at all." His opposition to this plan springs from the belief that stock option plans in general for public utility companies are adverse to the public interest.

[3] 46-3/4 bid, 49-3/4 asked, according to *The New York Times*, November 13, 1963.

As this Commission pointed out in *Pacific Power & Light Co.*, Opinion 354, issued April 17, 1962, 27 FPC 628, the provisions of Section 204 make it

> * * * a particularly unsuitable vehicle for comprehensive licensing-type regulation such as that exercised by this Commission under Section 7 of the Natural Gas Act.

The *Pacific Power & Light* case dealt with the issuance of securities to finance a power line, and the Commission remarked that if the company had chosen to finance the line out of surplus or from the proceeds of a short-term loan, it would have built it without even notifying the Commission. We have already seen a parallel to this in the present case. If the applicant had chosen to attract and retain its officers by salary increases, by cash bonuses or by any one or more of many possible fringe benefits, this Commission would have no veto power over such action.

The decision as to whether the company is making the best of two or more choices, or whether any action at all is required by the public convenience and necessity, is a decision that the Commission makes in a certificate case. Had Section 204 been intended to lead to that type of decision, it is not reasonable to suppose that it would have required Commission action if the company makes one choice but not if it makes another.

The *Pacific Power & Light* opinion further points out that jurisdiction attached only by virtue of the fact that no state commission was authorized to review the security issue there contemplated. The same is true in the present case: South Dakota exercises no authority over the issuance of securities by Black Hills Power and Light Company. The Commission in *Pacific Power & Light*, concluded that

> * * * If Congress had intended Section 204 to do service as a grant of certificating authority, it would hardly have confined the exercise of that authority to the relatively few companies which are not exempted from that section.

In addition to the foregoing, and to the discussion of legislative history in the *Pacific Power & Light* opinion (with which discussion the examiner is in full agreement) it is perhaps worth pointing out that Congress, in enacting Section 204, took a very limited view of the authority it was granting. In Sen. Rep. 621, 74th Cong., 1st Sess., at page 28, the Senate Committee discussed Section 204 of S. 2796 (substantially identical to Section 204 of the Act as it now stands) in the following terms:

> Under subsection (a) approval of security issues must be obtained in cases where no State commission has control. Approval must be given if the issue is for a lawful purpose, consistent with the proper performance by the applicant of service as a public utility.

The same language appears in the House report. H.R. Rep. 1318, 74th Cong., 1st Sess., page 28. It seems evident that if the record shows the plan to be lawful and within the corporate purposes, the remaining analysis should focus on whether approval would impair the company's ability to perform its normal functions as a public utility. Unless impairment is shown to be in prospect, approval must be granted.

The Commission also pointed out in its *Pacific Power & Light* opinion, *supra*,

> The plain purpose of Section 204 is to prevent the issuance of securities which might impair the company's financial integrity or its ability to perform its public utility responsibilities.

It there examined the investment which the company proposed to make with the proceeds of the securities issue there under consideration, but it expressly refused to decide whether some other type of investment might be preferable. It inquired only "whether the investment is so improvident, frivolous, or speculative, that it threatens to squander the corporate substance without reasonable hope of return." It declined to make an independent assessment of the wisdom of the management's decision. The examiner is bound by what it did. He has no hesitation, however, in stating that he would subscribe to that line of reasoning were the question before him one of first impression.

Applying it to the present case, the examiner concludes that the decision should be made without reference to the comparative merits of other possible courses of action, but solely on the basis of whether this plan and no other is likely to impair the company's ability to perform utility service, and is appropriate for its purpose.

The application seeks to issue stock for the purpose of providing a management incentive. Consideration of such an application must embrace consideration of price. Plainly, if the price were $5.00 per share the plan would tend to impair the company's ability to perform service as a public utility. No underwriter would be as eager to accept a stock issue of a company if company policy permitted stock offerings to management at twice the annual earnings. Options at such a price would weaken the company's ability to raise equity capital at reasonable rates. It cannot be argued that price is none of the Commission's business. The Commission has better things to do than to approve the issuance of 10,000 shares of stock merely on the basis of a finding that such an issue is necessary for the exercise of options granted in that amount. The statute cannot require so fatuous a procedure.

The question then arises: At what price must stock be sold in order to free the transaction from the likelihood that it will detract from the company's ability to render service? Unless a policy is set, each case must be judged without the benefit of a standard of measurement.

It is impossible, as a practical matter, to say that the prospective benefits justify a sale at one price and not at another. Absence of benefits would justify a disapproval, but the presence of benefits supplies no yardstick by which the propriety of an authorization can be measured. The arguments advanced by the company could be used with equal force to justify options at virtually any price. Those of the staff could be used to prohibit them altogether.

Section 204 is neither a bar nor a rubber stamp. There is some approximate level below which a sale of stock tends, by diluting the privileges of the stock already outstanding, to make it more difficult to raise capital in the future. If a stockholder sees his equity in earnings and assets being lessened by sales under stock options, the stock becomes a progressively less attractive vehicle for investment, other things being equal. On the other hand, if the option price is such that his equity is not decreased, purchases by the key executives would tend to build up, rather than dilute, the already outstanding shares.

According to the applicant's 1962 annual report, which forms a part of the record, the plant account, less depreciation, averaged for the year 1961–62, was $29,171,385. This plus an appropriate working capital allowance of $923,536[4] makes a total of $30,094,921. This amount of investment produced $1,905,594 of net operating income for the 1962 fiscal year, which was 6.33 percent of the total investment in plant and working capital required to produce it.

Where, as here, the record shows the company to be enjoying steady growth and good prospects, it is a reasonable assumption that the proceeds of stock options can be invested in new corporate assets at a satisfactory rate of return. At a 6.33 percent rate of return it would take $43.60 of new investment to produce $2.76 of earnings, *i.e.*, the same earnings per share on the new investment that were earned last year on the old.

If the management can create higher earnings, not only the key executives but all stockholders will benefit. At this price for the stock the options would provide management with a true incentive for the future. They would be paying a price at which the present rate of earnings would be maintained, and they, along with all other stockholders would benefit from any future improvement. The present stockholders would not be giving away any part of the earnings which the company, without the benefit of stock options, has been making in the past. And the production of the same per share earnings would not require the ratepayers to pay any more, in terms of return on the additional investment, than they now pay on the present one.

As previously pointed out, there would be no dilution of assets at an option price of $37.25. Obviously then there would be none at $43.60. The use of this yardstick would not be appropriate in all industries. For instance, in industries where assets are incapable of producing a reasonable return it may be undesirable and impractical to set a lower limit on a stock option price by relating it to assets per share. In this industry, where there is a predictable relationship between plant investment and earnings, it seems entirely appropriate to use this additional measure as a safeguard of investors' equity. In the present case, it makes no difference.

It may be argued that any stock option interferes with the sale in the open market of more of that kind of stock, and in that way makes it more difficult to obtain new capital at the best possible price. To an extent, this may be true. It is possible that a block of stock under the option of $43.60 may make it more difficult to sell stock in the open market at, say $50 or $60. However, it can hardly be said that options at $43.60 are not "consistent with the proper performance by the applicant of service as a public utility" or that they will "impair its ability to perform that service." It is properly performing that service now, and the new stock may be expected to show the same earnings as the old, plus whatever earnings the management, with this incentive before it, is able to produce additionally. It is not necessary to decide whether this is the best price obtainable, but only whether it is a price that is likely to result in impaired service.

---

[4] Derived as follows:

One-eighth of operating expenses of $4,034,825	$504,353
Materials and supplies (including merchandise and fuel)—average	680,487
Prepayments—average	110,696
	1,295,536
Less: 50 percent of $744,000 (Federal income taxes—current)	372,000
	923,536

The proposed price of $37.25, on the other hand, would give the company enough money to produce only $2.36 of earnings annually, assuming last year's 6.33 percent rate of return. For each share purchased at this price under the proposed plan the buyer would obtain an equity in $2.76 of earnings.[5] The difference would not represent an incentive but a reward, which would come proportionately from the present stockholders. The purpose of the proposed issue is to provide an incentive to management, and the statute requires a ruling as to whether the issue is "reasonably necessary or appropriate" for that purpose. It is not appropriate to an incentive plan, designed to stimulate the future activity of the management, to hand it a part of the earnings already being produced without any incentive plan at all.

The examiner concludes that a sale of stock under the proposed stock option plan at $37.25 does not meet the standards of Section 204, but that a sale at $43.60 would meet those standards.

The method used to reach this conclusion may or may not be found useful in the future. Experience is not yet sufficient to warrant the statement of any general rule. It is, however, a method which permits no dilution of the earnings or assets represented by the present shares, which requires no higher rate of return from ratepayers than they now pay, which does not depend on calculations of what the stock market may do in the future, which leaves management a wide degree of discretion (though admittedly not as wide as it would like), and which, in the examiner's judgment, conforms to the statutory language and intent. Whether it will be suitable in future cases is a decision that need not yet be made. It seems appropriate for this one.

It follows from the foregoing that the application should not be granted with respect to the 2,600 shares reserved for possible future option grants. No option price has been fixed with respect to those shares, and it should not be fixed prior to the time of the grant. If the present decision is upheld, standards will have been set for future applications by this company, so that ruling at that time should be a very simple matter. The present application in effect asks a free hand as to price with respect to the 2,600 shares. Furthermore, the record is not clear as to whether the price of the 7,400 shares already under option could be modified. Since price is an important factor in deciding whether the issue meets the statutory standards, lower limit of the option price should be definitely fixed.

III. Section 305(a)

Because of the nature of the reasons given in the concurring opinion annexed to the Commission's order of December 27, 1962, the examiner requested that both counsel brief the question whether Section 305(a) constitutes a bar to Commission approval of any and all stock option plans. Both take the position that it does not. The briefs are available to the Commission for its consideration.

In the circumstances of this case, the examiner concludes that he is bound not only by this Commission's action in approving a stock option plan in *The Montana Power Company*, 16 FPC 863, but by the opinions of the four Commissioners—all members of the present Commission—who subscribed to the majority and dissenting opinions accompanying the December 27, 1962 order. The majority and the dissent agree that Section 305(a) is no bar to plans of this type. That is the law of the case and this decision is written conformably to it.

---

[5] The examiner disregards the slight diminution in the $2.76 figure which would result from the small amount of additional stock that would produce lower earnings. It suffices for the present purpose to note the earnings dilution, irrespective of the precise amount.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the presiding examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated that:

(1) Black Hills Power and Light Company, is a public utility within the meaning of the Federal Power Act, and is subject to the jurisdiction of this Commission with respect to the issuance of shares under the stock option plan proposed in its application in this docket.

(2) The proposed stock issue is for a lawful object within the corporate purposes of the applicant.

(3) The proposed stock issue, to the extent of 7,400 shares, is compatible with the public interest, is consistent with the proper performance by the applicant of service as a public utility, will not impair its ability to perform that service, and is reasonably necessary and appropriate for its purposes, provided that the said 7,400 shares be issued at a price not less than $43.60 per share.

ORDER

WHEREFORE, IT IS ORDERED, that:

(A) The applicant is authorized to issue, for sale to its officers and employees, 7,400 shares of its common stock under the options heretofore granted subject to the approval of this Commission, provided that the purchase price stated in said options be changed from $37.25 per share to not less than $43.60 per share.

(B) This authorization is further conditioned upon its acceptance in writing by the applicant within 60 days of the issuance of this decision.

(C) The granting of this authorization shall not be construed as a waiver of any other applicable requirements of law.

(D) Authorization with respect to the remaining 2,600 shares applied for is denied, without prejudice, however, to the filing of an application for the issuance of those or other shares for sale at fixed prices under such options as the applicant may have granted, subject to Commission approval, at the time of any such filing.

ARTHUR H. FRIBOURG,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-1

ORDER GRANTING REHEARING FOR PURPOSES OF ADEQUATE CONSIDERATION

(Issued June 30, 1964)

Applications for rehearing of our Opinion No. 428 and order issued May 14, 1964 have been filed by the following parties: Mississippi Valley Gas Company on June 8, 1964, United Gas Pipe Line Company and Public Service Commission of the State of New York on June 11, 1964, Mississippi River Fuel Corporation, Western Kentucky Gas Company, Texas Gas Transmission Corporation, Indiana Gas and Water Company, Inc., and Louisville Gas and Electric Company on June 12, 1964, and Texas Eastern Transmission Corporation, Southern Union Gas Company, Laclede Gas Company, Wilmut Gas

and Oil Company, Natural Gas Pipeline Company of America and Memphis Light, Gas and Water Division on June 15, 1964. The Independent Natural Gas Association of America by letter filed June 15, 1964, has requested that the Commission reconsider the requirement of the order imposing refund obligations on United's customers and has requested that it be granted permission to participate as *amicus curiae* and file a brief. Because the thirty-day period after which the applications for rehearing may be deemed denied in accordance with Section 19(a) of the Natural Gas Act will expire on different days with respect to the several applications and because the issues in this case are complicated, we deem it appropriate to grant the applications. This will enable us to pass upon them at one time and give adequate consideration to the issues raised.

Under Section 1.34(d) of our Rules an answer to applications for rehearing may be filed when rehearing is granted. Since we are here granting the applications only to permit more orderly and more adequate consideration and have not yet determined the specific areas, if any, to which we wish to give further consideration, we do not believe answers are necessary at this time. We shall of course by further order provide all parties an opportunity to respond to the petitions on those matters which we conclude warrant our further consideration.

Our Opinion and Order of May 14, 1964, requires the filing of rates and refunds within 45 days. Because an order upon the applications for rehearing will not be issued within this period, the requirements of paragraphs (B), (C), and (G) should properly be stayed. Accordingly, United is authorized to continue collecting the rates proposed in the present docket subject, however, to all terms and conditions heretofore imposed and to its undertaking to make refunds.

The Commission orders:

(A) The applications for rehearing filed by the parties referred to above are hereby granted for purposes of more orderly and more adequate consideration.

(B) The requirements of paragraphs (B), (C), and (G) of our Opinion and Order No. 428 issued May 14, 1964 are hereby stayed pending further order of the Commission.

(C) The Independent Natural Gas Association of America is hereby granted permission to participate in these proceedings as *amicus curiae* and to file a brief when appropriate upon further order of the Commission.

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JANUARY 1, 1964 THROUGH JUNE 30, 1964; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954.

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Aikman Brothers:					
CI61-1373 El Paso Natural Gas Co.	Sawyer	N. Mex	Lea	03 27 64	Wtd.
Alamo Corp.:					
CI61-1026 El Paso Natural Gas Co.	Sawyer	N. Mex	Lea	04 03 64	Wtd.
Francis H. Alston:					
CI64-478 Southern Natural Gas Co.	Logansport	La	De Soto	01 03 64	Iss.
Amax Petroleum Corp.:					
CI62-1294 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla	Beaver	06 05 64	Iss.
CI64-653 Northern Natural Gas Co.	Undesignated	Okla	Beaver	01 20 64	Iss.
Ambassador Oil Corp.:					
CI64-1123 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla	Texas	05 18 64	Iss.
Ambassador Oil Corp., Operator, et al.:					
CI64-728 Northern Natural Gas Co.	Max A. Blau Gas Unit.*	Tex	Lipscomb*	02 17 64	Iss.
CI64-1235 Arkansas Louisiana Gas Co.	Gragg	Ark	Sebastian	06 05 64	Iss.
Amerada Petroleum Corp.:					
CI64-960 Northern Natural Gas Co.	N. E. Catesby*	Okla	Ellis*	04 23 64	Iss.
Amerada Petroleum Corp., Operator, et al.:					
CI64-392 Panhandle Eastern Pipe Line Co.	South Dacoma	Okla	Woods	01 10 64	Iss.
American Metal Climax, Inc., Operator, et al.:					
CI64-1142 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat Top.	Wyo	Converse	05 19 64	Iss.
American Petrofina Co. of Texas, Operator, et al.:					
CI61-775 Coastal States Gas Producing Co.	Johns Field Area	Tex	Duval	06 23 64	Iss.
Ames Gathering Co.:					
CI64-842 Magness Petroleum Co., Operator, et al.	Northeast Ames	Okla	Major	04 01 64	Iss.
Anadarko Production Co.:					
G-20176 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	04 24 64	Iss.
G-20177 Colorado Interstate Gas Co.	Greenwood	Kans	Morton	04 24 64	Iss.
G-20178 Colorado Interstate Gas Co.	Greenwood	Kans	Morton	04 24 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Anadarko Production Co.—Con.					
G-20179 Colorado Interstate Gas Co.	Keyes	Tex.	Cimarron*	04 24 64	Iss.
G-20180 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	04 24 64	Iss.
G-20181 Colorado Interstate Gas Co.	Southwest Camp Creek.	Okla.	Beaver	04 24 64	Iss.
CI60-486 Panhandle Eastern Pipe Line Co.	Boyer	Kans.	Meade	04 24 64	Iss.
CI60-765 Panhandle Eastern Pipe Line Co.	Glenwood Area	Okla.	Beaver	04 24 64	Iss.
CI60-823 Panhandle Eastern Pipe Line Co.	Singley*	Kans*	Morton*	04 24 64	Iss.
CI61-61 Panhandle Eastern Pipe Line Co.	Mocane Gas Area	Okla.	Beaver	04 24 64	Iss.
CI61-542 Panhandle Eastern Pipe Line Co.	Davies Area	Kans.	Seward	04 24 64	Iss.
CI61-684 Panhandle Eastern Pipe Line Co.	Interstate	Kans.	Morton	04 24 64	Iss.
CI61-700 Panhandle Eastern Pipe Line Co.	Eva Area	Okla.	Texas	04 24 64	Iss.
CI61-872 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	04 24 64	Iss.
CI61-873 Panhandle Eastern Pipe Line Co.	Greenwood	Kans.	Morton	04 24 64	Iss.
CI61-893 Panhandle Eastern Pipe Line Co.	Panoma Gas	Kans.	Stevens*	04 24 64	Iss.
CI61-964 Panhandle Eastern Pipe Line Co.	North Richland Center.*	Okla.	Texas	04 24 64	Iss.
CI61-1565 Panhandle Eastern Pipe Line Co.	North Richland Center.*	Okla.	Texas	04 24 64	Iss.
CI61-1617 Panhandle Eastern Pipe Line Co.	Carthage Area*	Okla.	Texas	04 24 64	Iss.
CI61-1618 Panhandle Eastern Pipe Line Co.	Greenwood	Kans.	Morton	04 24 64	Iss.
CI61-1755 Panhandle Eastern Pipe Line Co.	Liberal*	Okla.	Beaver	04 24 64	Iss.
CI62-431 Panhandle Eastern Pipe Line Co.	Hugoton	Kans.	Stevens	04 24 64	Iss.
CI62-827 Panhandle Eastern Pipe Line Co.	Greenough N.E	Okla.	Beaver	04 24 64	Iss.
CI62-834 Panhandle Eastern Pipe Line Co.	Light-Oklahoma	Okla.	Beaver	04 24 64	Iss.
CI62-846 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	04 24 64	Iss.
CI62-928 Panhandle Eastern Pipe Line Co.	North Hardesty	Okla.	Texas	04 24 64	Iss.
CI62-1307 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	04 24 64	Iss.
CI62-1535 Panhandle Eastern Pipe Line Co.	Northeast Postle Area.	Okla.	Texas	04 24 64	Iss.
CI62-1546 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	04 24 64	Iss.
CI63-86 Panhandle Eastern Pipe Line Co.	Carthage*	Okla.	Texas	04 24 64	Iss.
CI63-94 Panhandle Eastern Pipe Line Co.	Richfield	Kans.	Morton	04 24 64	Iss.
CI63-288 Panhandle Eastern Pipe Line Co.	Light	Okla.	Beaver	04 24 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Anadarko Production Co.—Con.					
CI64-575 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans.	Hamilton	01 03 64	Iss.
CI64-642 Colorado Interstate Gas Co.	Carthage-Reiss	Okla.	Texas	04 23 64	Iss.
CI64-920 Michigan Wisconsin Pipe Line Co.	Northwest Quinlan	Okla.	Woodward	06 05 64	Iss.
CI64-961 Panhandle Eastern Pipe Line Co.	Greenwood	Kans.	Morton	04 29 64	Iss.
CI64-1223 Northern Natural Gas Co.	Hugoton	Kans.	Morton	06 05 64	Iss.
Anadarko Production Co., Operator, et al.:					
CI61-683 Natural Gas Pipeline Co. of America.	Southeast Boyd	Okla.	Beaver	06 05 64	Iss
An-Son Corp., Operator, et al.:					
CI64-561 Trunkline Gas Co.	Little Chenier	La.	Cameron	01 10 64	Iss.
Anchor Oil Co.:					
CI61-292 Transwestern Pipeline Co.	Farnsworth	Tex.	Ochiltree	03 04 64	Iss.
George G. Anderman, et al.:					
CI63-1405 Colorado Interstate Gas Co.	Dinty Moore Reservoir Unit.	Wyo.	Fremont	03 27 64	Wtd.
Jacqueline Anderson:					
CI64-771 United Gas Pipe Line Co.	Maxie	Miss.	Forrest*	06 19 64	Iss.
Carl M. Archer:					
CI61-1782 Transwestern Pipeline Co.	Undesignated	Tex.	Hutchinson	03 04 64	Iss.
Dan E. Archer:					
CI61-1783 Transwestern Pipeline Co.	Undesignated	Tex.	Hutchinson	03 04 64	Iss.
M. B. Armer:					
G-11079 Panhandle Eastern Pipe Line Co.	Liberal Light	Kans.	Seward	06 05 64	Iss.
Armour Properties:					
CI61-102 Transwestern Pipeline Co.	Undesignated	Tex.	Lipscomb	03 04 64	Iss.
Ashland Oil & Refining Co.:					
G-20306 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	06 11 64	Iss.
CI60-493 United Fuel Gas Co.	Undesignated	W. Va.	Kanawha*	06 11 64	Iss.
CI61-1182 Texas Gas Transmission Corp.	Tremont*	La.	Lincoln	03 13 64	Iss.
CI64-159 Panhandle Eastern Pipe Line Co.	N.E. Trail*	Okla.	Dewey	03 30 64	Iss.
CI64-625 Tennessee Gas Transmission Co.	Undesignated	La.	Lafourche	02 19 64	Wtd.
CI64-638 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
CI64-681 Northern Natural Gas Co.	Southeast Dower	Okla.	Beaver	04 01 64	Iss.
CI64-686 Arkansas Louisiana Gas Co.	Erick	Okla.	Beckham	01 23 64	Iss.
Ashland Oil & Refining Co., et al.:					
CI64-980 Texas Gas Transmission Corp.	Bastrop	La.	Morehouse	04 20 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Ashland Oil & Refining Co., Operator, et al.:					
CI64-1175 Natural Gas Pipeline Co. of America.	Mutual area	Okla	Woodward	05 25 64	Iss.
The Atlantic Refining Co.:					
CI62-1511 Panhandle Eastern Pipe Line Co.	Avard*	Okla	Dewey*	03 30 64	Iss.
CI63-1491 Panhandle Eastern Pipe Line Co.	N.E. Trail	Okla	Dewey	03 30 64	Iss.
CI64-781 American Louisiana Pipe Line Co.	Jeanerette*	La	St. Mary	06 02 64	Iss.
CI64-822 Kansas-Nebraska Natural Gas Co., Inc.	S.E. Dombey	Okla	Beaver	03 10 64	Iss.
CI64-947 Northern Natural Gas Co.	Ivanhoe*	Okla*	Beaver*	04 23 64	Iss.
The Atlantic Refining Co., Operator, et al.:					
CI61-660 Texas Gas Transmission Corp.	Terryville	La	Lincoln	03 13 64	Iss.
Aztec Oil & Gas Co.:					
CI61-978 El Paso Natural Gas Co.	Sawyer	N. Mex	Lea	04 02 64	Wtd.
CI64-367 Texas Gas Transmission Corp.	North Rousseau area.	La	Lafourche	03 19 64	Iss.
B. & B. Oil & Gas Co., Inc.:					
CI64-900 Hope Natural Gas Co.	Simpson District	W. Va	Harrison	04 01 64	Iss.
BTA Oil Producers, Agent for Ernst Wolff, et al.:					
CI64-710 El Paso Natural Gas Co.	Spraberry Trend area.	Tex	Reagan	02 04 64	Iss.
CI64-954 El Paso Natural Gas Co.	Spraberry Trend area.	Tex	Reagan	04 23 64	Iss.
W. E. Bakke, et al.:					
CI64-823 Coastal States Gas Producing Co.	Undesignated	Tex	Karnes	03 03 64	Wtd.
Mary Barillard, Agent for Bradley Leggett Well No. 1:					
CI64-590 Hope Natural Gas Co.	Southwest District	W. Va	Doddridge	01 03 64	Iss.
Wardie Barnett:					
CI64-572 United Fuel Gas Co.	Undesignated	Ky	Knott	01 03 64	Iss.
Barnwell, Inc.:					
CI61-874 Texas Gas Transmission Corp.	Miden	La	Webster*	03 13 64	Iss.
Perry R. Bass, Operator, et al.:					
CI61-406 Southern Natural Gas Co.	Cox Bay*	La	Plaquemines*	01 07 64	Iss.
CI61-714 Transcontinental Gas Pipe Line Corp.	Judice	La	Lafayette	01 07 64	Iss.
CI61-973 United Fuel Gas Co.	West Gueydan	La	Vermilion	01 07 64	Iss.
CI63-631 Southern Natural Gas Co.	Pointe-a-la-Hache	La	Plaquemines	01 07 64	Iss.
Beard Oil Co.:					
CI64-863 Lone Star Gas Co.	East Doyle area	Okla	Stephens	03 24 64	Iss.
Ira W. Belcher, et al., Agent for James S. Ray:					
CI64-963 United Fuel Gas Co.	Malden District	W. Va	Kanawha	04 23 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Belco Petroleum Corp.:					
CI64-1139 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat Top.	Wyo	Converse	05 19 64	Iss.
Thomas E. Berry, et al.:					
CI60-784 Cities Service Gas Co.	Undesignated	Okla	Logan	01 23 64	Iss.
Thomas E. Berry, Operator, et al.:					
CI64-1246 Panhandle Eastern Pipe Line Co.	Mocane	Okla	Beaver	06 05 64	Iss.
Thomas N. Berry & Co.:					
CI64-632 Cities Service Gas Co.	East Goodnight	Okla	Lincoln	01 20 64	Iss.
Clyde Beymer, Jr.:					
CI63-474 Cities Service Gas Co.	Hugoton	Kans	Kearny	04 07 64	Dis.
Betty Osborn Biedenharn:					
CI64-806 Colorado Interstate Gas Co., et al.	Hugoton	Kans	Kearny	04 07 64	Iss.
Big Run Oil & Gas Co., et al.:					
CI64-645 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	01 20 64	Iss.
H. R. Billingsley, Trustee:					
CI61-515 South Texas Natural Gas Gathering Co.	Whitted	Tex	Hidalgo	06 11 64	Iss.
Bodcaw Co.:					
CI64-893 Texas Gas Transmission Corp.	Northwest Cotton Valley Area.	La	Webster	04 01 64	Iss.
Harry C. Boggs:					
CI64-1189 Hope Natural Gas Co.	Salt Sand-Big Injun Sand.	W. Va	Roane*	06 02 64	Iss
Bower & Barker, et al.:					
CI64-1257 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	06 05 64	Iss.
Bowers Drilling Co., Inc.:					
CI64-351 Cities Service Gas Co.	Boggs	Kans	Barber	03 10 64	Iss.
Boyd Oil and Gas Co.:					
CI64-651 United Fuel Gas Co.	Harvey district	W. Va	Mingo	01 20 64	Iss.
R. J. Braden, et al.:					
CI64-1238 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	06 05 64	Iss.
The British-American Oil Producing Co.:					
CI64-1088 Kansas-Nebraska Natural Gas Co., Inc.	Riverside	Colo	Weld	05 06 64	Iss.
Al. A. Brown, Operator, et al.:					
CI64-1313 Valley Gas Transmission, Inc.	Lissie	Tex	Wharton	06 11 64	Iss.
D. E. Brown, et al.:					
CI64-746 Hope Natural Gas Co.	Clay District	W. Va	Ritchie	02 17 64	Iss.
George R. Brown, Operator, et al.:					
CI63-523 Transcontinental Gas Pipe Line Corp.	Live Oak	La	Vermilion	05 04 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
James G. Brown & Associates, Operator, et al.:					
CI60-750 Transwestern Pipeline Co.	Cree-Flowers Field	Tex	Roberts	03 04 64	Iss.
CI60-770 Transwestern Pipeline Co.	Bernstein Morrow Sand	Tex	Hansford	03 04 64	Iss.
Robert H. Brumbaugh:					
CI64-919 Pennzoil Co	Spencer District	W. Va	Roane	04 09 64	Iss.
George L. Buckles, et al.:					
CI64-1127 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex	Lea	05 19 64	Iss.
CI64-1128 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex	Lea	05 19 64	Iss.
Harry D. Bush, et al.:					
CI64-1343 Hope Natural Gas Co.	Dekalb District	W. Va	Gilmer	06 19 64	Iss.
J. R. Buler, et al.:					
CI61-150 Texas Gas Transmission Corp.	Sugar Creek	La	Claiborne*	03 13 64	Iss.
Francis Cain:					
CI64-510 Cabot Corp	Center District	W. Va	Calhoun	02 04 64	Iss.
CI64-511 Cabot Corp	Sherman District	W. Va	Calhoun	02 04 64	Iss.
CI64-512 Cabot Corp	Center District	W. Va	Calhoun	02 04 64	Iss.
CI64-513 Cabot Corp	Sheridan District	W. Va	Calhoun	02 04 64	Iss.
CI64-515 Cabot Corp	Lee District	W. Va	Calhoun	02 04 64	Iss.
CI64-744 Cabot Corp	Center District	W. Va	Calhoun	03 18 64	Iss.
CI64-874 Cabot Corp	Center District	W. Va	Calhoun	03 24 64	Iss.
California Oil Co., Western Division:					
CI63-1105 Colorado Interstate Gas Co.	Cooper Reservoir Area.*	Wyo	Fremont*	03 27 64	Wtd.
Callery Properties, Inc., et al.:					
CI63-1326 United Fuel Gas Co.	Valentine	La	Lafourche	06 19 64	Iss.
Calvert Exploration Co., Operator:					
CI63-1165 Arkansas Louisiana Gas Co.	Lacy Area	Okla	Kingfisher	02 20 64	Iss.
Cam Gas Co.:					
CI64-161 Arkansas Louisiana Gas Co.	S.W. Waukomis	Okla	Garfield	03 10 64	Iss.
Pearl G. Campbell:					
CI64-1157 Northern Natural Gas Co.	Hugoton	Kans	Kearny	05 25 64	Iss.
George A. Carlson:					
CI64-1081 Cities Service Gas Co.	Undesignated	Okla	Kay	04 29 64	Iss.
Jerome A. Carraras:					
CI61-229 Texas Gas Transmission Corp.	Sugar Creek	La	Claiborne*	03 13 64	Iss.
W. W. Carter, et al.:					
CI61-1116 South Texas Natural Gas Gathering Co.	Dinn Field Area	Tex	Duval	06 23 64	Iss.
Carthay Land Co.:					
CI64-1126 Great Circle Gas Co., Inc.	Freisburg	Tex	Colorado	05 19 64	Iss.
Cenard Oil & Gas Co.:					
CI64-1132 Hope Natural Gas Co.	Little Bayou Pigeon.	La	Iberia	06 29 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Chambers & Kennedy:					
CI64-1102 Northern Natural Co.	Hunt-Baggett	Tex.	Crockett	06 02 64	Iss.
Champlin Oil & Refining Co.:					
CI61-888 Transwestern Pipeline Co.	Cutter-Irving Unit	Tex.	Ochiltree	03 04 64	Iss.
CI64-1095 Mountain Fuel Supply Co.	Little Snake Unit Area.	Colo*	Moffat*	05 06 64	Iss.
Champlin Oil & Refining Co., Operator, et al.:					
CI64-303 Colorado Interstate Gas Co.	Undesignated	Okla.	Beaver	01 06 64	Wtd.
Chelsea Oil & Gas, Inc.:					
CI64-971 Colorado Interstate Gas Co.	Kansas-Hugoton	Kans.	Finney*	04 29 64	Iss.
Cherokee Gas Corp.:					
CI64-1200 Texas Gas Transmission Corp.	Midland Gas	Ky.	Muhlenberg	06 02 64	Iss.
Chicago Mill and Lumber Co., et al.:					
G-19192 United Fuel Gas Co.	Killens Ferry	La.	Franklin	03 31 64	Iss.
Cimarron Exploration, Inc. Operator, et al.:					
CI64-646 Panhandle Eastern Pipe Line Co.	Borchers N.E.	Kans.	Meade	01 20 64	Iss.
Circle Drilling Co., Inc.:					
CI64-715 Texas Gas Transmission Corp.	North Rousseau Area.	La.	Lafourche	03 20 64	Iss.
CI64-932 Texas Gas Transmission Corp.	North Welsh	La.	Jefferson Davis	04 13 64	Iss.
Cities Service Oil Co.:					
G-18236 Transwestern Pipeline Co.	West Panhandle	Tex.	Roberts	01 22 64	Iss.
G-18718 El Paso Natural Gas Co.	Aneth	Utah	San Juan	03 11 64	Dis.
G-19450 Colorado Interstate Gas Co.	Eubanks	Kans.	Haskell	01 22 64	Iss.
CI60-418 Panhandle Eastern Pipe Line Co.	Murdock Area	Okla.	Texas	01 22 64	Iss.
CI60-830 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	01 22 64	Iss.
CI61-1055 Anadarko Production Co.	Undesignated	Kans.	Morton	01 22 64	Iss.
CI61-1100 Transwestern Pipeline Co.	Undesignated	Okla.	Beaver	01 22 64	Iss.
CI63-647 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Major*	03 30 64	Iss.
CI63-888 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont	05 12 64	Wtd.
CI63-1307 Colorado Interstate Gas Co.	Hugoton	Kans.	Haskell	02 20 64	Iss.
CI64-664 Colorado Interstate Gas Co.	Wilburton	Kans.	Morton	01 23 64	Iss.
CI64-752 Northern Natural Gas Co.	Victory	Kans.	Haskell	01 17 64	Iss.
CI64-773 Northern Natural Gas Co.	West Hough	Okla.	Texas	02 25 64	Iss.
CI64-1110 Tennessee Gas Transmission Co.	Patterson	La.	St. Mary	05 18 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Cities Service Oil Co., Operator, et al.:					
CI64-724 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 17 64	Iss.
Cities Service Production Co., Operator, et al.:					
G-16854 Transcontinental Gas Pipe Line Corp.	Chegby Area	La.	St. James*	01 22 64	Iss.
CI60-20 Southern Natural Gas Co.	Fausse Point	La.	Iberia*	01 22 64	Iss.
N. G. Clark, et al.:					
CI64-936 Hope Natural Gas Co.	Courthouse District.	W. Va.	Lewis	04 13 64	Iss.
Cleary Petroleum, Inc., Operator, et al.:					
CI63-1461 Arkansas Louisiana Gas Co.	Starr	Okla.	Kingfisher	03 30 64	Iss.
CI64-1090 Northern Natural Gas Co.	Como	Okla.	Beaver	05 06 64	Iss.
CI64-1091 Panhandle Eastern Pipe Line Co.	Alva East	Okla.	Alfalfa*	05 06 64	Iss.
Coastal States Gas Producing Co.:					
CI64-926 United Gas Pipe Line Co.	North Rosenburg Area.	Tex.	Fort Bend	04 09 64	Iss.
CI64-927 Texas Gas Transmission Corp.	South Bell City	La.	Calcasieu	04 13 64	Iss.
CI64-969 Transcontinental Gas Pipe Line Corp.	Dilworth Dome	Tex.	McMullen	04 29 64	Iss.
Coastal States Gas Producing Co., Operator, et al.:					
CI62-1004 Tennessee Gas Transmission Co.	Chess*	Tex.	Willacy	05 13 64	Iss.
Colorado Oil and Gas Corp., Operator, et al.:					
CI64-1215 Florida Gas Transmission Co.	Savoy	La.	St. Landry	06 02 64	Iss.
Bert T. Combs:					
CI64-726 Kentucky West Virginia Gas Co.	Undesignated	Ky.	Perry	02 17 64	Iss.
Commercial Coal & Coke Co.:					
CI64-1106 Hope Natural Gas Co.	Elk District	W. Va.	Harrison	05 06 64	Iss.
Commonwealth Gas Corp.:					
CI64-613 Columbian Fuel Corp.	Elk District	W. Va.	Kanawha	01 20 64	Iss.
Compadre Oil Corp., et al.:					
CI64-1178 Lone Star Gas Co.	Undesignated	Okla.	Stephens	05 25 64	Iss.
Continental Oil Co.:					
CI62-1100 Lone Star Gas Co.	Doyle	Okla.	Stephens	03 30 64	Iss.
CI64-39 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont*	06 22 64	Wtd.
CI64-821 Arkansas Louisiana Gas Co.	Starr	Okla.	Kingfisher	03 10 64	Iss.
CI64-1203 Panhandle Eastern Pipe Line Co.	S.E. Alva	Okla.	Woods	06 02 64	Iss.
CI64-1205 Natural Gas Pipeline Co. of America.	Mutual Area	Okla.	Woodward	06 02 64	Iss.

See footnotes at end of table, p. 1676

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Continental Oil Co.—Continued					
CI64-1274 Northern Natural Gas Co.	Denison Strawn	Tex.	Sutton	06 11 64	Iss.
Continental Oil Co., Operator, et al.:					
CI64-1086 Montana-Dakota Utilities Co.	Pennel-Lookout Butte.	Mont.	Fallon	05 06 64	Iss.
Cooley & Holcomb:					
CI61-1021 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 06 64	Wtd.
CI61-1025 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 03 64	Wtd.
Cooper Petroleum Co., Operator, et al.:					
CI64-962 Texas Eastern Transmission Corp.	West May	Tex.	Kleberg	04 23 64	Iss.
W. J. Coppinger, Operator, et al.:					
CI64-1161 Northern Natural Gas Co.	Wide Awake	Kans.	Seward	05 25 64	Iss.
C. C. Cottrille, et al.:					
CI64-1267 Hope Natural Gas Co.	McClellan District	W. Va.	Doddridge	06 11 64	Iss.
Edwin L. Cox:					
CI64-571 Cimmarron Transmission Co.	Enville	Okla.	Love	01 03 64	Iss.
CI64-800 Lone Star Gas Co.	East Doyle	Okla.	Stephens	03 02 64	Iss.
Creslenn Oil Co.:					
CI62-709 Rio Sabine, Inc.	Simpson Lake	La.	Caddo	03 13 64	Iss.
Crest Exploration Co.:					
CI64-795 Northern Natural Gas Co.	South Six Mile	Okla.	Beaver	03 02 64	Iss.
Cricket Oil Co., et al.:					
CI61-650 Transwestern Pipeline Co.	Undesignated	Tex.	Hutchinson	03 04 64	Iss.
The Deb Oil and Gas Co., Inc.:					
CI64-1258 Hope Natural Gas Co.	Buckhannon District.	W. Va.	Upshur	06 05 64	Iss.
J. F. Deem, et al.:					
CI64-1269 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	06 11 64	Iss.
Delta Drilling Co., Operator, et al.:	Ozona Area	Tex.	Crockett	04 01 64	Iss.
CI64-902 Northern Natural Gas Co.					
CI64-922 Northern Natural Gas Co.	Sonora Area	Tex.	Sutton	04 13 64	Iss.
Delta Petroleum Co., et al.:					
CI64-1331 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	06 19 64	Iss.
Roscoe Dingess, Jr., Agent:					
CI64-848 United Fuel Gas Co.	Duval District	W. Va.	Lincoln	03 18 64	Iss.
Patrick A. Doheny, et al.:					
CI63-1562 Colorado Interstate Gas Co.	Undesignated	Wyo.	Fremont	06 22 64	Wtd.
J. F. Dougherty, Operator, et al.:					
CI60-257 Tennessee Gas Transmission Co.	East Wearden	Tex.	Jackson	01 28 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Frank F. Dubose:					
CI64-1335 Warren Petroleum Corp.	West Panhandle Sweet Gas.	Tex.	Wheeler	06 19 64	Iss.
Thomas A. Dugan:					
CI64-1172 El Paso Natural Gas Co.	Fulcher Kutz	N. Mex.	San Juan	05 25 64	Iss.
Thomas A. Dugan, Operator, et al.:					
CI64-1111 El Paso Natural Gas Co.	South Blanco Pictured Cliffs.	N. Mex.	Rio Arriba	05 18 64	Iss.
E. Dunlap, Jr., Operator, et al.:					
CI64-1317 Lone Star Gas Co.	Robberson	Okla.	Garvin	06 19 64	Iss.
E. Dunlap, Jr., Operator, et al.:					
CI64-764 Lone Star Gas Co.	East Hewitt	Okla.	Carter	02 25 64	Iss.
Eason Oil Co.:					
CI64-817 Arkansas Louisiana Gas Co.	Starr	Okla.	Kingfisher	03 10 64	Iss.
CI64-930 Northern Natural Gas Co.	Southeast Floris	Okla.	Beaver	04 13 64	Iss.
CI64-934 Arkansas Louisiana Gas Co.	Red Oak-Norris	Okla.	Latimer	04 13 64	Iss.
C. L. Eleson:					
CI64-1227 Hope Natural Gas Co.	Skin Creek District.	W. Va.	Lewis	06 05 64	Iss.
H. A. Ells, et al.:					
CI64-660 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
Fain & McGaha, Operator, et al.:					
CI64-444 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
Falcon Seaboard Drilling Co., et al.:					
CI63-1410 Michigan Wisconsin Pipe Line Co.	North Oakdale	Okla.	Woods	06 02 64	Iss.
Falcon Seaboard Drilling Co., Operator, et al.:					
CI60-586 Transwestern Pipeline Co.	Kiowa Creek	Tex.	Lipscomb	01 20 64	Iss.
CI64-565 Northern Natural Gas Co.	Kiowa Creek	Tex.	Lipscomb	01 03 64	Iss.
CI64-586 Northern Natural Gas Co.	Kiowa Creek	Tex.	Lipscomb	01 03 64	Iss.
Olen F. Featherstone, et al.:					
CI63-1308 Colorado Interstate Gas Co.	Wind River Basin Area.	Wyo.	Fremont *	05 12 64	Wtd.
W. C. Feazel, et al.:					
CI61-563 Texas Gas Transmission Corp.	Terryville-Ruston Area.	La.	Lincoln	03 13 64	Iss.
W. C. Feazel, Operator, et al.:					
CI64-559 Arkansas Louisiana Gas Co.	Hodge	La.	Jackson	01 10 64	Iss.
D. D. Feldman:					
CI61-1452 Transwestern Pipeline Co.	Feldman-Tonkawa	Tex.	Hemphill	03 04 64	Iss.
Felmont Oil Corp.:					
CI64-587 The Manufacturers Light & Heat Co.*	Mann Township	Pa.	Redford	01 03 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Willard E. Ferrell:					
CI64-1239 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	06 05 64	Iss.
Paul Fleming, et al.:					
CI64-627 Cabot Corp	Washington District	W. Va.	Calhoun	04 29 64	Iss.
E. E. Fogelson:					
G-19013 Transwestern Pipeline Co.	Undesignated	Tex.	Hemphill	03 04 64	Iss.
Foree Drilling Co., Operator, et al.:					
CI61-1726 Transwestern Pipeline Co.	Undesignated	Tex.	Dallam*	03 04 64	Iss.
James M. Forgotson:					
G-16530 Texas Gas Transmission Corp.	Carlton*	La.	Ouachita	03 13 64	Iss.
Grant Fowler, Agent for S. P. Bell Heirs Tract:					
CI64-608 Cabot Corp	Sherman District	W. Va.	Calhoun	02 17 64	Iss.
I. Dalph Fowler, Agent for Fowler Gas Co.:					
CI64-493 Cabot Corp	Sherman District	W. Va.	Calhoun	04 29 64	Iss.
CI64-494 Cabot Corp	Sherman District	W. Va.	Calhoun	04 29 64	Iss.
CI64-495 Cabot Corp	Lee District	W. Va.	Calhoun	04 29 64	Iss.
CI64-496 Cabot Corp	Sherman District	W. Va.	Calhoun	04 29 64	Iss.
CI64-497 Cabot Corp	Center District	W. Va.	Calhoun	04 29 64	Iss.
J. W. Frame, et al.:					
CI64-734 United Fuel Gas Co.	Big Sandy District	W. Va.	Kanawha	02 17 64	Iss.
John Franks:					
CI64-953 Florida Gas Transmission Co.	North Veltin	La.	St. Landry	04 23 64	Iss.
John Franks, Operator, et al.:					
CI64-844 Texas Gas Transmission Corp.	Ruston	La.	Lincoln	03 18 64	Iss.
CI64-859 Arkansas Louisiana Gas Co.	Cheniere	La.	Ouachita	03 24 64	Iss.
Francis Friestad, Trustee:					
CI64-768 Kentucky West Virginia Gas Co.	Bull Creek	Ky.	Floyd	02 25 64	Iss.
Frontier Savings Stamps, Inc. of Lubbock, Tex., Operator:					
CI64-968 Northern Natural Gas Co.	North Hansford	Tex.	Hansford	04 29 64	Iss.
GMC Oil & Gas Corp.:					
CI64-557 Cities Service Gas Co.	Wayoka West Pool	Okla.	Woods*	01 10 64	Iss.
L. L. Gage and Minnie Gage:					
CI64-727 Lone Star Gas Co.	Banner-Church	Okla.	Stephens	02 17 64	Iss.
R. James Gear:					
CI64-1159 Cities Service Gas Co.	West Whelan	Kans.	Barber	05 25 64	Iss.
General American Oil Co. of Texas:					
CI64-657 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
O. W. Gerwig:					
CI64-904 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	04 01 64	Iss.
F. A. Gillespie and Sons Co.:					
CI64-650 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
F. A. Gillespie and Sons Co., Operator, et al.:					
CI64-568 Warren Petroleum Corp.	East Panhandle	Tex	Wheeler	02 07 64	Iss.
Glasscock-Chapman, Inc., et al.:					
CI64-722 Texas Eastern Transmission Corp.	Bunchy Creek	La	Allen	02 17 64	Iss.
Alfred C. Glassell, Jr.:					
CI63-221 Lone Star Gas Co.	Du Bose	Tex	De Witt	06 11 64	Wtd.
Delbert Goff, et al.:					
CI64-955 Hope Natural Gas Co.	Collins Settlement District.	W. Va	Lewis	04 23 64	Iss.
Goff Oil Co.:					
CI64-1112 Natural Gas Pipeline Co. of America	Nobscot	Okla	Dewey*	05 18 64	Iss.
Hugh Goodrich:					
CI62-1410 Transcontinental Gas Pipe Line Corp.	Kaplan Area	La	Vermilion	01 07 64	Iss.
Graham-Michaelis Drilling Co., Operator, et al.:					
CI62-1297 Panhandle Eastern Pipe Line Co.	Carthage	Okla	Texas	06 05 64	Iss.
CI63-1329 Colorado Interstate Gas Co., et al.	Mocane	Okla	Beaver	06 19 64	Iss.
CI64-813 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Beaver	03 24 64	Iss.
CI64-828 Panhandle Eastern Pipe Line Co.	Keyes Pool	Okla	Cimarron	03 10 64	Iss.
Earl Q. Gray:					
CI64-759 Northern Natural Gas Co.	Undesignated	Tex	Lipscomb	02 25 64	Iss.
Great Circle Gas Co., Inc.:					
CI64-1144 Texas Eastern Transmission Corp.	Frelsburg	Tex	Colorado	05 19 64	Iss.
R. R. Greenbaum, d/b/a Time Petroleum Co.:					
CI64-687 Northern Natural Gas Co.	Undesignated	Kans	Ford	01 23 64	Iss.
Greenwich Oil & Gas, Inc.:					
CI64-970 Colorado Interstate Gas Co.	Kansas-Hugoton	Kans	Finney*	04 29 64	Iss.
Jack W. Grigsby, Operator, et al.:					
CI61-195 United Gas Pipe Line Co.	Maxie-Pistol Ridge	Miss	Forrest	06 19 64	Iss.
CI61-196 United Gas Pipe Line Co.	Maxie-Pistol Ridge	Miss	Forrest	06 19 64	Iss.
William Gruenerwald & Associates, Inc., et al.:					
CI64-1094 Phillips Petroleum Co.	Undesignated	Tex	Gray	05 06 64	Iss.
Gulf Oil Corp.:					
CI63-123 Southern Natural Gas Co.	Offshore West Delta Block 27.	La	Plaquemines	04 06 64	Iss.
CI63-962 Colorado Interstate Gas Co.	Wind River Basin	Wyo	Fremont	03 27 64	Wtd.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Gulf Oil Corp.—Continued					
CI63-1125 Arkansas Louisiana Gas Co.	N. Cooper*	Okla	Blaine*	03 30 64	Iss.
CI63-1129 Arkansas Louisiana Gas Co.	N. Carter	Okla	Beckham	03 30 64	Iss.
CI63-1152 Arkansas Louisiana Gas Co.	N.W. Anthon	Okla	Custer	03 30 64	Iss.
CI64-208 Panhandle Eastern Pipe Line Co.	N.W. Avard	Okla	Woods	03 30 64	Iss.
CI64-415 Natural Gas Pipeline Co. of America.	Northwest Dower	Okla	Beaver	02 07 64	Iss.
CI64-663 Cities Service Gas Co.	North Nardin	Okla	Grant	01 23 64	Iss.
CI64-816 Northern Natural Gas Co.	Mocane	Okla	Beaver	03 10 64	Iss.
CI64-1069 Arkansas Louisiana Gas Co.	Southeast Zion	Okla	Garfield	05 06 64	Iss.
CI64-1117 United Gas Pipe Line Co.	Weeks Island	La	Iberia	05 18 64	Iss.
Gulf Oil Corp., Operator, et al.:					
CI63-459 Michigan Wisconsin Pipe Line Co.	N. Oakdale*	Okla	Dewey	03 30 64	Iss.
Carl E. Gungoll, et al.:					
CI64-1141 Arkansas Louisiana Gas Co.	Lacy Area	Okla	Kingfisher	06 19 64	Iss.
P. P. Gunn, et al., Agent for Dell Cooper #1:					
CI64-939 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	04 13 64	Iss.
CI64-1240 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	06 05 64	Iss.
P. P. Gunn, et al.:					
CI64-779 Cabot Corp	Lee District	W. Va	Calhoun	05 06 64	Iss.
Hadal Oil and Gas Corp.:					
CI64-856 United Fuel Gas Co.	Henry* Districts	W. Va	Clay	03 18 64	Iss.
Joseph H. Hager:					
CI64-733 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	02 17 64	Iss.
Victor Hale:					
CI64-574 Kentucky West Virginia Gas Co.	Middle Creek	Ky	Floyd	01 03 64	Iss.
Hall-Jones Oil Corp., Operator, et al.:					
CI64-1272 Panhandle Eastern Pipe Line Co.	Southeast Alva	Okla	Woods	06 11 64	Iss.
Claude B. Hamill:					
CI64-606 Texas Eastern Transmission Corp.	West Weesatche	Tex	Goliad	01 10 64	Iss.
Hamilton Brothers, Ltd.:					
CI61-849 Transwestern Pipeline Co.	North Hansford	Tex	Hansford	03 04 64	Iss.
Jake L. Hamon, Operator, et al.:					
CI64-641 Northern Natural Gas Co.	L. E. Graff Unit	Okla	Beaver	01 20 64	Iss.
Roger C. Hanks:					
CI64-1276 Northern Natural Gas Co.	McKinney Area	Kans	Meade	06 11 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Hanley and Bird:					
CI64–1337 New York State Natural Gas Corp.	Big Run	Pa.	Jefferson	06 19 64	Iss.
Ernest A. Hanson:					
CI64–730 El Paso Natural Gas Co.	Bisti	N. Mex.	San Juan	02 17 64	Iss.
Har-Ken Oil Co.:					
CI64–600 Equitable Gas Co.	Otter District	W. Va.	Braxton	01 10 64	Iss.
CI64–1333 Texas Gas Transmission Corp.	Midland	Ky.	Muhlenberg	06 19 64	Iss.
Harkins & Co.:					
CI61–38 Coastal States Gas Producing Co.	Johns Field Area	Tex.	Duval	06 23 64	Iss.
Harkins & Co., Operator, et al.:					
CI64–1114 Lone Star Gathering Co.	South Marshall	Tex.	Goliad	05 18 64	Iss.
CI64–1270 Lone Star Gathering Co.	Karen Beachamp	Tex.	Goliad	06 11 64	Iss.
Ben Harwit, et al.:					
CI64–1133 Northern Natural Gas Co.	Joe T. Strawn	Tex.	Crockett	05 18 64	Iss.
Glenn L. Haught, Agent for L. & D. Gas Co.:					
CI64–1248 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	06 05 64	Iss.
Glenn L. Haught, et al.:					
CI64–907 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	04 01 64	Iss.
L. E. Haught, et al.:					
CI64–1233 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	06 05 64	Iss.
Herman G. Haury:					
CI64–1322 Natural Gas Pipeline Co. of America.	Dewey*	Okla.	West Crane*	06 19 64	Iss.
H. L. Hawkins & H. L. Hawkins, Jr.:					
CI63–1399 Texas Gas Transmission Corp.	Midland	La.	Acadia	06 19 64	Iss.
Hays & Co., Agent for Delta Petroleum Co., et al.:					
CI64–1249 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	06 05 64	Iss.
Hays & Co., Agent for Jumbo Oil & Gas Co., et al.:					
CI64–690 Hope Natural Gas Co.	Banks District	W. Va.	Upshur	02 04 64	Iss.
Hays & Co., Agent for Keillor & Clark:					
CI64–852 Hope Natural Gas Co.	Dekalb District	W. Va.	Gilmer	03 18 64	Iss.
CI64–854 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	03 18 64	Iss.
Paul M. Haywood:					
CI64–838 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	03 18 64	Iss.
Gene Heape, Operator, et al.:					
CI64–792 Lone Star Gas Co.	Walnut Bend Area	Tex.	Cooke	06 11 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Minnie Bell Heep, et al.:					
CI61-1046 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 03 64	Wtd.
The Hefner Co., et al.:					
CI64-1083 Lone Star Gas Co.	East Doyle	Okla.	Stephens	04 29 64	Iss.
The Hefner Production Co., Operator, et al.:					
CI64-1176 Kansas-Nebraska Natural Gas Co., Inc.	Camrick Area	Okla.	Beaver	05 25 64	Iss.
CI64-1177 Cities Service Gas Co.	Northeast Richfield Area.	Kans.	Morton	05 25 64	Iss.
Peter Henderson Oil Co.:					
CI63-1523 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont*	06 22 64	Wtd.
The Charles L. Hickman, et al., Oil Co.:					
CI64-692 Hope Natural Gas Co.	Center District	W. Va.	Doddridge	02 04 64	Iss.
Floyd M. Hodge:					
G-20466 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	03 13 64	Iss.
Walter S. Hojka, et al., d/b/a Hojka Oil & Gas Co.:					
CI64-605 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	01 10 64	Iss.
R. H. Holland:					
CI64-1281 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	06 11 64	Iss.
Horizon Oil & Gas Co.:					
G-16948 Northern Natural Gas Co.	Share	Tex.	Ochiltree	01 16 64	Dis.
CI64-894 Northern Natural Gas Co.	Hansford	Tex.	Hansford	04 01 64	Iss.
Terry A. Hornaday, Operator, et al.:					
CI64-737 Lone Star Gathering Co.	South Weesatche *	Tex.	Goliad	02 17 64	Iss.
Houston Natural Gas Production Co., Operator, et al.:					
CI64-1314 Valley Gas Transmission, Inc.	Sejita	Tex.	Duval	06 11 64	Iss.
Houston Royalty Co., Operator, et al.:					
CI64-1167 Texas Gas Transmission Corp.	Sardis Church	La.	Caldwell	05 25 64	Iss.
The Howard Corp.:					
CI64-345 Hope Natural Gas Co.	Bayou Pigeon	La.	Iberia	06 29 64	Rej.
J. M. Huber Corp.:					
CI64-819 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	03 10 64	Iss.
Humble Oil & Refining Co.:					
G-15095 Natural Gas Pipeline Co. of America.	Camrick Southeast	Okla.	Beaver	03 11 64	Iss.
CI61-1796 Natural Gas Pipeline Co. of America.	Joiner City Gasoline Plant.	Okla.	Carter	03 06 64	Iss.
CI63-129 Southern Natural Gas Co.	Offshore West Delta Block 27.	La.	Plaquemines	04 06 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Humble Oil & Refining Co.—Con.					
CI63-575 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey*	03 30 64	Iss.
CI63-996 Arkansas Louisiana Gas Co.	North Cooper	Okla.	Blaine	04 09 64	Iss.
CI63-1000 Arkansas Louisiana Gas Co.	Lacey Area	Okla.	Kingfisher	04 09 64	Iss.
CI63-1187 Colorado Interstate Gas Co.	Wind River Basin Area.	Wyo.	Fremont *	06 22 64	Wtd.
CI64-1102 Transwestern Pipeline Co.	Mendota	Tex.	Roberts *	05 06 64	Iss.
CI64-1140 Michigan Wisconsin Pipe Line Co.	Quinlan	Okla.	Woodward	06 11 64	Iss.
CI64-1338 Natural Gas Pipeline Co. of America.	Crane	Okla.	Dewey *	06 19 64	Iss.
Humble Oil & Refining Co., Operator, et al.:					
G-19191 United Fuel Gas Co.	Killens Ferry	La.	Franklin *	03 31 64	Iss.
CI64-791 El Paso Natural Gas Co.	Jack Herbert	Tex.	Upton	03 02 64	Iss.
Hassie Hunt Trust:					
CI64-577 Texas Gas Transmission Corp.	Cotton Valley	La.	Webster	02 07 64	Iss.
CI64-581 Texas Gas Transmission Corp.	Cotton Valley	La.	Webster	02 07 64	Iss.
Hunt Oil Co.:					
CI60-11 Texas Eastern Transmission Corp.	Southwest Speaks	Tex.	Lavaca	01 22 64	Iss.
CI60-457 Texas Eastern Transmission Corp.	Hico-Knowles Hosston.	La.	Lincoln	01 22 64	Iss.
CI64-582 Texas Gas Transmission Corp.	Cotton Valley	La.	Webster	02 07 64	Iss.
Hunt Oil Co., et al.:					
CI64-578 Texas Gas Transmission Corp.	Cotton Valley	La.	Webster	02 07 64	Iss.
Husky Oil Co.:					
CI63-1534 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont *	06 22 64	Wtd.
CI64-1097 Mountain Fuel Supply Co.	Little Snake Unit Area.	Colo.*	Moffat *	05 06 64	Iss.
H. L. Hutton:					
CI64-570 Wunderlich Development Co.	Buckles Lease	Okla.	Kay	01 10 64	Iss.
CI64-1207 Arkansas Louisiana Gas Co.	South Braman	Okla.	Kay	06 02 64	Iss.
H. L. Ice, Agent for J. C. Baker Baker Oil & Gas Co.:					
CI64-853 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	03 18 64	Iss.
CI64-1096 Equitable Gas Co.	Union District	W. Va.	Ritchie	05 06 64	Iss.
Injun Gas Co.:					
CI64-757 Hope Natural Gas Co.	Grant District	W. Va.	Monongalia	02 25 64	Iss.
Irvin Producing Co.:					
CI61-579 Transwestern Pipeline Co.	Undesignated	Tex.	Lipscomb	03 04 64	Iss.
James Drilling Corp., et al.:					
CI64-1241 Hope Natural Gas Co.	Skin Creek District.	W. Va.	Lewis	06 5 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
L. E. Jones Drilling Co., Operator, et al.:					
CI64-1328 Lone Star Gas Co.	Robertson	Okla.	Garvin	06 19 64	Iss.
Jones-O'Brien, Inc., Operator, et al.:					
G-7751 Tennessee Gas Transmission Co.	Bethany Gas	Tex.	Panola	01 23 64	Iss.
Thomas Jordan, Inc.:					
CI64-637 Texas Eastern Transmission Corp.	Reeves	La.	Allen	01 20 64	Iss.
Jumbo Oil & Drilling Co., et al.:					
CI64-1264 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	06 05 64	Iss.
H. N. Kennedy:					
CI64-1182 Natural Gas of West Virginia, Inc.	North Hoover	W. Va.	Monongalia	06 25 64	Iss.
Kerr-McGee Oil Industries, Inc., Operator, et al.:					
CI63-1517 Florida Gas Transmission Co.	Bayou Crook Chene.	La.	St. Martin	02 20 64	Iss.
Ralph F. Ketchum, d/b/a Ketchum Oil Co.:					
CI64-666 Cushing Gas Transmission Co.	North Lincoln County Pool.	Okla.	Lincoln	01 23 64	Iss.
Robert E. King, et al.:					
CI64-1324 Arkansas Louisiana Gas Co.	Ada	La.	Bienville	06 19 64	Iss.
King-Stevenson Gas and Oil Co., Operator, et al.:					
CI64-731 Northern Natural Gas Co.	N.E. Dower Area	Okla.	Beaver	02 17 64	Iss.
C. L. Kingsbury, et al.:					
CI64-849 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	03 18 64	Iss.
M. C. Kramer & Molly M. Kramer:					
CI61-1027 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 03 64	Wtd.
Walter F. Kuhn:					
CI64-1118 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Stevens*	06 02 64	Iss.
Walter F. Kuhn, Operator, et al.:					
CI63-589 Panhandle Eastern Pipe Line Co.	Hugoton	Kans.	Stevens	06 11 64	Iss.
Lab Oil Co., Operator, et al.:					
CI61-1159 Coastal States Gas Producing Co.	A & H Field Area	Tex.	Duval	06 23 64	Iss.
LaGloria Oil & Gas Co.:					
CI63-1388 United Gas Pipe Line Co.	Valentine	La.	Lafourche	06 19 64	Iss.
R. W. Lange:					
CI64-684 Northern Natural Gas Co.	Crist Gas Unit	Kans.	Finney	04 29 64	Iss.
K. D. Lankford, Jr., Operator, et al.:					
CI64-721 United Gas Pipe Line Co.	Monroe	La.	Union	02 17 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION
Fred Larue, et al., d/b/a Larue-Smith Production Co.:					
CI64-506 Southern Natural Gas Co.	Dexter	Miss.	Walthall	01 10 64	Iss.
R. G. Lawton:					
CI64-898 Hope Natural Gas Co.	Grant District	W. Va.	Marion	04 01 64	Iss.
Robert A. Lee & Hilton L. Ladner, Operator, et al.:					
CI64-189 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Forrest*	06 19 64	Iss.
R. T. Linger:					
CI64-886 Equitable Gas Co.	Skin Creek*	W. Va.	Lewis*	04 01 64	Iss.
Livingston Oil Co.:					
CI64-679 Kansas-Nebraska Natural Gas Co., Inc.	Syracuse Area	Kans.	Hamilton	03 18 64	Iss.
Emery D. Locke, et al.:					
CI64-1265 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	06 05 64	Iss.
Logue and Patterson:					
CI64-812 Lone Star Gathering Co.	South Weesatche	Tex.	Goliad	03 10 64	Iss.
Logue and Patterson, Operator, et al.:					
CI64-694 Banquete Gas Co. Div. Crestmont.	West Taft	Tex.	San Patricio	02 04 64	Iss.
Lone Star Producing Co.:					
CI64-804 Lone Star Gas Co.	Blue Grove North	Tex.	Clay	06 02 64	Iss.
I. W. Lovelady, Operator, et al.:					
CI64-1336 El Paso Natural Gas Co.	North Justis Blinebry.*	N. Mex.	Lea	06 19 64	Iss.
W. P. Luse Estate:					
CI64-617 Texas Gas Transmission Corp.	North Rousseau Area.	La.	Lafourche	03 20 64	Iss.
MacDonald Oil Corp., et al.:					
CI64-1329 Natural Gas Pipeline Co. of America.	West Crane*	Okla.	Dewey*	06 19 64	Iss.
W. C. McBride, Inc.:					
CI64-1273 Cities Service Gas Co.	Agra Northwest	Okla.	Lincoln	06 11 64	Iss.
McCall Drilling Co., Inc.:					
CI64-888 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	04 01 64	Iss.
CI64-931 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	04 13 64	Iss.
McCarrick, Gouger & Mitchell, Operator, et al.:					
CI64-1236 Trunkline Gas Co.	South Haldeman	Tex.	Jim Wells	06 05 64	Iss.
J. Ray McDermott & Co., Inc.:					
CI61-1061 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 22 64	Wtd.
T. W. McGuire, et al.:					
CI63-666 Texas Gas Transmission Corp.	North Lisbon	La.	Claiborne	03 13 64	Iss.
W. L. McKnight, Operator, et al.:					
CI61-1719 El Paso Natural Gas Co.	Undesignated	Tex.	Ochiltree	02 20 64	Iss.
CI62-225 El Paso Natural Gas Co.	C. S. McGarraugh Lease.	Tex.	Ochiltree	02 20 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASERS[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
McLean Oil Field Drilling & Equipment Co., Inc.:					
CI64-1116 Texas Gas Transmission Corp.	MacKey	Ind.	Gibson	05 18 64	Iss.
Ralph Mace:					
CI64-780 Cabot Corp.	Center District	W. Va.	Gilmer	03 25 64	Iss.
Mahaska Gas Co., Inc.:					
G-5251 Panhandle Eastern Pipe Line Co.	Hugoton	Kans.	Morton*	06 05 64	Iss.
Marathon Oil Co.:					
G-15704 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	06 23 64	Iss.
G-15910 Texas Gas Transmission Corp.	North Dubberly Area.	La.	Webster	01 22 64	Iss.
G-17896 Florida Gas Transmission Co.	Half Moon Reef	Tex.	Aransas	06 23 64	Iss.
CI61-301 Panhandle Eastern Pipe Line Co.	Glenwood Area	Okla.	Beaver	06 23 64	Iss.
CI62-792 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	06 23 64	Iss.
CI63-356 Lone Star Gas Co.	E. Durant	Okla.	Bryan	03 30 64	Iss.
CI63-1086 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey	03 30 64	Iss.
CI63-1585 Panhandle Eastern Pipe Line Co.	Avard	Okla.	Woods	03 30 64	Iss.
CI64-670 Arkansas Louisiana Gas Co.	Wilburton	Okla.	Pittsburg*	01 23 64	Iss.
CI64-1080 Southern Union Gathering Co.	La Plata River Area.	N. Mex.	San Juan	04 20 64	Iss.
Marion Oil Co., Div. of Stickler & Sons, Inc.:					
CI63-1482 Texas Gas Transmission Corp.	Midland	La.	Acadia	06 19 64	Iss.
C. F. Martin, Inc.:					
G-20053 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Forrest*	06 19 64	Iss.
Mayhew Oil & Gas Developments:					
CI64-1237 Hope Natural Gas Co.	Collins Settlement* Districts.	W. Va.	Braxton*	06 05 64	Iss.
Clarence Maze:					
CI64-975 Cabot Corp.	Sherman District	W. Va.	Calhoun	04 29 64	Iss.
Medallion Oil Co.:					
CI64-959 Texas Eastern Transmission Corp.	Rodessa	Tex.	Marion	06 02 64	Iss.
Mid-America Minerals, Inc.:					
CI64-519 Northern Natural Gas Co.	East Balko	Okla.	Beaver	01 10 64	Iss.
CI64-593 Natural Gas Pipeline Co. of America.	Camrick Southeast Gas Pool.	Okla.	Beaver	04 13 64	Iss.
CI64-1284 Transcontinental Gas Pipe Line Corp.	South Tilden	Tex.	McMullen	06 11 64	Iss.
Mid-States Oil Corp.:					
G-8655 Cities Service Gas Co.	Undesignated	Kans.	Kearny	06 05 64	Dis.
Midwest Oil Corp.:					
CI64-1327 Natural Gas Pipeline Co. of America.	W. Crane*	Okla.	Dewey*	06 19 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Midwest Oil Corp., Operator, et al.:					
CI61-621 Hope Natural Gas Co.	South Bosco	La.	Acadia	01 07 64	Iss.
CI62-1317 United Fuel Gas Co.	South Thornwell	La.	Jefferson Davis	01 07 64	Iss.
William S. Millener, et al.:					
CI64-675 Cities Service Gas Co.	Hugoton Gas	Kans.	Stanton	04 23 64	Iss.
Mineral Mining Co., Operator, et al.:					
CI64-1093 Cities Service Gas Co.	Eureka*	Okla.	Grant*	06 12 64	Iss.
Monsanto Chemical Co.:					
CI61-94 Transwestern Pipeline Co.	Undesignated	Tex.	Hansford	03 04 64	Iss.
CI61-604 Texas Gas Transmission Corp.	Bernice*	La.	Union*	03 13 64	Iss.
CI64-767 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	02 25 64	Iss.
Frank Moore, et al.:					
CI64-665 Pennzoil Co.	Troy District	W. Va.	Gilmer	01 23 64	Iss.
W. A. Morel, Operator, et al.:					
CI64-867 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	06 10 64	Iss.
W. H. Mossor, Agent for Bud Moore Oil & Gas Co.:					
CI64-1231 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	06 05 64	Iss.
Mountain States Natural Gas Co.:					
CI64-640 El Paso Natural Gas Co.	Basin Dakota	Colo.	La Plata	01 20 64	Iss.
E. W. Mudge, Jr., Operator, et al.:					
CI64-776 Warren Petroleum Corp.	East Panhandle Sweet Gas.	Tex.	Wheeler	03 18 64	Iss.
Mutual Oil Co., et al.:					
CI64-851 Hope Natural Gas Co.	Clay* Districts	W. Va.	Harrison	03 18 64	Iss.
Natol Petroleum Corp., Operator, et al.:					
CI64-910 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Pearl River	06 19 64	Iss.
Natural Gas of West Virginia, Inc.:					
CI64-563 Hope Natural Gas Co.	Murphy District	W. Va.	Wetzel	01 03 64	Iss.
CI64-1254 Hope Natural Gas Co.	Ripley District	W. Va.	Jackson	06 05 64	Iss.
Holly Nestor, Agent for Starkey Gas Co.:					
CI64-753 Cabot Corp.	Center District	W. Va.	Calhoun	05 06 64	Iss.
Joseph E. Newman, Operator, et al.:					
CI64-1143 Cities Service Gas Co.	Gereke Pool	Kans.	Pratt	05 19 64	Iss.
Carl A. Nilsen:					
CI64-1174 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Dewey	06 11 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
North Central Oil Corp., Operator, et al.:					
CI61-1571 Transcontinental Gas Pipe Line Corp.	North Thibodaux	La.	Lafourche	01 20 64	Iss.
CI62-313 Transcontinental Gas Pipe Line Corp.	Kaplan Area	La.	Vermilion	01 20 64	Iss.
Northern Natural Gas Producing Co.:					
CI63-1250 Northern Natural Co.	Mammoth Creek	Tex.	Lipscomb	02 20 64	Iss.
CI64-588 Panhandle Eastern Pipe Line Co.	Trail Northeast	Okla.	Dewey	02 07 64	Iss.
Phil P. O'Neal:					
CI64-614 Lone Star Gas Co.	West Marlow	Okla.	Stephens	01 10 64	Iss.
Ocean Drilling & Exploration Co., Operator, et al.:					
CI60-743 Transcontinental Gas Pipe Line Corp.	Undesignated	La.	Undesignated	04 16 64	Iss.
CI61-1469 Transcontinental Gas Pipe Line Corp.	Ship Shoal Area	La.	Undesignated	04 16 64	Iss.
CI61-1708 Transcontinental Gas Pipe Line Corp.	South Pelto Area	La.	Undesignated	04 16 64	Iss.
Odessa Natural Gasoline Co.:					
CI64-868 Northern Natural Gas Co.	Lipscomb Tonkawa.	Tex.	Lipscomb	03 24 64	Iss.
The Oil Capital Corp.:					
CI63-1349 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont*	06 22 64	Wtd.
Osborn-Barret Petroleum, Inc.:					
CI64-807 Colorado Interstate Gas Co., et al.	Hugoton	Kans.	Kearny	04 07 64	Iss.
Jewel Osborn:					
CI64-805 Colorado Interstate Gas Co., et al.	Hugoton	Kans.	Kearny	04 07 64	Iss.
W. B. Osborn, Jr.:					
CI64-806 Colorado Interstate Gas Co., et al.	Hugoton	Kans.	Kearny	04 07 64	Iss.
J. P. Owen, Operator, et al.:					
CI63-1363 Texas Gas Transmission Corp.	Midland	La.	Acadia	06 19 64	Iss.
Ozark-Mahoning Co.:					
CI64-777 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	02 25 64	Iss.
C. T. Palmer, Operator, et al.:					
CI64-750 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 17 64	Iss.
Pan American Petroleum Corp.:					
G-4757 Northern Natural Gas Co.	Hugoton	Kans.	Haskell	06 05 64	Iss.
G-4759 Colorado Interstate Gas Co.	Hugoton	Kans.	Kearny	06 05 64	Iss.
G-4761 Colorado Interstate Gas Co.	Hugoton	Kans.	Kearny	06 05 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Pan American Petroleum Corp.:—Continued					
G-4835 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton	Kans	Finney	06 05 64	Iss.
G-4838 Colorado Interstate Gas Co.	Hugoton	Kans	Finney	06 05 64	Iss.
G-7528 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton	Kans	Finney	06 05 64	Iss.
G-14922 Tensas Gas Gathering Corp.	Lake St. John	La	Tensas	01 20 64	Iss.
G-19417 Cimarron Transwestern Co.	West Enville	Okla	Love	03 30 64	Iss.
CI61-883 Arkansas Louisiana Gas Co.	Calhoun	La	Ouachita	03 13 64	Iss.
CI61-1722 Lone Star Gas Co	S.E. Durant	Okla	Bryan	03 30 64	Iss.
CI62-783 Western Gas Service Co.	Guymon-Hugoton	Okla	Beaver	01 20 64	Iss.
CI63-286 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Major	03 30 64	Iss.
CI63-328 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Major	03 30 64	Iss.
CI63-336 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Woodward	03 30 64	Iss.
CI63-337 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Major	03 30 64	Iss.
CI63-1488 Tennessee Gas Transmission Co.	La Sal Vieja	Tex	Willacy	04 22 64	Iss.
CI64-23 Arkansas Louisiana Gas Co.	Starr	Okla	Kingfisher	03 30 64	Iss.
CI64-67 Arkansas Louisiana Gas Co.	N. Cooper	Okla	Blaine	03 30 64	Iss.
CI64-669 Trunkline Gas Co	Block 26	La	Vermilion	03 20 64	Iss.
CI64-695 Arkansas Louisiana Gas Co.	Arkomo Area	Okla	Latimer	02 04 64	Iss.
CI64-705 Panhandle Eastern Pipe Line Co.	Mocane Gas Area	Okla	Beaver	02 04 64	Iss.
CI64-707 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	02 17 64	Iss.
CI64-751 El Paso Natural Gas Company.	Ignacio	Colo	La Plata	04 09 64	Iss.
CI64-811 Arkansas Louisiana Gas Co.	Cheniere Brake	La	Ouachita	03 10 64	Iss.
CI64-1158 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woodward	06 11 64	Iss.
CI64-1198 Lone Star Gas Co	Penn-Griffith	Tex	Rusk	06 02 64	Iss.
Pan American Petroleum Corp., Operator, et al.:					
G-4836 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton	Kans	Kearny	06 05 64	Iss.
CI61-194 Texas Eastern Transmission Corp.	Willow Springs	Tex	Gregg	06 11 64	Iss.
Parker Petroleum:					
CI64-909 Pennzoil Co.	Union District	W. Va.	Ritchie	04 01 64	Iss.
Irving Pasternak:					
CI62-349 El Paso Natural Gas Co.	Dakota Formation	Colo	La Plata	03 11 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
W. C. Payne:					
CI64-628 Northern Natural Gas Co.	Southeast Dower	Okla.	Beaver	04 02 64	Iss.
Ruth I. Penton and D. N. Penton:					
CI64-476 United Gas Pipe Line Co.	Gordon	La.	Beauregard	02 20 64	Iss.
Petroleum Associates Fund, Inc., Operator, et al.:					
CI64-797 Panhandle Eastern Pipe Line Co.	Borchers N.W. Morrow Oil & Gas Pool.	Kans.	Meade	03 02 64	Iss.
Petroleum Inc. Operator, et al.:					
CI62-372 Cities Service Gas Co.	Hugoton	Kans.	Finney	01 20 64	Iss.
Petroleum Promotions, Inc.:					
CI64-1092 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	05 06 64	Iss.
Petroleum Resources Inc., et al.:					
CI64-887 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	04 01 64	Iss.
CI64-1286 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	06 05 64	Iss.
O. A. Phillips:					
CI61-113 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	04 13 64	Iss.
Phillips Petroleum Co.:					
CI63-1005 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont	03 27 64	Wtd.
CI63-1371 Hope Natural Gas Co.	Panhandle Area	Tex.	Moore*	02 17 64	Iss.
CI64-895 Champlin Oil & Refining Co.	Witcher Area	Okla.	Logan	05 06 64	Iss.
Phillips Petroleum Co., Operator, et al.:					
CI63-462 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey*	03 30 64	Iss.
CI63-583 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	03 30 64	Iss.
W. C. Pickens, et al.:					
CI64-1180 Northern Natural Gas Co.	Como	Okla.	Beaver	05 25 64	Iss.
Pioneer Petroleum, Inc.:					
CI64-925 Pennzoil Co.	Greenbrier District	W. Va.	Doddridge	04 13 64	Iss.
Pioneer Production Corp., Operator, et al.:					
CI64-535 Northern Natural Gas Co.	Fincham	Kans.	Meade	01 10 64	Iss.
CI64-671 Northern Natural Gas Co.	North	Tex.	Lipscomb	01 23 64	Iss.
CI64-676 Northern Natural Gas Co.	North	Tex.	Lipscomb	01 23 64	Iss.
CI64-720 Northern Natural Gas Co.	West Follett	Tex.	Lipscomb	02 17 64	Iss.
CI64-942 Northern Natural Gas Co.	Follett	Tex.	Lipscomb	04 13 64	Iss.
CI64-945 Northern Natural Gas Co.	North	Tex.	Lipscomb	04 13 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
C. O. Poling, et al.:					
CI64-504 Cabot Corp.	Center District	W. Va.	Calhoun	04 29 64	Iss.
CI64-505 Cabot Corp.	Lee District	W. Va.	Calhoun	04 29 64	Iss.
CI64-506 Cabot Corp.	Sheridan District	W. Va.	Calhoun	04 29 64	Iss.
CI64-507 Cabot Corp.	Sherman District	W. Va.	Calhoun	04 29 64	Iss.
CI64-508 Cabot Corp.	Lee District	W. Va.	Calhoun	04 29 64	Iss.
CI64-509 Cabot Corp.	Burning Springs District.	W. Va.	Wirt	04 29 64	Iss.
Fred W. Pool, Operator, et al.:					
CI62-1335 El Paso Natural Gas Co.	Dakota Formation	Colo.	La Plata	03 11 64	Iss.
William E. Portman, et al.:					
CI64-599 Panhandle Eastern Pipe Line Co.	Hough Area	Okla.	Texas	01 10 64	Iss.
Pratt County Gas Co.:					
CI63-750 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Pratt	06 11 64	Iss.
The Preston Oil Co.:					
CI64-941 Texas Gas Transmission Corp.	North Welsh	La.	Jefferson Davis	04 13 64	Iss.
Ferrell L. Prior:					
CI64-691 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	02 04 64	Iss.
CI64-700 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	02 04 64	Iss.
CI64-1255 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	06 05 64	Iss.
Ferrell L. Prior, et al.:					
CI64-967 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	04 29 64	Iss.
The Pure Oil Co.:					
CI61-1791 Texas Eastern Transmission Corp.	Vienna	Tex.	Lavaca	01 22 64	Iss.
CI62-634 Natural Gas Pipeline Co. of America.	Bryans Mill	Tex.	Cass	01 22 64	Iss.
CI62-1224 Tennessee Gas Transmission Co.	Lake Pelto	La.	Terrebonne	01 22 64	Iss.
CI63-148 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Woodward	06 11 64	Iss.
CI63-1242 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont*	06 22 64	Wtd.
CI64-55 Arkansas Louisiana Gas Co.	S.W. Waukomis	Okla.	Garfield	03 10 64	Iss.
Quaker State Oil Refining Corp.:					
CI64-899 Hope Natural Gas Co.	Mannington District.	W. Va.	Marion	04 01 64	Iss.
Homer Queen, et al.:					
CI64-880 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	04 01 64	Iss.
Leslie A. Quillen, et al.:					
CI64-611 Northern Natural Gas Co.	Undesignated	Kans.	Edwards	01 10 64	Iss.
A. C. Radford, Agent for Reed Gas Co.:					
CI64-850 Hope Natural Gas Co:	Union District	W. Va.	Clay	03 18 64	Iss.
A. C. Radford, et al.:					
CI64-956 Columbian Fuel Corp:	Elk District	W. Va.	Kanawha	04 23 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Charles B. Read, Operator, et al.:					
CI64-741 El Paso Natural Gas Co.	House	N. Mex.	Lea	02 17 64	Iss.
Reading & Bates Offshore Drilling Co., Operator, et al.:					
CI64-1262 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	06 05 64	Iss.
Reaves and Myers, Operator, et al.:					
CI63-124 Texas Eastern Transmission Corp.	Goebel	Tex.	Live Oak	01 20 64	Iss.
The R. W. Rine Drilling Co., Operator & Agent, et al.:					
CI62-1308 Panhandle Eastern Pipe Line Co.	Iuka-Carni Council Grove.	Kans.	Pratt	06 05 64	Iss.
Robbins Petroleum Corp., Operator, et al.:					
CI64-704 Lone Star Gas Co.	Peatown	Tex.	Gregg	02 04 64	Iss.
CI64-1208 Lone Star Gas Co.	North	Tex.	Gregg	06 02 64	Iss.
Robert F. Roberts, et al.:					
CI61-231 Texas Gas Transmission Corp.	Sugar Creek	La.	Claiborne*	03 24 64	Iss.
Rovboscer, Inc.:					
CI64-747 Equitable Gas Co.	Clay District	W. Va.	Ritchie	02 17 64	Iss.
Neal Rudder, et al.:					
CI64-807 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	04 01 64	Iss.
CI64-901 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	04 01 64	Iss.
CI64-1263 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	06 05 64	Iss.
A. W. Rutter, et al.:					
CI64-709 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Glasscock*	03 05 64	Iss.
CI64-740 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	03 05 64	Iss.
Rutter and Wilbanks Brothers, et al.:					
CI64-977 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	04 20 64	Iss.
Sagahoc Oil & Gas Corp., et al.:					
CI62-128 Orange Grove Gas Gathering Co.	Undesignated	Tex.	Jim Wells	02 05 64	Wtd.
St. Clair Oil Co.:					
CI64-841 Equitable Gas Co.	Collins Settlement District.	W. Va.	Lewis	03 18 64	Iss.
San Jacinto Oil and Gas Co.:					
CI64-456 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	03 18 64	Iss.
Caroline Hunt Sands & Loyd B. Sands:					
CI61-643 Transwestern Pipeline Co.	Farnsworth	Tex.	Ochiltree	03 04 64	Iss.
Caroline Hunt Sands, et al.:					
CI64-912 Northern Natural Gas Co.	S.W. Bates	Okla.	Beaver	04 09 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Secure Trusts:					
CI64-1186 Northern Natural Gas Co.	McKinney Area	Kans	Meade	06 02 64	Iss.
Seneca Oil Co.:					
CI64-631 Northern Natural Gas Co.	Southeast Dower	Okla	Beaver	04 02 64	Iss.
Severino P. Severino, et al.:					
CI64-620 Lake Shore Pipe Line Co.	Conneaut Township.	Pa	Erie	01 20 64	Iss.
Fred V. Shadid, et al.:					
CI64-1211 El Paso Natural Gas Co.	South Erick	Okla	Greer	06 02 64	Iss.
Shadid Production Co.:					
CI64-107 Arkansas Louisiana Gas Co.	North Carter	Okla	Beckham	01 28 64	Iss.
The Shamrock Oil and Gas Corp.:					
CI64-622 Northern Natural Gas Co.	Undesignated	Okla	Beaver	01 20 64	Iss.
Howard W. Sharpley, et al.:					
CI64-636 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	01 20 64	Iss.
Warren Shear:					
CI64-754 Lone Star Gas Co.	East Doyle Area	Okla	Stephens	03 18 64	Iss.
Shell Oil Co.:					
CI63-479 Cities Service Gas Co.	Hobart Ranch Area	Tex	Hemphill	01 03 64	Iss.
CI63-892 Colorado Interstate Gas Co.	Wind River Basin Area.	Wyo	Fremont	03 27 64	Wtd.
CI63-1583 Arkansas Louisiana Gas Co.	North Carter	Okla	Beckham	01 28 64	Iss.
CI64-592 Northern Natural Gas Co.	Baldwin Area*	Okla.*	Beaver*	01 10 64	Iss.
CI64-594 Northern Natural Gas Co.	Follet Area*	Okla.*	Beaver*	01 10 64	Iss.
CI64-652 Arkansas Louisiana Gas Co.	West Enid Area	Okla	Garfield	01 20 64	Iss.
CI64-697 New York State Natural Gas Corp.*	Artemas Pool	Pa	Bedford	02 04 64	Iss.
CI64-699 Cities Service Gas Co.	N.E. Waynoka Area.	Okla	Woods	02 04 64	Iss.
CI64-1170 Natural Gas Pipeline Co. of America.	Thomas Plant	Okla	Dewey	05 25 64	Iss.
CI64-1213 Natural Gas Pipeline Co. of America.	N.W. Chester	Okla	Woodward	06 19 64	Iss.
CI64-1219 Northern Natural Gas Co.	Jalmat	N. Mex	Lea	06 04 64	Rej.
Sho-Van Gas Producing Co., Inc.:					
G-18367 United Gas Pipe Line Co.	Monroe	La	Ouachita	03 13 64	Iss.
Shoreline Exploration, Inc.:					
CI60-356 United Gas Pipe Line Co.	East Gibson	La	Terrebonne	01 21 64	Iss.
CI61-1015 United Gas Pipe Line Co.	Gibson	La	Terrebonne	01 21 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,‡ DOCKET NO. AND PURCHASER‡	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Donald W. Sidwell, et al.:					
CI64-802 Panhandle Eastern Pipe Line Co.	Panoma Council Grove.	Kans.	Stevens*	04 01 64	Iss.
Howard H. Sidwell:					
CI64-803 Panhandle Eastern Pipe Line Co	Panoma Council Grove.	Kans.	Stevens*	04 01 64	Iss.
Sidwell Oil and Gas, Inc.:					
CI64-940 El Paso Natural Gas Co.	East Panhandle	Tex.	Wheeler	04 13 64	Iss.
CI64-1220 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	06 05 64	Iss.
Walter L. Sidwell, Jr., et al.:					
CI64-801 Panhandle Eastern Pipe Line Co.	Panoma Council Grove.	Kans.	Stevens*	04 01 64	Iss.
Signal Oil & Gas Co., Operator:					
CI64-612 Cities Service Gas Co.	Sho-Vel-Tum*	Okla.	Stephens*	01 20 64	Iss.
Sinclair Oil & Gas Co.:					
G-17979 Transwestern Pipeline Co.	Undesignated	Okla.*	Ellis*	01 22 64	Iss.
CI61-971 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	03 24 64	Wtd.
CI61-1137 Panhandle Eastern Pipe Line Co.	Angell	Kans.	Meade	06 23 64	Iss.
CI63-1025 Arkansas Louisiana Gas Co.	North Carter	Okla.	Beckham	03 30 64	Iss.
CI63-1026 Arkansas Louisiana Gas Co.	North Cooper	Okla.	Blaine	03 30 64	Iss.
CI63-1042 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey	03 30 64	Iss.
CI62-1221 Colorado Interstate Gas Co.	Wind River Basin	Wyo.	Fremont	03 27 64	Wtd.
CI64-621 Panhandle Eastern Pipe Line Co.	East Trail	Okla.	Dewey	02 25 64	Iss.
Singer-Fleischaker Oil Co.:					
CI63-1217 Texas Gas Transmission Corp.	North Elton	La.	Allen	06 19 64	Iss.
Skelly Oil Co.:					
CI64-774 Natural Gas Pipeline Co. of America	Camrick	Okla.	Beaver	02 25 64	Iss.
CI64-884 Lone Star Gas Co.	East Doyle	Okla.	Stephens	04 01 64	Iss.
CI64-1181 Texas Gas Transmission Corp.	Northwest Cotton Valley Area.	La.	Webster	05 25 64	Iss.
CI64-1190 Arkansas Louisiana Gas Co.	Sibley	La.	Webster	06 11 64	Iss.
Bob B. Slack, et al.:					
CI62-1095 Rio Sabine, Inc.	Millers Bluff	La.	Bossier	03 13 64	Iss.
Jas. F. Smith:					
CI64-735 Kansas-Nebraska Natural Gas Co., Inc.	Dombey	Okla.	Beaver	03 18 64	Iss.
Louis J. Smith:					
CI64-745 Equitable Gas Co.	Otter District	W. Va.	Braxton	02 17 64	Iss.
O. D. Smith Gas Co.:					
CI64-762 Cabot Corp.	Undesignated	W. Va.	Calhoun	02 25 64	Iss.
CI64-763 Cabot Corp.	Undesignated	W. Va.	Wirt*	02 25 64	Iss.
A. M. Snider:					
CI64-830 The Ohio Fuel Gas Co.	Church District	W. Va.	Wetzel	03 10 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Socony Mobil Oil Co., Inc., Operator, et al.:					
CI61-735 Texas Gas Transmission Corp.	East Blackburn	La.	Claiborne	03 13 64	Iss.
CI61-1105 El Paso Natural Gas Co.	Kermit	Tex.	Winkler	03 27 64	Wtd.
CI63-1300 Natural Gas Pipeline Co. of America.	West Crane*	Okla.	Dewey*	04 08 64	Wtd.
CI64-799 El Paso Natural Gas Co.	Waha	Tex.	Pecos*	05 19 64	Iss.
CI64-1079 Colorado Interstate Gas Co.	Hugoton	Kans.	Grant*	04 29 64	Iss.
CI64-1113 Mountain Fuel Supply Co.	Little Snake Unit Area.	Wyo.*	Sweetwater*	05 18 64	Iss.
CI64-1115 Northern Natural Gas Co.	Hansford*	Tex.	Hansford*	05 18 64	Iss.
Sohio Petroleum Co.:					
CI64-1278 Northern Natural Gas Co.	Follett	Tex.	Lipscomb	06 11 64	Iss.
CI64-1495 Northern Natural Gas Co.	Drinkard	N. Mex.	Lea	06 25 64	Rej.
Southern Minerals Corp.:					
CI64-1103 Florida Gas Transmission Co.	Edna	La.	Jefferson Davis	05 06 64	Iss.
Southern New Mexico Oil Corp.:					
CI64-1108 El Paso Natural Gas Co.	Lusk Deep Unit Area.	N. Mex.	Lea*	05 06 64	Iss.
Southern Union Production Co.:					
CI63-696 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 27 64	Wtd.
CI64-935 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Major	05 19 64	Iss.
Southwest Gas Producing Co., Inc., et al.:					
CI64-1084 United Fuel Gas Co.	Midland	La.	Acadia	04 29 64	Iss.
Southwest Natural Production Co.:					
CI63-1189 Arkansas Louisiana Gas Co.	Cheniere	La.	Ouachita	02 25 64	Iss.
CI63-1277 Arkansas Louisiana Gas Co.	Ada	La.	Webster	02 25 64	Iss.
Southwest Petroleum Management Corp., Operator:					
CI64-736 Texas Eastern Transmission Corp.	Gottschalt	Tex.	Goliad	02 17 64	Iss.
CI64-869 Texas Eastern Transmission Corp.	West Weesatche	Tex.	Goliad	03 24 64	Iss.
Southwest Petroleum Management Corp., Operator, et al.:					
CI64-847 Texas Eastern Transmission Corp.	East Melrose*	Tex.	Goliad	03 24 64	Iss.
Jack C. Staley, Operator, et al.:					
CI64-616 Warren Petroleum Corp.	East Panhandle Sweet Gas.	Tex.	Wheeler	02 07 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Standard Oil Co. of Tex., A Division of California Oil Co.:					
CI64-607 Natural Gas Pipeline Co. of America.	Willamar	Tex	Willacy	01 10 64	Iss.
Star Gas Co.:					
CI64-630 Cabot Corp	Sherman District	W. Va	Calhoun	01 20 64	Iss.
Harvey L. Starr, et al.:					
CI64-1345 Hope Natural Gas Co.	Spring Creek	W. Va	Wirt	06 10 64	Iss.
Paul F. Starr, Agent for M. & R. Producing Co.:					
CI64-855 Hope Natural Gas Co.	Spencer District	W. Va	Roane	03 18 64	Iss.
CI64-890 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	04 01 64	Iss.
CI64-891 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	04 01 64	Iss.
CI64-906 Hope Natural Gas Co.	Spencer District	W. Va	Roane	04 01 64	Iss.
CI64-937 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	04 13 64	Iss.
CI64-938 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	04 13 64	Iss.
CI64-1232 Hope Natural Gas Co.	Spencer	W. Va	Roane	06 05 64	Iss.
CI64-1250 Hope Natural Gas Co.	Washington District	W. Va	Calhoun	06 05 64	Iss.
N. A. Steed, Operator, et al.:					
CI64-783 El Paso Natural Gas Co.	Undesignated	N. Mex	San Juan	02 25 64	Iss.
J. F. Stephenson, Operator, et al.:					
CI64-761 Lone Star Gas Co	East Hewitt	Okla	Carter	02 25 64	Iss.
CI64-769 Lone Star Gas Co	East Hewitt	Okla	Carter	02 25 64	Iss.
CI64-1135 Lone Star Gas Co	East Hewitt	Okla	Carter	05 19 64	Iss.
O. V. Stonestreet, et al., d/b/a Big Sandy Gas Co.:					
CI64-815 United Fuel Gas Co.	Geary District	W. Va	Roane	03 10 64	Iss.
S. A. Story, Operator, et al.:					
CI64-693 Banquete Gas Co. Div. Crestmont.	Plymouth*	Tex	San Patricio	02 17 64	Iss.
Stubblefield Brothers:					
CI61-605 Transwestern Pipeline Co.	East Panhandle	Tex	Wheeler	01 04 64	Iss.
Sun Oil Co.:					
CI60-349 South Texas Natural Gas Gathering Co.	Donna	Tex	Hidalgo	06 23 64	Iss.
CI63-1427 Arkansas Louisiana Gas Co.	N. Cooper	Okla	Blaine	03 30 64	Iss.
CI64-648 Arkansas Louisiana Gas Co.	Arkoma Area	Okla	Latimer	01 20 64	Iss.
CI64-782 Lone Star Gathering Co.	Ida Weitz	Tex	Victoria	02 25 64	Iss.
CI64-885 Cities Service Gas Co.	N.E. Waynoka	Okla	Woods	04 01 64	Iss.
CI64-981 Northern Natural Gas Co.	N.E. Dower	Okla	Beaver	04 20 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Sunac Petroleum Corp., et al.:					
CI60-793 South Texas Natural Gas Gathering Co.	East Falfurrias Area.	Tex.	Jim Wells*	06 23 64	Iss.
Sunglaze, Inc.:					
CI64-758 Texas Eastern Transmission Corp.	Hungerford	Tex.	Wharton	02 25 64	Iss.
Sunray DX Oil Co.:					
CI60-85 United Gas Pipe Line Co.	Calhoun	La.	Ouachita	03 31 64	Iss.
CI60-377 Trunkline Gas Co.	Cypress Creek	Tex.	Newton	01 28 64	Iss.
CI60-800 Texas Gas Transmission Co.	Calhoun	La.	Ouachita	03 13 64	Iss.
CI63-151 Northern Natural Gas Co.	Doby Springs	Okla.	Harper	03 11 64	Iss.
CI64-543 Northern Natural Gas Co.	Southeast Como	Okla.	Beaver	01 10 64	Iss.
CI64-835 Natural Gas Pipeline Co. of America.	Thomas Area	Okla.	Dewey*	03 18 64	Iss.
CI64-875 Arkansas Louisiana Gas Co.	North Enid Field	Okla.	Garfield	03 24 64	Iss.
Sunray DX Oil Co., Operator, et al.:					
CI64-639 Texas Gas Transmission Corp.	Egan	La.	Acadia	01 20 64	Iss.
The Superior Oil Co.:					
CI63-51 Lone Star Gathering Co.	Du Bose	Tex.	De Witt*	06 11 64	Wtd.
CI64-836 Kansas-Nebraska Natural Gas Co., Inc.	Syracuse Area	Kans.	Hamilton	03 18 64	Iss.
CI64-982 Florida Gas Transmission Co.	Fausse Pointe	La.	Iberia	04 29 64	Iss.
C. P. Talbot, et al.:					
G-20381 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	03 13 64	Iss.
B. E. Talkington, et al., Agent:					
CI64-944 Hope Natural Gas Co.	Meade District	W. Va.	Upshur	04 13 64	Iss.
Tarpon Management Co., Agent:					
CI64-831 Trunkline Gas Co.	East Edinburg	Tex.	Hidalgo	04 09 64	Iss.
Ernest W. Tate:					
CI64-1134 Lone Star Gas Co.	East Doyle	Okla.	Stephens	05 19 64	Iss.
Warren L. Taylor, et al.:					
CI64-1260 Hope Natural Gas Co.	McClellan District	W. Va.	Doddridge	06 05 64	Iss.
Tenneco Corp.:					
CI63-1182 Arkansas Louisiana Gas Co.	North Cooper	Okla.	Blaine	02 20 64	Iss.
Tenneco Oil Co.:					
CI61-1730 Tennessee Gas Transmission Co.	Trull	Tex.	Matagorda	06 19 64	Wtd.
CI62-1032 Tennessee Gas Transmission Co.	Charenton	La.	St. Mary	06 19 64	Wtd.
CI63-1183 Arkansas Louisiana Gas Co.	Okeene	Okla.	Blaine	02 20 64	Iss.
CI64-516 Panhandle Eastern Pipe Line Co.	Northeast Trail	Okla.	Dewey	02 04 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Tenneco Oil Co.—Continued					
CI64-985 American Louisiana Pipe Line Co.	North Holly Beach	La.	Cameron	06 30 64	Iss.
CI64-987 Phillips Petroleum Co.	Fuhrman-Mascho	Tex.	Andrews	06 30 64	Iss.
CI64-989 Northern Natural Gas Co.	Prentice	Tex.	Yokum	06 30 64	Iss.
CI64-992 Cities Service Gas Co.	Hardtner	Kans.	Barber	06 30 64	Iss.
CI64-996 El Paso Natural Gas Co.	Blanco Pictured Cliffs.	N. Mex.	Rio Arriba	06 30 64	Iss.
CI64-998 Lone Star Gas Co.	Katie	Okla.	Garvin	06 30 64	Iss.
CI64-999 El Paso Natural Gas Co.	S. Fullerton	Tex.	Andrews	06 30 64	Iss.
CI64-1001 United Gas Pipe Line Co.	Cowards Gulley Area.	La.	Beauregard*	06 30 64	Iss.
CI64-1004 El Paso Natural Gas Co.	Sonora*	Tex.	Sutton	06 30 64	Iss.
CI64-1006 Kansas-Nebraska Natural Gas Co., Inc.	Armstrong	Colo.	Logan	06 30 64	Iss.
CI64-1007 El Paso Natural Gas Co.	Blanco	N. Mex.	Rio Arriba	06 30 64	Iss.
CI64-1008 El Paso Natural Gas Co.	Blanco	N. Mex.	Rio Arriba	06 30 64	Iss.
CI64-1009 Arkansas Louisiana Gas Co.	Simsboro	La.	Lincoln	06 30 64	Iss.
CI64-1013 Panhandle Eastern Pipe Line Co.	S.E. Light	Okla.	Beaver	06 30 64	Iss.
CI64-1015 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	06 30 64	Iss.
CI64-1016 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	06 30 64	Iss.
CI64-1018 Transcontinental Gas Pipe Line Corp.	Vermilion Block 76	La.	Vermilion	06 30 64	Iss.
CI64-1019 Texas Gas Transmission Corp.	Sugar Creek	La.	Claiborne	06 30 64	Iss.
CI64-1020 United Gas Pipe Line Co.	Maxie-Pistol Ridge Area.	Miss.	Forrest*	06 30 64	Iss.
CI64-1022 Lone Star Gas Co.	Doyle	Okla.	Stephens	06 30 64	Iss.
CI64-1024 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	06 30 64	Iss.
CI64-1027 Arkansas Louisiana Gas Co.	East Haynesville	La.	Claiborne	06 30 64	Iss.
CI64-1028 Texas Eastern Transmission Corp.	Delhi	La.	Richland*	06 30 64	Iss.
CI64-1029 Arkansas Louisiana Gas Co.	East Haynesville	La.	Claiborne	06 30 64	Iss.
CI64-1030 Arkansas Louisiana Gas Co.	East Haynesville	La.	Claiborne	06 30 64	Iss.
CI64-1031 Mississippi River Fuel Corp.	Woodlawn	Tex.	Harrison*	06 30 64	Iss.
CI64-1034 United Gas Pipe Line Co.	Waskom	Tex.	Harrison	06 30 64	Iss.
CI64-1036 Arkansas Louisiana Gas Co.	Bethany	Tex.	Panola	06 30 64	Iss.
CI64-1037 Arkansas Louisiana Gas Co.	North Lansing	Tex.	Harrison	06 30 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Tenneco Oil Co.—Continued					
CI64-1038 Arkansas Louisiana Gas Co.	South Hallsville	Tex.	Harrison*	06 30 64	Iss.
CI64-1039 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	06 30 64	Iss.
CI64-1040 Arkansas Louisiana Gas Co.	Sibley	La.	Webster	06 30 64	Iss.
CI64-1041 United Gas Pipe Line Co.	Carthage	Tex.	Panola	06 30 64	Iss.
CI64-1042 United Gas Pipe Line Co.	Burnell*	Tex.	Bee	06 30 64	Iss.
CI64-1044 United Gas Pipe Line Co.	Bethany	Tex.	Panola	06 30 64	Iss.
CI64-1045 United Gas Pipe Line Co.	Bethany	Tex.	Panola	06 30 64	Iss.
CI64-1046 United Gas Pipe Line Co.	Bethany	Tex.	Panola	06 30 64	Iss.
CI64-1047 Texas Eastern Transmission Corp.	Myersville	Tex.	De Witt	06 30 64	Iss.
CI64-1048 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	06 30 64	Iss.
CI64-1049 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	06 30 64	Iss.
CI64-1050 Texas Eastern Transmission Corp.	North Hostetter	Tex.	McMullen	06 30 64	Iss.
CI64-1052 United Fuel Gas Co.	Ellis	La.	Acadia	06 30 64	Iss.
CI64-1053 Arkansas Louisiana Gas Co.	Longstreet	La.	De Soto	06 30 64	Iss.
CI64-1054 Arkansas Louisiana Gas Co.	Ivan	La.	Bossier	06 30 64	Iss.
CI64-1056 United Gas Pipe Line Co.	Elysian	Tex.	Harrison	06 30 64	Iss.
CI64-1057 Texas Eastern Transmission Corp.	Bethany-Longstreet	La.	Caddo*	06 30 64	Iss.
CI64-1058 Natural Gas Pipeline Co. of America.	East Maxine	Tex.	Live Oak	06 30 64	Iss.
CI64-1061 Arkansas Louisiana Gas Co.	Athens	La.	Claiborne	06 30 64	Iss.
CI64-1062 Cities Service Gas Co.	N.E. Waynoka	Okla.	Woods	06 30 64	Iss.
CI64-1066 United Gas Pipe Line Co.	Emma Haynes	Tex.	Goliad	06 30 64	Iss.
CI64-1067 Texas Eastern Transmission Corp.	Bethany-Longstreet	La.	Caddo*	06 30 64	Iss.
CI64-1068 Texas Eastern Transmission Corp.	Waskom	Tex.	Harrison	06 30 64	Iss.
CI64-1069 Texas Eastern Transmission Corp.	Bethany-Longstreet	La.	Caddo*	06 30 64	Iss.
CI64-1070 United Gas Pipe Line Co.	Logansport	La.	De Soto	06 30 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Tenneco Oil Co.—Continued					
CI64-1071 United Gas Pipe Line Co.	Greenwood-Waskom.	La.	Caddo	06 30 64	Iss.
CI64-1073 Kansas-Nebraska Natural Gas Co., Inc.	Walker*	Colo.	Logan	06 30 64	Iss.
CI64-1074 Tennessee Gas Transmission Co.	El Ebanito	Tex.	Starr	06 30 64	Iss.
CI64-1075 Tennessee Gas Transmission Co.	Heyser	Tex.	Calhoun	06 30 64	Iss.
CI64-1076 Tennessee Gas Transmission Co.	Deckers Prairie	Tex.	Montgomery	06 30 64	Iss.
CI64-1077 Tennessee Gas Transmission Co.	Palacios	Tex.	Matagorda	06 30 64	Iss.
CI64-1078 Tennessee Gas Transmission Co.	LaSalle	Tex.	Jackson	06 30 64	Iss.
Tenneco Oil Co., Operator:					
CI64-946 Michigan Wisconsin Pipe Line Co.	Curtis Area	Okla.	Woodward	06 02 64	Iss.
Tenneco Oil Co., Operator, et al.:					
CI64-858 El Paso Natural Gas Co.	Monahans	Tex.	Ward	03 24 64	Iss.
CI64-983 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	06 30 64	Iss.
CI64-984 El Paso Natural Gas Co.	Aztec	N. Mex.	San Juan	06 30 64	Iss.
CI64-986 Northern Natural Gas Co.	Eunice Monument	N. Mex.	Lea	06 30 64	Iss.
CI64-988 United Gas Pipe Line Co.	Sibley	La.	Webster	06 30 64	Iss.
CI64-990 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	06 30 64	Iss.
CI64-991 Cities Service Gas Co.	N.W. Sharon	Kans.	Barber	06 30 64	Iss.
CI64-993 Cities Service Gas Co.	E. Hugoton	Kans.	Finney	06 30 64	Iss.
CI64-994 El Paso Natural Gas Co.	W. Kutz Canyon	N. Mex.	San Juan	06 30 64	Iss.
CI64-997 El Paso Natural Gas Co.	Blanco Mesaverde	N. Mex.	San Juan	06 30 64	Iss.
CI64-1000 Natural Gas Pipeline Co. of America.	Fairbanks	Tex.	Harris	06 30 64	Iss.
CI64-1002 Northern Natural Gas Co.	E. Hugoton	Kans.	Finney	06 30 64	Iss.
CI64-1003 El Paso Natural Gas Co.	W. Huerfano	N. Mex.	San Juan	06 30 64	Iss.
CI64-1005 El Paso Natural Gas Co.	Aztec	N. Mex.	San Juan	06 30 64	Iss.
CI64-1010 Coastal States Gas Producing Co.	Chiltipin	Tex.	Duval	06 30 64	Iss.
CI64-1011 South Texas Natural Gas Gathering Co.	N. Monte Christo	Tex.	Hidalgo	06 30 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER[#]		FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Tenneco Oil Co., Operator, et al.—Continued						
CI64-1012	South Texas Natural Gas Gathering Co.	N. Monte Christo	Tex	Hidalgo	06 30 64	Iss.
CI64-1014	El Paso Natural Gas Co.	Blanco	N. Mex	San Juan*	06 30 64	Iss.
CI64-1021	Cities Service Gas Co.	Eureka	Okla	Grant	06 30 64	Iss.
CI64-1023	Lone Star Gas Co.	Doyle	Okla	Stephens	06 30 64	Iss.
CI64-1025	El Paso Natural Gas Co.	West Huerfano	N. Mex	San Juan	06 30 64	Iss.
CI64-1026	Arkansas Louisiana Gas Co.	Longwood	La	Caddo	06 30 64	Iss.
CI64-1032	Texas Gas Transmission Corp.	South Cottonwood Creek.	Tex	De Witt	06 30 64	Iss.
CI64-1033	United Gas Pipe Line Co.	Waskom	Tex	Harrison	06 30 64	Iss.
CI64-1035	Mississippi River Fuel Corp.	Woodlawn	Tex	Harrison	06 30 64	Iss.
CI64-1043	United Gas Pipe Line Co.	Bethany	Tex	Panola	06 30 64	Iss.
CI64-1051	Arkansas Louisiana Gas Co.	Sentell	La	Bossier	06 30 64	Iss.
CI64-1055	Arkansas Louisiana Gas Co.	Scottsville	Tex	Harrison	06 30 64	Iss.
CI64-1059	Texas Eastern Transmission Corp.	North Myersville	Tex	De Witt	06 30 64	Iss.
CI64-1060	Texas Eastern Transmission Corp.	North Mission Valley.	Tex	De Witt	06 30 64	Iss.
CI64-1063	Cities Service Gas Co.	N.E. Clyde	Okla	Grant	06 30 64	Iss.
CI64-1064	Tensas Gas Gathering Corp.	Lake St. John	La	Tensas*	06 30 64	Iss.
CI64-1072	El Paso Natural Gas Co.	Bird-Ringo	Tex	Reagan	06 30 64	Iss.
Tex-Star Oil & Gas Corp.:						
CI64-521	El Paso Natural Gas Co.	Martinez Unit	Colo	La Plata	01 03 64	Iss.
Texaco Inc.:						
CI62-1181	El Paso Natural Gas Co.	Basin Dakota	N. Mex	San Juan	05 15 64	Iss.
CI62-1315	El Paso Natural Gas Co.	Aneth	Utah	San Juan	03 11 64	Iss.
CI63-1206	Kansas-Nebraska Natural Gas Co., Inc.	Alkali Butte Unit	Wyo	Fremont	05 15 64	Iss.
CI64-809	Colorado Interstate Gas Co.	Undesignated	Wyo	Sweetwater	03 05 64	Wtd.
CI64-966	Colorado Interstate Gas Co.	Table Rock	Wyo	Sweetwater	06 29 64	Iss.
CI64-973	Kansas-Nebraska Natural Gas Co., Inc.	Boyd Northeast	Okla	Beaver	04 29 64	Iss.
CI64-1171	Lone Star Gas Co.	East Hewitt	Okla	Carter	05 25 64	Iss.
CI64-1204	Arkansas Louisiana Gas Co.	Centrahoma	Okla	Coal	06 02 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY [2]	DISPOSITION DATE	DISPOSITION [1]
Texaco Inc., Operator:					
CI64-608 Northern Natural Gas Co.	South Kermit Gas Plant.	Tex	Winkler	02 04 64	Iss.
Texaco Inc., Operator, et al.:					
CI64-976 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans	Hamilton	04 29 64	Iss.
CI64-1138 El Paso Natural Gas Co.	Fuller Gas Plant	Tex	Scurry	05 19 64	Iss.
CI64-1325 Lone Star Gas Co.	Sho-Vel-Tum District.	Okla	Stephens	06 19 64	Iss.
Texas American Oil Corp., Operator, et al.:					
CI64-1318 El Paso Natural Gas Co.	Sonora Gas	Tex	Sutton	06 19 64	Iss.
Texas Crude Oil Co.:					
CI64-950 Northern Natural Gas Co.	Upper Morrow	Tex	Hansford	04 23 64	Iss.
Texas Gas Exploration Corp.:					
CI60-76 Texas Gas Transmission Corp.	Chacahoula	La	Lafourche	02 10 64	Iss.
CI62-204 Texas Gas Transmission Corp.	Sligo	La	Bossier	06 11 64	Iss.
Texas Pacific Coal & Oil Co.:					
CI63-1216 Colorado Interstate Gas Co.	Wind River Basin	Wyo	Fremont *	06 22 64	Wtd.
Glenn F. Thomas, et al.:					
CI64-567 Panhandle Eastern Pipe Line Co.	H. G. Adams 1-5 Well.	Kans	Meade	01 03 64	Iss.
James A. Thomas, et al.:					
CI64-1261 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	06 05 64	Iss.
Tidewater Oil Co.:					
CI60-158 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	06 23 64	Iss.
CI63-1009 Arkansas Louisiana Gas Co.	N. Carter	Okla	Beckham	03 30 64	Iss.
CI63-1148 Arkansas Louisiana Gas Co.	Anthon Area	Okla	Custer	02 20 64	Iss.
CI63-1161 Colorado Interstate Gas Co.	Muddy Ridge	Wyo	Fremont	06 22 64	Wtd.
CI64-974 Natural Gas Pipeline Co. of America.	West Crane	Okla	Custer *	04 29 64	Iss.
Tidewater Oil Co., Operator, et al.;					
CI61-1663 Texas Gas Transmission Corp.	Calhoun	La	Lincoln	03 13 64	Iss.
Tomoc Oil Co.:					
CI64-840 Amata Gas Corp	Morales	Tex	Jackson	03 18 64	Iss.
J. C. Trahan, Drilling Contractor, Inc.:					
CI61-1388 United Gas Pipe Line Co.	Simpson Lake	La	Caddo	03 13 64	Iss.
J. C. Trahan, Drilling Contractor, Inc., Operator, et al.:					
G-18287 United Gas Pipe Line Co.	North Turtle Bayou Area.	La	Terrebonne	01 21 64	Iss.
CI60-461 United Gas Pipe Line Co.	East Gibson	La	Terrebonne	01 21 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
J. C. Trahan, Drilling Contractor, Inc., Operator, et al.—Continued					
CI60-698 Transcontinental Gas Pipe Line Corp.	North Duson	La.	Lafayette	01 21 64	Iss.
CI62-771 Texas Gas Transmission Corp.	Ramos	La.	St. Mary	01 21 64	Iss.
CI62-1327 Texas Gas Transmission Corp.	Ruston	La.	Lincoln	03 13 64	Iss.
Twin Gas Co., Operator:					
CI64-1082 Lone Star Gas Co.	Velma Plant	Okla.	Stephens	04 29 64	Iss.
Union Drilling, Inc.:					
CI64-1243 Cumberland and Allegheny Gas Co.	Buckhannon District.	W. Va.	Upshur	06 05 64	Iss.
CI64-1340 Cumberland and Allegheny Gas Co.	Warren District	W. Va.	Upshur	06 19 64	Iss.
Union Drilling, Inc., et al.:					
CI64-1332 Hope Natural Gas Co.	Elk *	W. Va.	Taylor	06 19 64	Iss.
Union Oil Co. of California:					
CI63-1241 Michigan Wisconsin Pipe Line Co.	N. W. Chester	Okla.	Major	03 30 64	Iss.
CI64-486 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla.	Beaver	02 17 64	Iss.
CI64-522 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla.	Beaver	02 17 64	Iss.
CI64-601 Panhandle Eastern Pipe Line Co.	Northwest Trail	Okla.	Dewey	02 07 64	Iss.
CI64-668 Trunkline Gas Co.	Block 26	La.	Vermilion	03 20 64	Iss.
CI64-834 Natural Gas Pipeline Co. of America.	Thomas Area	Okla.	Dewey*	03 18 64	Iss.
CI64-843 Panhandle Eastern Pipe Line Co.	Northwest Oakdale	Okla.	Woods	05 18 64	Iss.
CI64-911 Northern Natural Gas Co.	Northeast Ivanhoe	Okla.	Beaver	04 29 64	Iss.
CI64-958 Northern Natural Gas Co.	Kiowa Creek	Tex.	Lipscomb	04 23 64	Iss.
CI64-1099 Mountain Fuel Supply Co.	Little Snake Unit Area.	Colo.*	Moffat*	05 06 64	Iss.
Union Pacific Railroad Co.:					
CI64-965 Colorado Interstate Gas Co.	Table Rock	Wyo.	Sweetwater	06 29 64	Iss.
Union Texas Petroleum, Division of Allied Chemical Corp.:					
CI61-732 Transwestern Pipeline Co.	Catesby N.E	Okla.	Ellis	03 23 64	Wtd.
Union Texas Petroleum, Division of Allied Chemical Corp., et al.:					
CI61-1275 Natural Gas Pipeline Co. of America.	N. Custer City	Okla.	Custer	03 30 64	Iss.
CI64-654 Arkansas Louisiana Gas Co.	North East Ames	Okla.	Major	01 20 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASERS[4]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
U.S. Natural Gas Corp.:					
CI63-1460 Western Transmission Corp.	Washakie Basin	Wyo	Carbon	05 26 64	Iss.
Harley E. Venters:					
CI64-1131 Lone Star Gas Co.	East Doyle	Okla	Stephens	05 18 64	Iss.
Vienna Oil and Gas Co.:					
CI64-914 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	04 09 64	Iss.
Delbert Wallace, Operator, et al.:					
CI61-871 Coastal States Gas Producing Co.	Johns Field Area	Tex	Duval	06 23 64	Iss.
J. C. Walter, Jr., and Larmar W. Davis, Jr.:					
CI64-688 United Gas Pipe Line Co.	South Weesatche	Tex	Goliad	02 17 64	Iss.
Tommy Ward Drilling Co.:					
CI64-635 Northern Natural Gas Co.	Como Area	Okla	Beaver	01 20 64	Iss.
Roy L. Warner, et al.:					
CI64-905 Hope Natural Gas Co.	Banks District	W. Va	Upshur	04 01 64	Iss.
The Waverly Oil Works Co.:					
CI64-662 Equitable Gas Co.	Otter District	W. Va	Braxton	01 23 64	Iss.
Dorothea Webber:					
CI62-1310 Hope Natural Gas Co.	Meade District	W. Va	Tyler	03 11 64	Iss.
Western Drilling Co. of Longview, Tex.:					
CI61-1045 El Paso Natural Gas Co.	Sawyer	N. Mex	Lea	04 03 64	Wtd.
Western Oil Fields, Inc., Operator, et al.:					
CI61-273 Transwestern Pipeline Co.	Hill-Parsell	Tex	Roberts	03 04 64	Iss.
Wheless Drilling Co., Operator, et al.:					
CI61-587 United Gas Pipe Line Co.	W. Simsboro	La	Lincoln	03 31 64	Iss.
Douglas Whitaker, Operator, et al.:					
CI62-1342 United Gas Pipe Line Co.	Cotton Valley	La	Webster	03 13 64	Iss.
Whitehall Oil Co., Inc.:					
CI64-1147 Northern Natural Gas Co.	Undesignated	Tex	Ochiltree	05 19 64	Iss.
Wilcox Oil Co.:					
CI63-1435 Arkansas Louisiana Gas Co.	North Carter	Okla	Beckham	02 20 64	Iss.
Marvin E. Wilhite, et al.:					
CI64-1250 Hope Natural Gas Co.	Warren District	W. Va	Upshur	06 05 64	Iss.
Robert L. Williams, d/b/a Imperial Oil Co., Operator, et al.:					
CI64-672 Northern Natural Gas Co.	Undesignated	Kans	Meade	01 23 64	Iss.
W. E. Williams, et al.:					
CI64-595 Texas Gas Transmission Corp.	Midland	Ky	Muhlenberg	01 10 64	Iss.

See footnotes at end of table, p. 1676.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Wolf's Head Oil Refining Co., Inc.:					
CI64-1334 Pennzoil Co.	Undesignated	W. Va.	Undesignated	06 19 64	Iss.
Gene M. Woodfin, Trustee:					
CI63-885 Florida Gas Transmission Co.	Chacahoula	La.	Lafourche	04 14 64	Iss.
Worldwide Petroleum Corp.:					
CI64-952 Lake Shore Pipe Line Co.	Conneaut Township.	Pa.	Erie	04 23 64	Iss.
Worldwide Petroleum Corp., et al.:					
CI64-596 Lake Shore Pipe Line Co.	Conneaut Township.	Pa.	Erie	01 10 64	Iss.
George L. Yaste, d/b/a Oil States Co.:					
CI64-647 Equitable Gas Co.	Union District	W. Va.	Ritchie	01 20 64	Iss.
Yucca Petroleum Corp.:					
CI60-768 Transwestern Pipeline Co.	Brillhart	Tex.	Hansford	03 04 64	Iss.
Zapopan, Inc.:					
CI63-842 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	04 03 64	Wtd.

See footnotes at end of table, p. 1676.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JANUARY 1, 1964 THROUGH JUNE 30, 1964

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
A and R Pipe Co.:					
CI64-334 Coastal States Gas Producing Co.	**Heard**	**Tex**	**Bee**	**05 18 64**	**Iss.**
Ambassador Oil Corp., Operator, et al.:					
CI64-772 Natural Gas Pipeline Co. of America.	**Undesignated**	**Tex**	**Hansford**	**02 25 64**	**Iss.**
Amerada Petroleum Corp.:					
CI64-488 Transcontinental Gas Pipe Line Corp.	**Mission Bridge Area.**	**Tex**	**Victoria**	**01 20 64**	**Iss.**
CI64-839 Cities Service Gas Co.	**Elwood**	**Kans**	**Barber**	**03 18 64**	**Iss.**
CI64-892 El Paso Natural Gas Co.	**Bagley**	**N. Mex**	**Lee**	**04 01 64**	**Iss.**
W. H. Appell, Operator, et al.:					
CI64-239 Coastal States Gas Producing Co.	**Poesta Creek**	**Tex**	**Bee**	**05 18 64**	**Iss.**
Carl M. Archer:					
CI64-610 El Paso Natural Gas Co.	**Hansford**	**Tex**	**Ochiltree**	**01 27 64**	**Rej.**
Arnold Well Service, Inc., Operator, et al.:					
CI64-242 Coastal States Gas Producing Co.	**Beeville**	**Tex**	**Bee**	**05 18 64**	**Iss.**
Ashland Oil & Refining Co.:					
CI64-649 Lone Star Gas Co	**East Panhandle**	**Tex**	**Wheeler**	**02 07 64**	**Iss.**
Associated Oil & Gas Co.:					
CI64-832 Trunkline Gas Co	**Salem**	**Tex**	**Victoria**	**03 18 64**	**Iss.**
CI64-833 Banquete Gas Co., Division of Crestmont.	**Spartan**	**Tex**	**San Patricio**	**03 18 64**	**Iss.**
The Atlantic Refining Co.:					
CI64-251 Coastal States Gas Producing Co.	**Poesta**	**Tex**	**Bee**	**05 18 64**	**Iss.**
CI64-787 Trunkline Gas Co	**Fields**	**La**	**Beauregard**	**03 02 64**	**Iss.**
B.D.K. Production Co., Operator, et al.:					
CI64-263 Coastal States Gas Producing Co.	**Mathis Area**	**Tex**	**San Patricio**	**05 18 64**	**Iss.**
Lenore N. Bailey, et al.:					
CI64-249 Coastal States Gas Producing Co.	**Beeville**	**Tex**	**Bee**	**05 18 64**	**Iss.**
Barnwell & Kinzler:					
CI64-748 United Gas Pipe Line Co.	**Greenwood**	**La**	**Caddo**	**02 17 64**	**Iss.**
R. S. Barnwell, Jr., Operator:					
CI64-862 Arkansas Louisiana Gas Co.	**Bellevue**	**La**	**Bossier**	**03 24 64**	**Iss.**
Perry R. Bass, Operator, et al.:					
CI64-576 United Fuel Gas Co.	**Second Bayou**	**La**	**Cameron**	**01 03 64**	**Iss.**
Batex, Inc :					
CI63-1501 Tennessee Gas Transmission Co.	**Rincon**	**Tex**	**Starr**	**02 25 64**	**Iss.**

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Bennett S. Valley Development Co.:					
CI64-629 New York State Natural Gas Corp.	Benezette Township.	Pa.	Elk	01 20 64	Iss.
D. H. Bland:					
CI64-711 United Fuel Gas Co.	Elk District	W. Va.	Kanawha	02 04 64	Iss.
Bridwell Oil Co.:					
CI64-250 Coastal States Gas Producing Co.	Beeville	Tex.	Bee	05 18 64	Iss.
E. J. Brindley:					
CI64-755 New York State Natural Gas Corp.	Leidy	Pa.	Clinton	02 25 64	Iss.
George R. Brown, Operator, et al.:					
CI64-1210 Texas Eastern Transmission Corp.	South Lucky	Tex.	Matagorda	06 05 64	Iss.
CI64-1214 Tennessee Gas Transmission Co.	Sublime	Tex.	Colorado	06 05 64	Iss.
H. L. Brown, et al.:					
CI64-556 South Texas Natural Gas Gathering Co.	Kelsey	Tex.	Brooks	05 19 64	Iss.
Bobby M. Burns:					
CI64-876 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Morgan	04 09 64	Iss.
B. G. Byars:					
CI64-1330 Lone Star Gas Co.	Winnsboro	Tex.	Wood	06 19 64	Iss.
Cabot Corp.:					
CI64-1193 Hope Natural Gas Co.	Undesignated	W. Va.	Calhoun	06 11 64	Iss.
The California Co., Division California Oil Co.:					
CI64-1234 Arkansas Louisiana Gas Co.	Hayti Area	La.	Caddo	06 05 64	Iss.
Cities Service Oil Co.:					
CI64-829 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Seward	03 10 64	Iss.
Cities Service Oil Co., Operator, et al.:					
CI64-723 Lone Star Gas Co.	East Panhandle	Tex.	Wheeler	02 17 64	Iss.
Charles E. Clowe, Jr., et al.:					
CI64-602 Lone Star Gas Co.	North Nellie	Okla.	Stephens	01 10 64	Iss.
Coastal States Gas Producing Co.:					
CI64-237 Trunkline Gas Co.	Undesignated	Tex.	Bee	04 24 64	Iss.
CI64-269 Trunkline Gas Co.	Willman	Tex.	San Patricio	04 24 64	Iss.
Columbian Fuel Corp.:					
CI64-717 Texas Gas Transmission Corp.	Monroe	La.	Ouachita*	03 18 64	Iss.
Continental Oil Co.:					
CI64-742 Southern Natural Gas Co.	Lake Fortuna	La.	St. Bernard	02 17 64	Iss.
Cosden Petroleum Corp., et al.:					
CI64-257 Coastal States Gas Producing Co.	Beeville	Tex.	Bee	05 18 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
W. L. Cotton, Operator, et al.:					
CI61-1572 South Texas Natural Gas Gathering Co.	Nicholson	Tex.	Webb	01 03 64	Iss.
Edwin L. Cox, Operator, et al.:					
CI64-1282 Coastal States Gas Producing Co.	Garaz Unit	Tex.	Duval	06 11 64	Iss.
Chas. Daubert, et al.:					
CI64-243 Coastal States Gas Producing Co.	Willman	Tex.	San Patricio	05 18 64	Iss.
Davon Drilling Co., Operator and Agent, et al.:					
CI64-1268 Cities Service Gas Co.	West Lawrie	Okla.	Logan	06 11 64	Iss.
Dillard & Waltermire Drilling Co.:					
CI64-1121 Tennessee Gas Transmission Co.	La Sal Vieja	Tex.	Willacy	05 18 64	Iss.
Roscoe Dinges, Jr., et al.:					
CI64-948 Hope Natural Gas Co.	Clearfork District	W. Va.	Wyoming	04 23 64	Iss.
Frank F. Dubose:					
CI64-1344 Lone Star Gas Co.	E. Panhandle	Tex.	Wheeler	06 19 64	Iss.
H. A. Ells, et al.:					
CI64-661 Lone Star Gas Co.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
Exchange Oil Co., Ltd., Operator, et al.:					
CI64-796 Cities Service Gas Co.	North Hoover	Okla.	Garvin	03 02 64	Iss.
Fain & McGaha, Operator, et al.:					
CI64-445 Lone Star Gas Co.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
Willard E. Ferrell:					
CI64-564 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	01 03 64	Iss.
Fitzpatrick Drilling Co., Operator, et al.:					
CI64-1341 Coastal States Gas Producing Co.	Poesta Creek	Tex.	Bee	06 19 64	Iss.
Forest Oil Corp., Operator, et al.:					
CI64-1184 Lone Star Gas Co.	North Hoover	Okla.	Garvin	05 25 64	Iss.
Gainer Gas Co.:					
CI64-881 Hope Natural Gas Co.	Dekalb District	W. Va.	Gilmer	04 01 64	Iss.
T. J. Garrity, et al.:					
CI64-1196 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	06 02 64	Iss.
General American Oil Co. of Texas:					
CI64-673 Lone Star Gas Co.	East Panhandle Sweet Gas.	Tex.	Wheeler	02 07 64	Iss.
CI64-978 Texas Eastern Transmission Corp.	Arneckeville	Tex.	De Witt	05 18 64	Iss.
F. A. Gillespie and Sons Co., Operator, et al.:					
CI64-566 Lone Star Gas Co.	East Panhandle	Tex.	Wheeler	02 07 64	Iss.
Ginther, Warren and Co.:					
CI64-266 Coastal States Gas Producing Co.	Mathis	Tex.	San Patricio	05 18 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Delbert Goff, et al.:					
CI64-756 Hope Natural Gas Co.	Freemans Creek District.	W. Va	Lewis	02 25 64	Iss.
W. J. Goldston, et al.:					
CI64-344 Coastal States Gas Producing Co.	Mathis	Tex	San Patricio	05 18 64	Iss.
Gulf Coast Minerals Management Corp.:					
CI64-569 Coastal States Gas Producing Co.	Robinson	Tex	Duval	05 19 64	Iss.
Claud B. Hamill:					
CI64-1251 Tennessee Gas Transmission Co.	Egypt	Tex	Wharton	06 05 64	Iss.
CI64-1252 Tennessee Gas Transmission Co.	Bucksnag	Tex	Colorado	06 05 64	Iss.
Jake L. Hamon:					
CI64-260 Coastal States Gas Producing Co.	Poesta	Tex	Bee	05 18 64	Iss.
Jake L. Hamon, Operator, et al.:					
CI64-1129 Coastal States Gas Producing Co.	Al Smith Area	Tex	Jim Wells	05 19 64	Iss.
J. D. Hedley, Operator, et al.:					
CI64-240 Coastal States Gas Producing Co.	Poesta Creek	Tex	Bee	05 18 64	Iss.
Highland Oil Co., Operator, et al.:					
CI64-825 Texas Eastern Transmission Corp.	Pheasant	Tex	Matagorda	03 10 64	Iss.
Humble Oil & Refining Co.:					
CI64-634 Northern Natural Gas Co.	Dude Wilson	Tex	Ochiltree	01 20 64	Iss.
CI64-1339 Humble Gas Transmission Co.	Carthage Point	Miss	Adams	06 19 64	Iss.
Inland Natural Gasoline:					
CI64-712 El Paso Natural Gas Co.	South Cowden Gas Plant.	Tex	Ector	02 07 64	Iss.
J. C. Baker, Agent for Gregory Gas Co.:					
CI64-1195 Hope Natural Gas Co.	Glade and Fort Lick District.	W. Va	Webster	06 02 64	Iss.
George Jackson, Agent for Elliott-Cain Gas Co., et al.:					
CI64-924 Pennzoil Co.	Undesignated	W. Va	Gilmer	04 13 64	Iss.
J. E. Jackson, Inc., Operator, et al.:					
CI64-248 Coastal States Gas Producing Co.	Beeville	Tex	Bee	05 18 64	Iss.
Julkirk Corp., Operator, et al.:					
CI64-583 Northern Natural Gas Pipeline Co.	Clayton Ranch Lease.	Tex	Crockett	01 10 64	Iss.
Paul E. Kahle, et al.:					
CI64-880 New York State Natural Gas Corp.	Benzette Township	Pa	Elk	04 01 64	Iss.
J. A. Kimmey, Operator, et al.:					
CI64-685 Trunkline Gas Co.	Captain Lucey	Tex	Jim Wells	02 17 64	Iss.
Philip Lemon, et al.:					
CI64-870 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	02 24 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Liberty Fuel Corp. of West Virginia:					
CI64-589 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	01 03 64	Iss.
H. B. Lively, Operator, et al.:					
CI64-258 Coastal States Gas Producing Co.	Linke	Tex.	Bee	05 18 64	Iss.
CI64-259 Coastal States Gas Producing Co.	Yougeen	Tex.	Bee	05 18 64	Iss.
Lone Star Producing Co.:					
CI64-760 Warren Petroleum Corp.	East Panhandle	Tex.	Wheeler	02 25 64	Iss.
May Oil Co., Operator, et al.:					
CI64-280 Coastal States Gas Producing Co.	Poesta	Tex.	Bee	05 18 64	Iss.
Meredith & Co.:					
CI62-1495 Texas Eastern Transmission Corp.	Aldine	Tex.	Harris	03 26 64	Wtd.
Midwest Oil Corp., Operator, et al.:					
CI64-1187 Hope Natural Gas Co.	South Bosco	La.	Acadia	06 02 64	Iss.
Wynn D. Miller, et al.:					
CI64-254 Coastal States Gas Producing Co.	Papalote	Tex.	Bee	05 18 64	Iss.
E. W. Mudge, Jr., Operator, et al.:					
CI64-775 Lone Star Gas Co.	East Panhandle Sweet Gas.	Tex.	Wheeler	03 02 64	Iss.
Nabob Production Co., Operator, et al.:					
CI64-122 Transwestern Pipeline Co.	Hugoton	Tex.	Sherman	01 19 64	Iss.
W. J. Newman:					
CI64-804 Kentucky West Virginia Gas Co.	Undesignated	Ky.	Floyd	03 24 64	Iss.
John C. O'Leary:					
CI64-1323 Tennessee Gas Transmission Co.	Little Flower	Tex.	Victoria	06 19 64	Iss.
Oil Development Co. of Texas:					
CI64-928 Natural Gas Pipeline Co. of America.	North Spearman	Tex.	Hansford	04 13 64	Iss.
Oklahoma Natural Gas Co.:					
CI64-51 Arkansas Louisiana Gas Co.	Armour Webb	Okla.	Grant	03 18 64	Iss.
K. D. Owen, Operator, et al.:					
CI64-678 Transcontinental Gas Pipe Line Corp.	Sour Lake Area	Tex.	Hardin	01 23 64	Iss.
C. T. Palmer, Operator, et al.:					
CI64-749 Lone Star Gas Co.	East Panhandle	Tex.	Wheeler	02 17 64	Iss.
Pan American Petroleum Corp.:					
CI64-1230 Northern Natural Gas Co.	Hugoton	Kans.	Seward	06 05 64	Iss.
J. P. Petkas, et al.:					
CI64-244 Coastal States Gas Producing Co.	Willman	Tex.	San Patricio	05 18 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Phillips Petroleum Co.:					
CI64-326 Coastal States Gas Producing Co.	Poesta	Tex	Bee	05 18 64	Iss.
CI64-871 Texas Eastern Transmission Corp.	West George West	Tex	Live Oak	03 24 64	Iss.
Pioneer Production Corp., Operator, et al.:					
CI61-439 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	05 19 64	Iss.
Prairie Petroleum, Inc., Operator, et al.:					
CI64-827 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo	Morgan	03 10 64	Iss.
Pratt-Hewitt Oil Corp., et al.:					
CI64-253 Coastal States Gas Producing Co.	Beeville	Tex	Bee	05 18 64	Iss.
Producing Properties, Inc., Operator, et al.:					
CI64-845 Texas Eastern Transmission Corp.	Jennie Bell	Tex	De Witt	03 18 64	Iss.
J. P. Pruett:					
CI64-387 Coastal States Gas Producing Co.	Mathis	Tex	San Patricio	05 18 64	Iss.
The Pure Oil Co.:					
CI64-785 Lone Star Gas Co.	Velma-Springer	Okla	Stephens	02 25 64	Iss.
Clara W. Ray, et al.:					
CI64-338 Coastal States Gas Producing Co.	Beeville	Tex	Bee	05 18 64	Iss.
Renappi Corp.:					
G-12992 United Gas Pipe Line Co.	Carthage	Tex	Panola	06 03 64	Iss.
Frank E. Rogers, et al.:					
CI64-463 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	02 17 64	Iss.
Samedan Oil Corp., Operator, et al.:					
CI64-743 United Fuel Gas Co.	Chaulkey	La	Cameron	03 02 64	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI64-770 Texas Eastern Transmission Corp.	North Gillis	La	Calcasieu	02 25 64	Iss.
CI64-798 Jernigan & Morgan Transmission Co.	North Wellston	Okla	Lincoln	03 02 64	Iss.
Shell Oil Co.:					
CI64-896 Phillips Petroleum Co.	Fuhrman-Mascho	Tex	Andrews	04 09 64	Iss.
Sinclair Oil & Gas Co.:					
CI64-846 Cities Service Gas Co.	S.W. Mocane	Okla	Beaver	03 18 64	Iss.
Skelly Oil Co.:					
CI64-252 Coastal States Gas Producing Co.	Silva	Tex	Bee	05 18 64	Iss.
CI64-1105 Texas Eastern Transmission Corp.	Cherokee Lake area	Tex	Rusk *	05 06 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Skelly Oil Co., Operator:					
CI64-1087 Kansas-Nebraska Natural Gas Co., Inc.	Pawnee Hills	Colo.	Logan	05 06 64	Iss.
Skinner Corp., Operator, et al.:					
CI64-256 Coastal States Gas Producing Co.	Mengers	Tex.	Bee	05 18 64	Iss.
Sam Sklar, et al.:					
CI64-628 United Gas Pipe Line Co.	Sibley	La.	Webster	01 20 64	Iss.
Sam Sklar, Trustee:					
CI64-562 Southern Natural Gas Co.	Spider	La.	De Soto	01 03 64	Iss.
Slade, Inc., et al.:					
CI64-241 Coastal States Gas Producing Co.	Poesta Creek	Tex.	Bee	05 18 64	Iss.
Southeastern Gas Co.:					
CI64-1209 Hope Natural Gas Co.	Hamilton	W. Va.	Nicholas	06 05 64	Iss.
Southeastern Public Service Co.:					
CI64-1320 Transcontinental Gas Pipe Line Corp.	Wyrick	Tex.	Refugio	06 19 64	Iss.
Southern Triangle Oil Co., et al.:					
CI64-778 Hope Natural Gas Co.	Cove District	W. Va.	Doddridge	02 25 64	Iss.
Jack C. Staley, Operator, et al.:					
CI64-615 Lone Star Gas Co.	East Panhandle Sweet Gas.	Tex.	Wheeler	02 07 64	Iss.
Standard Oil Co. of Tex., a Division of California Oil Co.:					
CI64-814 Union Tex. Petroleum, Division of Allied Chemical Corp.	Robinson Lake	Tex.	Chambers	03 10 64	Iss.
Reed Starcher:					
CI64-584 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	01 03 64	Iss.
Sunray DX Oil Co.:					
CI64-1217 Cities Service Gas Co.	Woodward	Okla.	Woodward	06 02 64	Iss.
The Superior Oil Co.:					
CI64-1160 Cities Service Gas Co.	Whiterock	Okla.	Noble	06 02 64	Iss.
Tenneco Oil Co.:					
CI64-667 Coastal States Gas Producing Co.	East Mathis	Tex.	San Patricio	05 19 64	Iss.
CI64-663 Arkansas Louisiana Gas Co.	SE Braman	Okla.	Kay	01 23 64	Iss.
Tenneco Corp.:					
CI64-878 Lone Star Gas Co.	Fox Graham	Okla.	Carter	04 01 64	Iss.
CI64-879 Southern Natural Gas Co.	Spider	La.	De Soto	04 01 64	Iss.
Tenneco Oil Co.:					
CI64-674 United Gas Pipe Line Co.	Old Ingleside	Tex.	San Patricio	01 23 64	Iss.
Texaco Inc.:					
CI64-603 Texas Eastern Transmission Corp.	North Karon	Tex.	Live Oak	04 01 64	Iss.

See footnotes at end of table, p. 1676.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Texaco Inc.—Continued					
CI64-609 Texas Eastern Transmission Corp.	Christmas	Tex.	De Witt	04 01 64	Iss.
CI64-643 Tennessee Gas Transmission Co.	Riverside	Tex.	Nueces	02 04 64	Iss.
Texam Oil Corp.:					
CI64-245 Coastal States Gas Producing Co.	Seeley	Tex.	San Patricio	05 18 64	Iss.
Texam Oil Corp., Operator, et al.:					
CI64-246 Coastal States Gas Producing Co.	Tynan	Tex.	San Patricio	05 18 64	Iss.
Toto Gas Co.:					
CI64-1245 Cities Service Gas Co.	Lucien	Okla.	Logan	06 05 64	Iss.
Toto Gas Co., Operator, et al.:					
CI64-1266 Cities Service Gas Co.	Lawrie	Okla.	Logan	06 05 64	Iss.
Vincent & Welch, Inc., Operator, et al.:					
CI64-579 Texas Gas Transmission Corp.	North Elton	La.	Allen*	04 13 64	Iss.
John L. Welsh, Jr., et al.:					
CI64-247 Coastal States Gas Producing Co.	Willman	Tex.	San Patricio	05 18 64	Iss.
Western Oil Fields, Inc.:					
CI64-255 Coastal States Gas Producing Co.	Papalote	Tex.	Bee	05 18 64	Iss.
Westheimer-Neustadt Corp.:					
CI61-531 Cimarron Transmission Co.	Westheimer Unit	Okla.	Love	05 19 64	Iss.
Fred Whitaker, Operator, et al.:					
CI64-1100 Texas Gas Transmission Corp.	Carthage	Tex.	Panola	05 06 64	Iss.
Charles C. White, Operator, et al.:					
CI64-659 Texas Gas Transmission Corp.	Hanson	Ky.	Hopkins	04 29 64	Iss.
Yucca Petroleum Co., Operator, et al.:					
CI64-957 Panhandle Eastern Pipe Line Co.	Eva	Okla.	Texas	04 23 64	Iss.

---

* Indicates that other fields, counties, or States are also included.

# Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Wtd., withdrawn; Rej., rejected; Dis., dismissed.